Public Works (1898) Department.

G.O., No. 2176 98

DATED 29th August 98

[Despatch Abstract.]

W E A Reuch, late Sub Inquirer

Letter from the Govt of India to the Govt of Madras withholding the transmission of Memorial from —— Appealing against the order of the Govt dismissing him from the Public Service, Communicated to Mr Reuch.

[P. W. 28. 1,000—23-6-98.]

Indexed.

BACK PAPERS.

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P.W. (1898) Department.

CURRENT No. 6838

H6/13/ No 2176 W 29.8.98

From The Govt of India P.W.D

No. 2360. G

Communicates in French, in continuation of Go. No 1624 W dated 29th June 1898.

APK 19-8-98.

Dated 3rd August 1898

Received 16th Aug

Registered 16-8-98

Enclosures ~~27~~ 29 (Encls 2529 of P.W.C.No: 3080 W&S + Copy of No: 3080 W&S 1147)

Spare copies

SUBJECT.

Lt. E. A. French late a Sub-Engineer in the Madras P.W.D

Withholding under Financial rules of a memorial addressed to the Secretary of State by — & requesting that the memorial may be informed accordingly

Despatched Note thus 25.8.98

To Mrs E. A. French 29/8/98 with 28 enclos.

H/83 0.25300 11.2.98

BACK PAPERS.

G.O.	No.	Department.	Date.
	1625-28 W	PW	29-6-97
	794 W	"	14-1-97
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FURTHER PAPERS.

G.O.	No.	Department.	Date.

To

THE RIGHT HONORABLE

LORD GEORGE FRANCIS HAMILTON,

Her Majesty's Secretary of State for India.

LONDON.

THE humble Memorial of E. A. FRENCH, late Sub-Engineer of the Department of Public Works, residing at Nellore, in the Presidency of Madras.

HUMBLY SHOWETH,

1. That Your Lordship's Memorialist, after a successful course of study in the Civil Engineering College of the Presidency of Madras, passed out as an Assistant Civil Engineer, and was entertained in the Public Works Department, in April 1876, as an Overseer, and, after rapid promotions, he was finally appointed Sub-Engineer, 3rd Grade, in 1889. In the last-named appointment, Memorialist completed a service of nearly 8 years, including a period of 2 years and 5 months when employed as an Engineer in the Jeypore Rajah's Estate, which is situated in the Agency Tracts of the District of Vizagapatam.

2. That in May 1895, Your Lordship's Memorialist reverted, at his own request, from the special appointment he held in Jeypore, to the position he formerly held as a Sub-Engineer in the Public Works Department, and, in consequence of a report subsequently made by Mr. Willock, the Agent to the Governor in Vizagapatam, dated 26th February 1896 (or 9 months after Memorialist's special duties in Jeypore had ceased), regarding works executed under Memorialist's control as Estate Engineer, the Government of Madras decided on the very *extreme* course of dismissing Memorialist from the *public* service (*vide* its Order dated 2nd December 1896, No. 3439 W.) (EXHIBIT **A.**)

3. That, against said order, Your Lordship's Memorialist submitted a Review Petition to the Government of Madras (EXHIBIT **B.**), in March 1897, and prayed for reconsideration of its order, on the grounds set out in that appeal, but, to his great grief and surprise, Memorialist was favored with an order (G. O., 14th April 1897, No. 1038 W.) to the effect that "HIS EXCELLENCY THE GOVERNOR IN COUNCIL HAVING CONSIDERED THE FACTS AND ARGUMENTS SET OUT IN MR. FRENCH'S PETITION IS NOT PREPARED TO MODIFY IN HIS FAVOR G. O., No. 3439 W., DATED 2ND DECEMBER 1896," (EXHIBIT **C.**)

4. That, next, in the month of May 1897, Memorialist forwarded an appeal to the Government of India (EXHIBIT **D.**) against the order of the Local Government dismissing him from the service, and, though he solicited that, in the event of the Government of India not being prepared to at once restore Memorialist to his appointment, it may be pleased, having regard to the special position which Memorialist occupied in the Estate, to direct the Local Government to hold a full inquiry into Mr. Willock's complaints and thus afford Memorialist an opportunity of vindicating himself, that Government, without assigning any reasons, has merely intimated that it "SEES NO REASON FOR A RE-CONSIDERATION OF THE DECISION OF THE MADRAS GOVERNMENT." (EXHIBIT **E.**) In the circumstances, Memorialist regrets the necessity to trouble Your Lordship with this appeal, and he respectfully prays that Your Lordship will be pleased to carefully consider the following explanations and facts, which have been, unfortunately, unsuccessfully pressed on the attention and consideration of the Governments of Madras and of India.

5. That, as regards the several matters complained of by Mr. Willock, which will be found set out at length both in his letter of February 1896 (EXHIBIT **F.**) and in the Précis attached to the Order of Government, dated 2nd December 1896 (EXHIBIT **A.**), it will be observed from the order passed thereon that the Government of Madras dismissed from their consideration *all but two* of the complaints made by Mr. Willock, being of opinion that some were of "*minor importance*," and others for which Memorialist "*cannot, in fairness, be held responsible*," or "*the responsibility in the case had not been brought home*" to him, etc. In fact, out of the twelve charges alleged against Memorialist, only *two* were considered by the Government of Madras of some importance, and to require its consideration, and even of these two, the Government, in para. 5 of its Order (EXHIBIT **A.**) held that the *second* charge was "*not completely substantiated*," so that, practically, there remained only *one* charge on which so severe a sentence as *dismissal from the service* was directed, and that, in connection with work done in a *private* estate in a *private* capacity. Memorialist, therefore, craves leave to submit that the final decision lies in Your Lordship's hands whether, for that one offence, the Government of Madras was justified in dismissing Memorialist,—a subordinate of 20 years' standing in the P.W. Department and of unblemished character.

It will be observed by Your Lordship, that the charge on which Memorialist was dismissed related to the complaint that Memorialist had, on three different occasions, given advances of Rs. 3,000 at a time, to a contractor, for lime, and had signed a certificate that these payments were made on materials actually received. These certificates were regarded to be false, because they contained a declaration to the effect that the necessary measurement had been made by Memorialist, &c., and that there was no note on the bills to show that the payments were only advances.

6. That, before inviting Your Lordship's consideration of the explanation given in reference to the certificates referred to above, Memorialist respectfully solicits Your Lordship's very particular attention to the following remarks regarding the special position which was assigned to Memorialist as *Engineer of the Jeypore Rajah's Estate*. The correspondence relating to his engagement for a period

of 2 years, as Estate Engineer, will be found recorded in the Orders of the Government of Madras, dated 27th April 1892, No. 804, Judl. Dept. (EXHIBIT **G.**), and 23rd May 1892, No. 1565, P.W.D. (EXHIBIT **H.**); and from Mr. Willock's letter of complaint of the 28th February 1896, No. 249, (EXHIBIT **F.**) it will be observed that he assigned to Memorialist the position of a *Local Fund Engineer*, in the Estate of Jeypore, while he, as Agent, assumed towards Memorialist "*the place of the President of a District Board.*" Your Lordship's Memorialist respectfully submits that it is very important this fact should be borne in mind by Your Lordship when considering the sentence passed on Memorialist, as the very important question arises whether the Government was not *irregular* in dismissing Memorialist from his *permanent appointment* in the Public Works Department for supposed shortcomings in the discharge of his duties as *Estate Engineer*, practically a non-official appointment. The following facts which have been unsuccessfully urged on the attention of the Government of Madras and the Government of India will, it is respectfully hoped, in Your Lordship's judgment, justify Memorialist's contention that he has been improperly dismissed.

(i.) That Memorialist held a very unique and special position as Engineer in the Jeypore Rajah's Estate, and that he was not at the time a subordinate of the Public Works Department or responsible to it, and therefore not liable to removal from his permanent appointment by that department.

(ii.) That, as a matter of fact, during the 2 years and 5 months Memorialist was employed in the Rajah's Estate, he submitted no accounts or reports relating to works under his control in the Estate to any of his late superiors in the Public Works Department; neither did Memorialist receive any instructions from them in relation to works to be executed, nor were his works at any time inspected or subject to inspection by those officers. In the circumstances, Memorialist was, to all intents and purposes, an independent officer and irresponsible to the Public Works Department. His sole controlling authority was the Agent. This position will be found supported by a significant passage in paragraph 5 of Mr. Willock's letter recorded in EXHIBIT G, wherein he says:—If Mr. French's services are placed at the disposal of the Estate, I would recommend * * that these works be handed over to the Agency also to be looked after by him * * . *This would sever the connection of the Public Works Department with the Agency, and I must confess that I wish to see this done.*

(iii.) That, as the position assigned to Memorialist by the Agent was that of a LOCAL FUND ENGINEER, Your Lordship is doubtless aware that these appointments, in the Presidency of Madras, which are attached and subject to District Boards and Municipalities, carry with them a special status and position, and as such are not under the control of the Department of Public Works. Any complaints of inefficiency or misconduct affecting these officers are dealt with by their Controlling Authorities, the Municipal and District Boards, and not by the Government in the Public Works Department. Hence, it was for the *Agent alone*, who assumed towards Memorialist "*the place of the President of a District Board*," to have inquired into and dealt with any inefficiency or neglect he found in the execution of works under Memorialist's control in the Jeypore Estate, and the final orders in the case rested with the COURT OF WARDS in whose charge the aforesaid native estate was vested. But, as a matter of fact, Memorialist had resigned the office of Estate Engineer several months before Mr. Willock returned from furlough and wrote his complaint, and Mr. Willock's *locum tenens*, during his incumbency of the Agency, saw no reason for dissatisfaction and was really the proper officer to have dealt with Memorialist.

(iv.) That, further, in recommending that the supervision and construction of certain Government roads running through the Estate should be placed under Memorialist, Mr.

Willock thought proper to suggest, *as a return for services to be so rendered*, that a contribution be made by Government of 12 per cent. of the total cost of the estimate *to the Estate* (*vide* paragraph 9 of his letter read in G. O., 27th April 1892, No. 804, JUDICIAL). This recommendation was approved by Government, and the circumstance adds one other argument to the contention that Memorialist's connection with Government, was at the time, temporarily severed, as no claim for his services could be made, *even on Government works*, except the contribution were paid to the Rajah.

(v.) That lastly, in paragraph 4 of the Order of Government, dated 23rd May 1892, No. 1565, W, (EXHIBIT **H**), the Government, when sanctioning the transfer of Memorialist's services to the Jeypore Estate, arranged for "the pensionary contribution required by Article 823 of the Civil Service Regulations," which fact further indicates that Memorialist, was for the time, placed on other than *public* or *Government* duty.

For the several reasons given above, Memorialist very respectfully submits, for Your Lordship's consideration, that Memorialist has been irregularly removed from the *public* service for faults found in him as Engineer of the Jeypore Estate, and that though any such faults on his part, if established, may have laid Memorialist open to a reprimand or removal from his *special* appointment, punishment by dismissal from the *public* service was unnecessarily severe, considering also that Memorialist had previously done exceptionally good work in feverish tracts and that he was a public servant of over 20 years' standing.

7. That, nextly, Memorialist begs respectfully to submit the following explanation in reference to the only charge, which the Government of Madras say in their order (EXHIBIT **A**.), "*has been completely proved against Mr. French and this alone shows his unfitness to remain in the public service.*" The charge, as set out in para. 4 of the aforesaid order, may be considered under three heads:—

(1) the giving on three occasions advances of Rs. 3,000 at a time;

(2) making a second and third advance of Rs. 3,000 before lime to the value of the first advance had been received; and

(3) signing a certificate that payment was made on materials actually received.

As regards the foregoing charge, Memorialist begs respectfully to invite Your Lordship's attention, *in the first place*, to the remarks made in para. 3 of the Précis attached to the Order of Government (EXHIBIT **A**.). It will be manifest from a perusal of those remarks that they were passed on a wrong conception of Memorialist's position in the Jeypore Estate, and that, consequently, a grave injustice has been done to Memorialist, in judging the case against him. It will be observed that the PUBLIC WORKS CODE is discussed against Memorialist, and because "advances to contractors are not generally recognized by Government" according to that Code, Memorialist is regarded to have committed a grave error in making those advances. In this connection, Memorialist begs respectfully to submit that, having regard to the position assigned to him by the Agent (*vide* para. 2 of EXHIBIT **F**.), Memorialist had

(1) no concern with the Public Works Code which affects Public Works subordinates only and

(2) neither was the Code in question prescribed for his guidance by any order of the Agent (Memorialist's then controlling authority.)

It is, therefore, manifestly unfair, Memorialist respectfully submits, that the charge should be argued against Memorialist with reference to the provisions of the Public Works Code which, at the time, did not apply to him. Memorialist begs respectfully that Your Lordship will give due consideration to this point, and Memorialist will also crave leave to submit that it must already be evident to Your Lordship that the whole case against Memorialist has been judged from a wrong stand-point and a manifest injustice thus done him.

8. That, next, as regards the *first* head of the charge as set out in para. 7, Memorialist begs to submit that, though Rs. 9,000 may, at the first blush, seem a large sum to be paid away as an advance, the fact should be borne in mind that that sum was paid *on account of two estimates*, viz., Rs. 6,000 for lime on account of the Maharajah's palace, the construction of which had just been undertaken on a sanctioned estimate of *Rs.* (1,18,000) *one lac eighteen thousand*, and the remaining 3,000 Rupees for lime for the Borigumma road. But, as a matter of fact, the whole question, Memorialist submits, rests largely on the great difficulty of obtaining lime in the Agency Tracts, a fact which is notorious, as all officers employed in those tracts are not only cognizant of this circumstance but also aware that advances have to be made for the article; and, in point of fact, the practice is to advance to the *full value* of the quantity required before any portion of the lime is delivered *in situ*. In proof of such practice, Memorialist begs to invite Your Lordship's attention to the instances given in para. 7, iii (*a*) and (*b*) and 7, iv (*a*) and (*b*) and 7, v of Memorialist's Review Petition (*vide* pages 3 and 4 of EXHIBIT **B**.), and to the vouchers forwarded in substantiation of the above statement. These Exhibits are sufficient, it is submitted, to establish the fact that *a practice did prevail* in the Agency Tracts of *making advances*, and Memorialist respectfully trusts that Your Lordship, after referring to Exhibits **I**. **J**. and **K**. will be pleased to find, as a matter of fact, that Memorialist merely *followed a practice* which was forced on him owing to the customs of the place. Memorialist begs also to report for Your Lordship's information that all the Deputy Thasildars of the Agency worked on the same lines, and that the Manager even of the Jeypore Estate (Mr. Taylor) was no exception to the rule, for he frequently requested Memorialist to advance men recommended by him up to the extent of 75 per cent. for the supply of stone for the Maharajah's palace, before a single stone was delivered at site. These matters have been dealt with at length in paragraphs 7 and 8 of Memorialist's Review Petition (EXHIBIT **B**.), and the attention of Your Lordship is respectfully solicited to the Exhibits, as they establish conclusively three very important facts in favour of Memorialist:

(1) that it was customary in the Agency Tracts to pay for articles in the manner done by Memorialist,

(2) that Memorialist merely followed a practice he found existing, owing to the local customs of the Special Tracts referred to, and

(3) that Memorialist exposed the Estate to no greater risk than the other subordinate officers of the Agency.

Memorialist begs respectfully to add in regard to the foregoing remarks that if the Government of India had been pleased to accede to his request, the fore-

going facts could have been established to the satisfaction of any officer who may have been deputed to hold the inquiry which was solicited.

9. That, as regards the *second* head of charge, *viz.*, making a second and a third advance before the first was worked off, Memorialist begs to invite attention to the facts and figures given in para. 9 of EXHIBIT **B**. which, it is submitted, are sufficient to show the very heavy initial expenditure which contractors in the Agency have to incur for the supply of lime, and that it, therefore, became necessary to place the contractor in the best position possible to fufil his contract. In order to arrive at a fair and dispassionate view of the matter as affecting this charge, the exceptional difficulties of the locality should be considered and no comparison should be instituted as to what is feasible and practicable in the plains, a standpoint from which it unfortunately appears Memorialist's case has been judged by the Government of Madras. The latter should be placed out of consideration entirely.

10. That, lastly, as regards the *third* head of charge, *viz.*, that the advances were paid on work bills in which Memorialist certified that the necessary measurement has been made and that the work was satisfactorily performed, which certificates are considered to be false, Memorialist begs to submit that, if it is conceded from the statements made above, that advances were necessary owing to the difficulties of obtaining lime, then Memorialist submits *it is immaterial on what kind of form these advances were made.* The main point for consideration is, whether the transaction was *bonâ fide* or not. Memorialist begs respectfully to submit that it was, and that in the course followed by him in regard to these certificates there was no intention to deceive any one, and that Memorialist adopted the only course open to him of obtaining money to carry out works expeditiously. The first advance made by Memorialist was in February 1894, but it will be observed from paragraph 7, iii (*a*) of Memorialist's Review Petition (EXHIBIT **B**.) that the Deputy Thasildar of Jeypore, who was in charge of Memorialist's works during his absence, on leave, in the General Hospital, had, in August 1893, and while Mr. Willock was in charge of the Agency, made an advance of Rs. 720 for lime for the Jeypore Hospital, and that this advance was made on an *exactly similar bill or certificate* to that used by Memorialist and to it no exception was taken by Mr. Willock. An authenticated copy of that document is herewith submitted, marked EXHIBIT **L**. This single instance, it is respectfully submitted, is sufficient of itself to show the very exceptional course which had to be followed to get work executed in the Agency, and that Memorialist's action in this matter was not singular or exceptional. In this connection Memorialist begs also to refer Your Lordship to the following facts:—

(1) That while these advances were outstanding Memorialist applied to the Agent (*vide* EXHIBIT **M.**) to be relieved of the Estate Engineership on account of failing health, the effects of a carbuncle for which Memorialist had been treated at the General Hospital.

(2) That in the Materials at Site Statement which was jointly signed by Memorialist and his successor, at the time he handed over charge to the latter in May 1895, Memorialist made a note on that document to the effect that Mr. Fletcher had, under his contract, to deliver 300 garce of lime (*vide* EXHIBIT **N**),

The foregoing acts, Memorialist respectfully submits, strongly negative the supposition that the certificates were dishonest or fraudulent, for had Memorialist been in collusion with the contractor, it is unlikely that he would have asked to be permitted to revert to his permanent appointment, while large advances remained unadjusted. Besides, in addition to the entry made in the Materials at Site Statement, Your Lordship will observe that Memorialist, in his letters of the 10th and 22nd April 1895, printed in the Appendix to his Review Petition (EXHIBIT **B.**), brought to the special notice of the acting Agent that advances were outstanding on the contractor and that he had made default to carry out his contract. Memorialist, in the circumstances, respectfully trusts that, having regard to all the facts stated above, Your Lordship will be pleased to take a more lenient view of the character of the certificates on which the advances were made, and acquit Memorialist of the improper motives which the local Government attribute to Memorialist and consider "show his unfitness to remain in the service."

11. That, in reference to the foregoing letters, Memorialist begs further to state he has reason to believe that, on their receipt, the acting Agent informed the Board of Revenue of Mr. Fletcher's default and solicited orders, and that they directed the Agent to withhold such monies as were due to Mr. Fletcher on account of other works and to attach his property for any further balance due. In these circumstances, Memorialist respectfully submits that it was not open to Mr. Willock to re-open this matter on his return from Europe, as the Board of Revenue, in their capacity as Court of Wards, to which practically Memorialist was subordinate, saw no reason to censure Memorialist and had given their orders in the matter to the acting Agent. The matter was therefore *res judicata.*

12. That, next, in regard to the *second* charge which the Government of Madras in its order (EXHIBIT **A**) considers "*not completely substantiated,*" Memorialist begs respectfully to submit two authenticated extracts from the cash book of the Divisional Officer, Vizagapatam, dated the 8th January and 5th February 1896 (EXHIBITS **O** & **P**), for Your Lordship's perusal and inspection, from which it will be observed that Rs. 111 in the first instance, and Rs. 55-8-0 in the second, were brought to account as "value of limestone recovered." These Exhibits were submitted to the Government of Madras by Memorialist with his Review Petition (EXHIBIT **B**), but failed to elicit from that Government any expression of opinion as to whether they were accepted in vindication of the charge that Memorialist had made a present of the limestone to Mr. Fletcher.

13. That in order to epitomize the several contentions and arguments urged by Memorialist in preceding paragraphs against his removal from the service, Memorialist craves leave to solicit Your Lordship's patient and careful consideration of the following summary:—

(1.) That Memorialist was, in accordance with special terms, arranged between the Agent and the Government of Madras, temporarily withdrawn from Government employ and deputed as Engineer of the Jeypore Rajah's Estate, (*vide* EXHIBIT **G.**)

(2.) That Memorialist's appointment as Estate Engineer was considered as duty on *foreign* service.

(3.) That the position assigned to Memorialist was that of a Local Fund Engineer —a position which merely subordinated Memorialist to the Agent, who assumed towards Memorialist the position of the President of a District Board (*vide* EXHIBIT **F**.)

(4.) That it was not fair and proper that the Public Works Code should be applied to Memorialist's case as that Code was not applicable or in force in the Rajah's Estate, neither was it prescribed by the Agent for Memorialist's guidance.

(5.) That Mr. Willock's complaint bore date six months after Memorialist had reverted to the Public Works Department, and related to works executed during his absence in England.

(6.) That no complaint had been made by Mr. Willock's *locum tenens*, during his incumbency, nor any fault found with Memorialist's work by him.

(7.) That Memorialist acted to the best of his discretion in making advances, and was controlled in this respect by the *practice* prevailing among all Officers of the Estate.

(8.) That the bill or certificate used by Memorialist has been erroneously considered in the light in which it is treated in respect to works executed in the plains, and regardless of the special circumstances and practices prevailing in the Agency Tracts.

(9.) That there was no collusion about the advances—*vide* Memorialist's letters to the acting Agent, dated the 10th and 22nd April 1895, Nos. 29 and 66, respectively (printed in the Appendix to EXHIBIT **B**.)

(10.) That orders having been passed by the Court of Wards, Mr. Willock was not in order in re-opening the matter six months after Memorialist had left Jeypore and when he was practically *ex-officio functus*.

14. Lastly, Memorialist craves liberty having regard to the fact that the Government of Madras have come to unfavorable conclusions against Memorialist more on *suspicion* of fraud than on *proof* of it, to invite Your Lordship's kind attention to the very proper and equitable principles laid down in a Resolution of the Government of Bombay, dated the 16th October 1883, which the Government of Madras say in their Order of the 3rd December 1883, No. 2990, are "identical with those enunciated by itself from time to time" and which they therefore adopted and circulated for the guidance of all Heads of Departments.

It is there distinctly laid down that "*the intention of Government is that no servant of theirs should be dismissed except on proof*"; (para. 8),

that there should be "*no pretence of proof when there is only suspicion*; (para. 9),

and, "*if a man has earned or nearly earned his pension his would not be a proper case for removal on suspicion. He would necessarily be an old servant of Government * * and the sudden beggary of a man whose working days are drawing*

to a close is as serious an exercise of power as the penal sentence of a Court of Justice;" (para. 10),

and lastly, "*that in proportion as the evidence falls short of proof, consideration should be given to the previous character of the subordinate concerned, and also to any specific instances of good * * service that may have been officially noted in his case*" (para. 11).

Memorialist accordingly begs to bring to your Lordship's kind notice that he is an A. C. E. of the Civil Engineering College, that he obtained his first appointment in the Department of Public Works as Overseer, 3rd Grade, in April 1876, and after rapid promotions as Overseer, 1st Grade (1877), Supervisor, 2nd Grade (1880), and Supervisor, 1st Grade (1881), he was appointed Sub-Engineer, 3rd Grade, in 1889. In all grades Memorialist spared no pains to render satisfaction in the discharge of his duties and to secure the good-will of his superiors. Memorialist begs also, with pride and satisfaction, to refer Your Lordship to the valuable testimony borne to his good work in the documents which will be found printed in the paper attached to this Memorial. It will be there observed that Mr. Traill, the Executive Engineer, Vizagapatam Division, in March 1891, wrote of Memorialist as follows:—

"Mr. French, Sub-Engineer, took charge of the Sub-Division on Mr. Loam's getting ill in July last, and the improvement in the progress of work during the last six months has been most marked. He *at once* succeeded in getting carpenters and in finishing off the roofs of the Koraput buildings that had been at a stand still for months. He retained all the labour which Mr. Loam and Mr. Harris had and procured more. He cleared off numerous arrears of office work and managed to submit his accounts more regularly than they ever had been in Mr. Loam's time. He is energetic without being fussy or annoying his subordinates, and has a quiet, steady systematic way of carrying out all he does. Promptness in making payments is one of the secrets of his success. I was so satisfied with the results of his work that on Mr. Loam's recovery in October last I continued to keep Mr. French in charge, putting Mr. Loam on to special duty * * * . I should mention that for much of this time Mr. French was quite unaided, having no Overseer or Sub-Overseer under him."

In their Order thereon, dated 2nd May 1891, No. 1217, the Government of Madras, in the Public Works Department, was pleased to remark that it considered

"Mr. Traill's report on Mr. French's work is very creditable to the latter officer."

In the next document, which is an extract from Mr. Willock's Tour Statement as Governor's Agent, it will be observed that he was pleased to say that,

"Mr. French, the Sub-Engineer, has certainly a talent for getting work done in the Agency."

In consequence of the very favorable opinion then held by Mr. Willock of Memorialist's *capacity for getting work executed in the Agency* he decided, in February 1892, to secure Memorialist's services as a Special Engineer of the Jeypore

Estate and in his letter of the 25th February 1892, No. 191, he recommended Memorialist to the Government of Madras in the following flattering terms :—

"There is an excellent man at hand in Mr. E. French, Sub-Engineer of the Public Works Department who has been in charge of the Government works above the Ghats * * and to whom all the progress which has been made in that time is due."

The full text of Mr. Willock's letter will be found printed in G. O., 27th April 1892, No. 804, Judicial, (EXHIBIT **G**) to which reference is kindly invited. Next, it will be observed that Mr. Willock, for a *third* time, refers in commendatory terms to the work done by Memorialist, and that, on the 9th January 1893, he writes :—

"I have been much struck with the way Agency works under the Department, Public Works progressed when he (Mr. French) was put in charge and attribute the great change to *his energy and ability*."

This is not all, for, for the *fourth* time, Mr. Willock, in his letter to the Board of Revenue, dated 23rd November 1892, bears unqualified testimony to Memorialist's good work as follows :—

"We have in the new Estate Engineer, Mr. French, a man quite capable of building all I ever contemplated."

Again, in his letter of February 1896, wherein he thought fit to formulate charges against Memorialist, Mr. Willock writes :—

"Work under the D.P.W. on the Potinghi-Koraput Road and the Civil Buildings at Koraput made but little progress until Mr. French took charge about two years previously. He at once showed great aptitude for making use of the labour available *and meeting the difficulties unavoidable in dealing with works in the Agency*. The road and buildings proceeded rapidly under his supervision, and when the question of finding an Estate Engineer arose his success pointed him out as a promising officer for the post."

Memorialist therefore very earnestly prays that Your Lordship will be graciously pleased to bestow a very generous and careful consideration to the following facts :—

(i) Memorialist's long and unblemished career in the P. W. Department dating since April 1876, as testified to by his Service Register (herewith submitted, EXHIBIT **Q**) ;

(ii) the excellent services rendered by Memorialist in the execution of several important and difficult works in unhealthy and malarious portions of the Ceded Districts from 1880 to 1889, and in the Agency Tracts of the Vizagapatam District from 1890 to 1896 ; and

(iii) the unstinted approval expressed by the Agent, of his good work, as testified to in the extracts given in the preceding paragraph ;

and that with reference to

(iv) the very exceptional position filled by Memorialist in the Jeypore Estate as Estate Engineer during the period to which Mr. Willock's complaint relates, and

(v) the explanations given in connection with the charges laid against Memorialist,

Your Lordship will be graciously pleased to acquit Memorialist of any improper conduct which unfits him to remain in the public service, and to cancel the order of dismissal and to direct Memorialist's restoration to his appointment in the P. W. Department, with all arrears of pay, and thus remove the shame and disgrace brought on him by dismissal from the service ;—or that it may be Your Lordship's pleasure, having regard to Memorialist's long and efficient service, to admit him to a pension proportionate to the service rendered by him since April 1876, and with effect from the date of Memorialist's removal from the service.

NELLORE, *February* 1898.

No. 3080 W.

Government of Madras.

PUBLIC WORKS DEPARTMENT.

To

The Secretary to the Government of India.
Public Works Department.

5th November 1897.

Sir,

I am directed to forward the accompanying memorial from Mr. E. A. French, lately a Sub Engineer in the Madras Public Works Dept. appealing against the order of this Government dismissing him from the public service.

2. The facts of the case are as follows. The memorialist who was a Sub Engineer, 3d grade was on the 10th December 1892 appointed, for a period of 2 years, Engineer to the Jeypore Estate in the Agency tracts of the Vizagapatam district on a salary of Rs. 460 per mensem plus travelling allowance of Rs 4-8-0 per diem, exclusive of the pensionary contribution required under Article 823(b)(ii) of the Civil Service Regulations. The acting Agent to the Governor in Vizagapatam having declined to recommend Mr. French for

for an increase of pay to Rs 600 for which he applied, the memorialist reverted at his own request in May 1895 to the position he formerly held in the Public Works Department. Subsequently Mr. Willock, the agent to the Governor in Vizagapatam, in a letter No 249 dated 28th February 1896 brought several charges against Mr. French regarding his conduct while Estate Engineer. The Superintending Engineer, I circle, also brought some further charges against the Sub Engineer. The tabular statement attached to G.O. No. 3439 W, dated 2nd December 1896 contains an abstract of these charges. This Government, however, considered it necessary to deal only with the two most serious of the charges as if proved such punishment as might be meted out on their account would cover the other charges of alleged neglect in regard to the construction of certain buildings and roads. These two serious charges are

(i) that Mr. French on three* different occasions gave advances of Rs 3,000 at a time to a Mr. Fletcher, a contractor with whom he was on terms of the greatest intimacy, for 300 garces of lime only 61½ garces of which were ever received. The correspondence shows that Mr. French made a second and a third advance of Rs 3,000 before lime

* On 2nd February 1894.
14th March 1894.
7th September 1894.

lime to the value of the first advance had been received. Further that he signed certificates that payments were made on materials actually received, that the necessary measurements had been made by him and that the work had been satisfactorily performed.

(ii) that he made a present to the contractor mentioned of limestone belonging to the Potinghi Koraput road to enable him to manufacture the 300 garces of lime for which he received an advance of Rs. 9,000.

3. The charges made by Mr. Willock were forwarded to Mr. French for explanation. As regards the first of the two serious charges referred to, Mr. French's defence is that when in charge of Koraput Sub division from 1890 to 1892 he, at first, kept a gumastah at Salur for the purpose of buying lime and carting it up to the work site. The cartage as well as the value of the lime had in those days to be paid in full at Salur, but the lime was checked by the maistry on the work, and had to tally with the amount purchased. This method, he stated, had to be adopted as no contractor would undertake the supply, all who

had

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allowed in the Agency tracts, and these
for are always secured by documents. But
applic this is not the worst aspect of the case.
reques A reference to the bills show that they
merely do not purport to be on account of advances
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28° F on three separate dates on which he quotes as
Mr. carcely one fifth of the time certified to as
Estate having been measured ever existed, it is clear
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agam making three distinct false statements. By
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2nd D occasions, he must have known that he
charge was deceiving the controlling officer in
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seriou and he violated rules 1, 2 & 3 of the "notes" on the
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uild advances; but on the contrary, he distinctly
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is that the contracts paid for the lime
supplied to him. This Government considers
that this charge has not been completely
substantiated, but the charge having been
completely proved against Mr. French, it was
decided to dismiss him from the public service.

5. In March last Mr. French submitted
an appeal against the order dismissing him
but after considering the facts and arguments
therein advanced, this Government saw
no reason to modify G.O. No. 3439 W,
dated 2nd December 1896 in his favour.

6. In his present memorial, Mr. French
urges that it was ultra vires for this Government
to dismiss him for faults found in him in
his capacity as Estate Engineer, as he was then
virtually in private, not Government employ with
the Agent as his immediate superior. He contends
on this basis that the charges brought against
him should only have been inquired into and
dealt with by that officer and that his
services could only have been dispensed with
as Estate Engineer. As regards the charge
on which he was dismissed he pleads that
it was not fair to apply the provisions of
the

the P.W. code to the case; that he was left practically uncontrolled in the execution of works there being no officer of professional qualifications above him, and that he acted to the best of his discretion in making advances and was to a great extent controlled by the practice prevailing among all officers of the Estate.

With reference to this argument, I am to state that Mr. French was in foreign service of the second kind under article 802 of the Civil Service Regulations. His employer was the Board of Revenue which occupies the same position towards estates in the scheduled districts as the Court of Wards does elsewhere in the Presidency, and as the case was reported to Government for disposal in this department it could only be dealt with under P.W. Department rules. Mr French's accounts were checked in the office of the agent to the Governor in precisely the same way as those of a Local Fund Engineer, and had he not falsely stated that this large quantity of lime had been delivered, the irregularity would have been checked by his superior officer, the Agent. Mr French must have known, by describing advances as payments made for materials received, that he was deceiving the controlling officer in regard to the nature of these payments, for he made no note on any of the bills which might lead any one to suppose that they could possibly be advances; in fact he distinctly described them as quite different.

5. His remarks about other officers of the agency making advances falls to the ground, for it has been ascertained that those whom he cites as instances were not working under Local Fund rules at all, but in such a rough way as not to admit of any adequate check being exercised, and the advances which they were allowed to make were of a petty nature and always secured by documents. It was for this reason that the Sub-Engineer was placed under control which would have had the intended effect if he had not falsified his accounts.

9. It may be added that no security was taken by Mr French from Mr Fletcher for the large sum advanced nor was any contract or agreement drawn up. This large

large advance was made to a man without any capital of whom Mr French in subsequently writing to the agent says "when the proper time arrives I shall be prepared to give you some insight into his character and antecedents." In fact the matter of the advance was not brought to the Agent's notice till the 22nd April 1895 when Mr. French had fallen out with Mr. Fletcher and was on the eve of handing over charge of the estate. In para 12 of his memorial Mr. French brings to notice the fact that when handing over charge, he recorded a note on the materials-at-site statement that 300 gares were still to be delivered by Mr. Fletcher. This he submits should be accepted as evidence in his favour as not being the conduct of a man who had been guilty of malpractices. But as he had previously certified that he had received the lime in 1894, this statement was in reality a confession that he had been guilty of malpractices, if not of collusion with the contractor

10. The second charge referred to in para 13 of Mr. French's memorial need not be discussed as he was not dismissed on this charge.

11. In para 15 the memorialist complains of the summary manner in which his services have been dispensed with. The specific charges against Mr French were contained in Mr. Willock's letter No. 249 dated 28th February 1896, and this letter was sent to him for explanation. Thus the charges were furnished to him and his defence taken and on this he was judged. The statement attached to the G.G. dismissing him was only a précis of the correspondence which had already taken place and did not contain any fresh charges against him.

12. After considering all the arguments advanced by Mr. French, the fact still remains unaltered that he signed completion certificates for materials not supplied. This charge against him has been completely substantiated,

and

and proves his unfitness to remain in the public service. His Excellency the Governor in Council can therefore make no recommendation on the memorialist's behalf.

I have the honour to be,
Sir,
Your most obedient Servant,
(Signed) D. McN. Campbell Col. R.E.
Secretary to Government.

(True Copy)
A.C. Russell.
Under Secy to Govt.

not of com

All communications should be addressed to the Secretary.

No. 2368 G.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

GENERAL.

To

The Secretary to the Government of Madras,
Public Works Department.

Simla, the 3rd August 1898.

Sir,

I am directed to acknowledge the receipt of your letter No.1625 W., dated 29th June 1898, with which is forwarded a memorial addressed to the Secretary of State by Mr. E.A. French, late a Sub-Engineer in the Madras Public Works Department, on the subject of his dismissal from the service of Government, and in which he prays that he may be restored to his appointment in the Public Works Department with all arrears of pay, or that he may be admitted to a pension proportionate to the length of his service, and with effect from the date of his removal from the service.

2. In reply I am to state that under the discretionary

XII.-Governments and Administrations in India are vested with discretionary power to withhold the transmission of memorials addressed to Her Majesty or to the Secretary of State in the following cases:- x x x x	power vested in them by Rule XII clause 8, of the rules for the submission &c., of memorials addressed
8. When a memorial is an appeal against an order of a Local Government regarding the dismissal, removal, reduction, or other punishment of a Government servant whose salary was not more than Rs.100 a month, or when it is an appeal against similar orders of a Local Government confirmed by the Government of Inida from a Government servant whose salary was not more than Rs.250 a month. The first sentence in this clause applies to the orders of the Government of India as well as those of Local Governments.	

to Her Majesty the Queen, Empress of India, or to the Right Honorable the Secretary of State for India, quoted on the margin, the Government of India have withheld the transmission

transmission of the memorial in question.

3. I am to request that Mr.French may be informed accordingly.

4. The enclosures which accompanied the memorial are herewith returned.

I have the honour to be,

Sir,

Your most obedient servant,

Offg: Under Secy.to the Govt.of India.

Documents accompanying:-

Enclosures referred to.

File re Mr. French

Re

Memorandum

IS HAMILTON,

tary of State for India.

LONDON.

e Memorial of E. A. FRENCH,
ıb-Engineer of the Department
blic Works, residing at Nellore,
Presidency of Madras.

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EXHIBIT **B.**), in March 1897, and
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GUMENTS SET OUT IN MR. FRENCH'S
VOR G. O., No. 3439 W., DATED

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S.S.

To

THE RIGHT HONORABLE

LORD GEORGE FRANCIS HAMILTON,

Her Majesty's Secretary of State for India.

LONDON.

THE humble Memorial of E. A. FRENCH,
late Sub-Engineer of the Department
of Public Works, residing at Nellore,
in the Presidency of Madras.

HUMBLY SHOWETH,

1. That Your Lordship's Memorialist, after a successful course of study in the Civil Engineering College of the Presidency of Madras, passed out as an Assistant Civil Engineer, and was entertained in the Public Works Department, in April 1876, as an Overseer, and, after rapid promotions, he was finally appointed Sub-Engineer, 3rd Grade, in 1889. In the last-named appointment, Memorialist completed a service of nearly 8 years, including a period of 2 years and 5 months when employed as an Engineer in the Jeypore Rajah's Estate, which is situated in the Agency Tracts of the District of Vizagapatam.

2. That in May 1895, Your Lordship's Memorialist reverted, at his own request, from the special appointment he held in Jeypore, to the position he formerly held as a Sub-Engineer in the Public Works Department, and, in consequence of a report subsequently made by Mr. Willock, the Agent to the Governor in Vizagapatam, dated 26th February 1896 (or 9 months after Memorialist's special duties in Jeypore had ceased), regarding works executed under Memorialist's control as Estate Engineer, the Government of Madras decided on the very *extreme* course of dismissing Memorialist from the *public* service (*vide* its Order dated 2nd December 1896, No. 3439 W.) (EXHIBIT **A.**)

3. That, against said order, Your Lordship's Memorialist submitted a Review Petition to the Government of Madras (EXHIBIT **B.**), in March 1897, and prayed for reconsideration of its order, on the grounds set out in that appeal, but, to his great grief and surprise, Memorialist was favored with an order (G. O., 14th April 1897, No. 1038 W.) to the effect that "HIS EXCELLENCY THE GOVERNOR IN COUNCIL HAVING CONSIDERED THE FACTS AND ARGUMENTS SET OUT IN MR. FRENCH'S PETITION IS NOT PREPARED TO MODIFY IN HIS FAVOR G. O., NO. 3439 W., DATED 2ND DECEMBER 1896," (EXHIBIT **C.**)

Willock thought proper to suggest, *as a return for services to be so rendered*, that a contribution be made by Government of 12 per cent. of the total cost of the estimate *to the Estate* (*vide* paragraph 9 of his letter read in G. O., 27th April 1892, No. 804, JUDICIAL). This recommendation was approved by Government, and the circumstance adds one other argument to the contention that Memorialist's connection with Government, was at the time, temporarily severed, as no claim for his services could be made, *even on Government works*, except the contribution were paid to the Rajah.

(v.) That lastly, in paragraph 4 of the Order of Government, dated 23rd May 1892, No. 1565, W, (EXHIBIT **H**), the Government, when sanctioning the transfer of Memorialist's services to the Jeypore Estate, arranged for "the pensionary contribution required by Article 823 of the Civil Service Regulations," which fact further indicates that Memorialist, was for the time, placed on other than *public* or *Government* duty.

For the several reasons given above, Memorialist very respectfully submits, for Your Lordship's consideration, that Memorialist has been irregularly removed from the *public* service for faults found in him as Engineer of the Jeypore Estate, and that though any such faults on his part, if established, may have laid Memorialist open to a reprimand or removal from his *special* appointment, punishment by dismissal from the *public* service was unnecessarily severe, considering also that Memorialist had previously done exceptionally good work in feverish tracts and that he was a public servant of over 20 years' standing.

7. That, nextly, Memorialist begs respectfully to submit the following explanation in reference to the only charge, which the Government of Madras say in their order (EXHIBIT **A.**), "*has been completely proved against Mr. French and this alone shows his unfitness to remain in the public service.*" The charge, as set out in para. 4 of the aforesaid order, may be considered under three heads:—

(1) the giving on three occasions advances of Rs. 3,000 at a time;

(2) making a second and third advance of Rs. 3,000 before lime to the value of the first advance had been received; and

(3) signing a certificate that payment was made on materials actually received.

As regards the foregoing charge, Memorialist begs respectfully to invite Your Lordship's attention, *in the first place*, to the remarks made in para. 3 of the Précis attached to the Order of Government (EXHIBIT **A.**). It will be manifest from a perusal of those remarks that they were passed on a wrong conception of Memorialist's position in the Jeypore Estate, and that, consequently, a grave injustice has been done to Memorialist, in judging the case against him. It will be observed that the PUBLIC WORKS CODE is discussed against Memorialist, and because "advances to contractors are not generally recognized by Government" according to that Code, Memorialist is regarded to have committed a grave error in making those advances. In this connection, Memorialist begs respectfully to submit that, having regard to the position assigned to him by the Agent (*vide* para. 2 of EXHIBIT **F.**), Memorialist had

(1) no concern with the Public Works Code which affects Public Works subordinates only and

(2) neither was the Code in question prescribed for his guidance by any order of the Agent (Memorialist's then controlling authority.)

It is, therefore, manifestly unfair, Memorialist respectfully submits, that the charge should be argued against Memorialist with reference to the provisions of the Public Works Code which, at the time, did not apply to him. Memorialist begs respectfully that Your Lordship will give due consideration to this point, and Memorialist will also crave leave to submit that it must already be evident to Your Lordship that the whole case against Memorialist has been judged from a wrong stand-point and a manifest injustice thus done him.

8. That, next, as regards the *first* head of the charge as set out in para. 7, Memorialist begs to submit that, though Rs. 9,000 may, at the first blush, seem a large sum to be paid away as an advance, the fact should be borne in mind that that sum was paid *on account of two estimates*, viz., Rs. 6,000 for lime on account of the Maharajah's palace, the construction of which had just been undertaken on a sanctioned estimate of *Rs.* (1,18,000) *one lac eighteen thousand*, and the remaining 3,000 Rupees for lime for the Borigumma road. But, as a matter of fact, the whole question, Memorialist submits, rests largely on the great difficulty of obtaining lime in the Agency Tracts, a fact which is notorious, as all officers employed in those tracts are not only cognizant of this circumstance but also aware that advances have to be made for the article; and, in point of fact, the practice is to advance to the *full value* of the quantity required before any portion of the lime is delivered *in situ*. In proof of such practice, Memorialist begs to invite Your Lordship's attention to the instances given in para. 7, iii (*a*) and (*b*) and 7, iv (*a*) and (*b*) and 7, v of Memorialist's Review Petition (*vide* pages 3 and 4 of EXHIBIT **B.**), and to the vouchers forwarded in substantiation of the above statement. These Exhibits are sufficient, it is submitted, to establish the fact that *a practice did prevail* in the Agency Tracts of *making advances*, and Memorialist respectfully trusts that Your Lordship, after referring to Exhibits **I. J.** and **K.** will be pleased to find, as a matter of fact, that Memorialist merely *followed a practice* which was forced on him owing to the customs of the place. Memorialist begs also to report for Your Lordship's information that all the Deputy Thasildars of the Agency worked on the same lines, and that the Manager even of the Jeypore Estate (Mr. Taylor) was no exception to the rule, for he frequently requested Memorialist to advance men recommended by him up to the extent of 75 per cent. for the supply of stone for the Maharajah's palace, before a single stone was delivered at site. These matters have been dealt with at length in paragraphs 7 and 8 of Memorialist's Review Petition (EXHIBIT **B.**), and the attention of Your Lordship is respectfully solicited to the Exhibits, as they establish conclusively three very important facts in favour of Memorialist:

(1) that it was customary in the Agency Tracts to pay for articles in the manner done by Memorialist,

(2) that Memorialist merely followed a practice he found existing, owing to the local customs of the Special Tracts referred to, and

(3) that Memorialist exposed the Estate to no greater risk than the other subordinate officers of the Agency.

Memorialist begs respectfully to add in regard to the foregoing remarks that if the Government of India had been pleased to accede to his request, the fore-

4. That, next, in the month of May 1897, Memorialist forwarded an appeal to the Government of India (EXHIBIT **D.**) against the order of the Local Government dismissing him from the service, and, though he solicited that, in the event of the Government of India not being prepared to at once restore Memorialist to his appointment, it may be pleased, having regard to the special position which Memorialist occupied in the Estate, to direct the Local Government to hold a full inquiry into Mr. Willock's complaints and thus afford Memorialist an opportunity of vindicating himself, that Government, without assigning any reasons, has merely intimated that it "SEES NO REASON FOR A RE-CONSIDERATION OF THE DECISION OF THE MADRAS GOVERNMENT." (EXHIBIT **E.**) In the circumstances, Memorialist regrets the necessity to trouble Your Lordship with this appeal, and he respectfully prays that Your Lordship will be pleased to carefully consider the following explanations and facts, which have been, unfortunately, unsuccessfully pressed on the attention and consideration of the Governments of Madras and of India.

5. That, as regards the several matters complained of by Mr. Willock, which will be found set out at length both in his letter of February 1896 (EXHIBIT **F.**) and in the Précis attached to the Order of Government, dated 2nd December 1896 (EXHIBIT **A.**), it will be observed from the order passed thereon that the Government of Madras dismissed from their consideration *all but two* of the complaints made by Mr. Willock, being of opinion that some were of "*minor importance,*" and others for which Memorialist "*cannot, in fairness, be held responsible,*" or "*the responsibility in the case had not been brought home*" to him, etc. In fact, out of the twelve charges alleged against Memorialist, only *two* were considered by the Government of Madras of some importance, and to require its consideration, and even of these two, the Government, in para. 5 of its Order (EXHIBIT **A.**,) held that the *second* charge was "*not completely substantiated,*" so that, practically, there remained only *one* charge on which so severe a sentence as *dismissal from the service* was directed, and that, in connection with work done in a *private* estate in a *private* capacity. Memorialist, therefore, craves leave to submit that the final decision lies in Your Lordship's hands whether, for that one offence, the Government of Madras was justified in dismissing Memorialist,—a subordinate of 20 years' standing in the P. W. Department and of unblemished character.

It will be observed by Your Lordship, that the charge on which Memorialist was dismissed related to the complaint that Memorialist had, on three different occasions, given advances of Rs. 3,000 at a time, to a contractor, for lime, and had signed a certificate that these payments were made on materials actually received. These certificates were regarded to be false, because they contained a declaration to the effect that the necessary measurement had been made by Memorialist, &c., and that there was no note on the bills to show that the payments were only advances.

6. That, before inviting Your Lordship's consideration of the explanation given in reference to the certificates referred to above, Memorialist respectfully solicits Your Lordship's very particular attention to the following remarks regarding the special position which was assigned to Memorialist as *Engineer of the Jeypore Rajah's Estate.* The correspondence relating to his engagement for a period

of 2 years, as Estate Engineer, will be found recorded in the Orders of the Government of Madras, dated 27th April 1892, No. 804, Judl. Dept. (EXHIBIT **G.**), and 23rd May 1892, No. 1565, P.W.D. (EXHIBIT **H.**); and from Mr. Willock's letter of complaint of the 28th February 1896, No. 249, (EXHIBIT **F.**) it will be observed that he assigned to Memorialist the position of a *Local Fund Engineer*, in the Estate of Jeypore, while he, as Agent, assumed towards Memorialist "*the place of the President of a District Board.*" Your Lordship's Memorialist respectfully submits that it is very important this fact should be borne in mind by Your Lordship when considering the sentence passed on Memorialist, as the very important question arises whether the Government was not *irregular* in dismissing Memorialist from his *permanent appointment* in the Public Works Department for supposed shortcomings in the discharge of his duties as *Estate Engineer*, practically a non-official appointment. The following facts which have been unsuccessfully urged on the attention of the Government of Madras and the Government of India will, it is respectfully hoped, in Your Lordship's judgment, justify Memorialist's contention that he has been improperly dismissed.

(i.) That Memorialist held a very unique and special position as Engineer in the Jeypore Rajah's Estate, and that he was not at the time a subordinate of the Public Works Department or responsible to it, and therefore not liable to removal from his permanent appointment by that department.

(ii.) That, as a matter of fact, during the 2 years and 5 months Memorialist was employed in the Rajah's Estate, he submitted no accounts or reports relating to works under his control in the Estate to any of his late superiors in the Public Works Department; neither did Memorialist receive any instructions from them in relation to works to be executed, nor were his works at any time inspected or subject to inspection by those officers. In the circumstances, Memorialist was, to all intents and purposes, an independent officer and irresponsible to the Public Works Department. His sole controlling authority was the Agent. This position will be found supported by a significant passage in paragraph 5 of Mr. Willock's letter recorded in EXHIBIT G, wherein he says:—If Mr. French's services are placed at the disposal of the Estate, I would recommend * * that these works be handed over to the Agency also to be looked after by him * * . *This would sever the connection of the Public Works Department with the Agency, and I must confess that I wish to see this done.*

(iii.) That, as the position assigned to Memorialist by the Agent was that of a LOCAL FUND ENGINEER, Your Lordship is doubtless aware that these appointments, in the Presidency of Madras, which are attached and subject to District Boards and Municipalities, carry with them a special status and position, and as such are not under the control of the Department of Public Works. Any complaints of inefficiency or misconduct affecting these officers are dealt with by their Controlling Authorities, the Municipal and District Boards, and not by the Government in the Public Works Department. Hence, it was for the *Agent alone*, who assumed towards Memorialist "*the place of the President of a District Board,*" to have inquired into and dealt with any inefficiency or neglect he found in the execution of works under Memorialist's control in the Jeypore Estate, and the final orders in the case rested with the COURT OF WARDS in whose charge the aforesaid native estate was vested. But, as a matter of fact, Memorialist had resigned the office of Estate Engineer several months before Mr. Willock returned from furlough and wrote his complaint, and Mr. Willock's *locum tenens*, during his incumbency of the Agency, saw no reason for dissatisfaction and was really the proper officer to have dealt with Memorialist.

(iv.) That, further, in recommending that the supervision and construction of certain Government roads running through the Estate should be placed under Memorialist, Mr.

Willock thought proper to suggest, *as a return for services to be so rendered*, that a contribution be made by Government of 12 per cent. of the total cost of the estimate *to the Estate* (*vide* paragraph 9 of his letter read in G. O., 27th April 1892, No. 804, JUDICIAL). This recommendation was approved by Government, and the circumstance adds one other argument to the contention that Memorialist's connection with Government, was at the time, temporarily severed, as no claim for his services could be made, *even on Government works*, except the contribution were paid to the Rajah.

(v.) That lastly, in paragraph 4 of the Order of Government, dated 23rd May 1892, No. 1565, W, (EXHIBIT **H**), the Government, when sanctioning the transfer of Memorialist's services to the Jeypore Estate, arranged for "the pensionary contribution required by Article 823 of the Civil Service Regulations," which fact further indicates that Memorialist, was for the time, placed on other than *public* or *Government* duty.

For the several reasons given above, Memorialist very respectfully submits, for Your Lordship's consideration, that Memorialist has been irregularly removed from the *public* service for faults found in him as Engineer of the Jeypore Estate, and that though any such faults on his part, if established, may have laid Memorialist open to a reprimand or removal from his *special* appointment, punishment by dismissal from the *public* service was unnecessarily severe, considering also that Memorialist had previously done exceptionally good work in feverish tracts and that he was a public servant of over 20 years' standing.

7. That, nextly, Memorialist begs respectfully to submit the following explanation in reference to the only charge, which the Government of Madras say in their order (EXHIBIT **A.**), "*has been completely proved against Mr. French and this alone shows his unfitness to remain in the public service.*" The charge, as set out in para. 4 of the aforesaid order, may be considered under three heads:—

(1) the giving on three occasions advances of Rs. 3,000 at a time;

(2) making a second and third advance of Rs. 3,000 before lime to the value of the first advance had been received; and

(3) signing a certificate that payment was made on materials actually received.

As regards the foregoing charge, Memorialist begs respectfully to invite Your Lordship's attention, *in the first place*, to the remarks made in para. 3 of the Précis attached to the Order of Government (EXHIBIT **A.**). It will be manifest from a perusal of those remarks that they were passed on a wrong conception of Memorialist's position in the Jeypore Estate, and that, consequently, a grave injustice has been done to Memorialist, in judging the case against him. It will be observed that the PUBLIC WORKS CODE is discussed against Memorialist, and because "advances to contractors are not generally recognized by Government" according to that Code, Memorialist is regarded to have committed a grave error in making those advances. In this connection, Memorialist begs respectfully to submit that, having regard to the position assigned to him by the Agent (*vide* para. 2 of EXHIBIT **F.**), Memorialist had

(1) no concern with the Public Works Code which affects Public Works subordinates only and

(2) neither was the Code in question prescribed for his guidance by any order of the Agent (Memorialist's then controlling authority.)

It is, therefore, manifestly unfair, Memorialist respectfully submits, that the charge should be argued against Memorialist with reference to the provisions of the Public Works Code which, at the time, did not apply to him. Memorialist begs respectfully that Your Lordship will give due consideration to this point, and Memorialist will also crave leave to submit that it must already be evident to Your Lordship that the whole case against Memorialist has been judged from a wrong stand-point and a manifest injustice thus done him.

8. That, next, as regards the *first* head of the charge as set out in para. 7, Memorialist begs to submit that, though Rs. 9,000 may, at the first blush, seem a large sum to be paid away as an advance, the fact should be borne in mind that that sum was paid *on account of two estimates*, viz., Rs. 6,000 for lime on account of the Maharajah's palace, the construction of which had just been undertaken on a sanctioned estimate of *Rs.* (1,18,000) *one lac eighteen thousand*, and the remaining 3,000 Rupees for lime for the Borigumma road. But, as a matter of fact, the whole question, Memorialist submits, rests largely on the great difficulty of obtaining lime in the Agency Tracts, a fact which is notorious, as all officers employed in those tracts are not only cognizant of this circumstance but also aware that advances have to be made for the article; and, in point of fact, the practice is to advance to the *full value* of the quantity required before any portion of the lime is delivered *in situ*. In proof of such practice, Memorialist begs to invite Your Lordship's attention to the instances given in para. 7, iii (*a*) and (*b*) and 7, iv (*a*) and (*b*) and 7, v of Memorialist's Review Petition (*vide* pages 3 and 4 of EXHIBIT **B.**), and to the vouchers forwarded in substantiation of the above statement. These Exhibits are sufficient, it is submitted, to establish the fact that *a practice did prevail* in the Agency Tracts of *making advances*, and Memorialist respectfully trusts that Your Lordship, after referring to Exhibits **I. J.** and **K.** will be pleased to find, as a matter of fact, that Memorialist merely *followed a practice* which was forced on him owing to the customs of the place. Memorialist begs also to report for Your Lordship's information that all the Deputy Thasildars of the Agency worked on the same lines, and that the Manager even of the Jeypore Estate (Mr. Taylor) was no exception to the rule, for he frequently requested Memorialist to advance men recommended by him up to the extent of 75 per cent. for the supply of stone for the Maharajah's palace, before a single stone was delivered at site. These matters have been dealt with at length in paragraphs 7 and 8 of Memorialist's Review Petition (EXHIBIT **B.**), and the attention of Your Lordship is respectfully solicited to the Exhibits, as they establish conclusively three very important facts in favour of Memorialist:

(1) that it was customary in the Agency Tracts to pay for articles in the manner done by Memorialist,

(2) that Memorialist merely followed a practice he found existing, owing to the local customs of the Special Tracts referred to, and

(3) that Memorialist exposed the Estate to no greater risk than the other subordinate officers of the Agency.

Memorialist begs respectfully to add in regard to the foregoing remarks that if the Government of India had been pleased to accede to his request, the fore-

going facts could have been established to the satisfaction of any officer who may have been deputed to hold the inquiry which was solicited.

9. That, as regards the *second* head of charge, *viz.*, making a second and a third advance before the first was worked off, Memorialist begs to invite attention to the facts and figures given in para. 9 of EXHIBIT **B**. which, it is submitted, are sufficient to show the very heavy initial expenditure which contractors in the Agency have to incur for the supply of lime, and that it, therefore, became necessary to place the contractor in the best position possible to fufil his contract. In order to arrive at a fair and dispassionate view of the matter as affecting this charge, the exceptional difficulties of the locality should be considered and no comparison should be instituted as to what is feasible and practicable in the plains, a standpoint from which it unfortunately appears Memorialist's case has been judged by the Government of Madras. The latter should be placed out of consideration entirely.

10. That, lastly, as regards the *third* head of charge, *viz.*, that the advances were paid on work bills in which Memorialist certified that the necessary measurement has been made and that the work was satisfactorily performed, which certificates are considered to be false, Memorialist begs to submit that, if it is conceded from the statements made above, that advances were necessary owing to the difficulties of obtaining lime, then Memorialist submits *it is immaterial on what kind of form these advances were made.* The main point for consideration is, whether the transaction was *bonâ fide* or not. Memorialist begs respectfully to submit that it was, and that in the course followed by him in regard to these certificates there was no intention to deceive any one, and that Memorialist adopted the only course open to him of obtaining money to carry out works expeditiously. The first advance made by Memorialist was in February 1894, but it will be observed from paragraph 7, iii (*a*) of Memorialist's Review Petition (EXHIBIT **B**.) that the Deputy Thasildar of Jeypore, who was in charge of Memorialist's works during his absence, on leave, in the General Hospital, had, in August 1893, and while Mr. Willock was in charge of the Agency, made an advance of Rs. 720 for lime for the Jeypore Hospital, and that this advance was made on an *exactly similar bill or certificate* to that used by Memorialist and to it no exception was taken by Mr. Willock. An authenticated copy of that document is herewith submitted, marked EXHIBIT **L**. This single instance, it is respectfully submitted, is sufficient of itself to show the very exceptional course which had to be followed to get work executed in the Agency, and that Memorialist's action in this matter was not singular or exceptional. In this connection Memorialist begs also to refer Your Lordship to the following facts:—

(1) That while these advances were outstanding Memorialist applied to the Agent (*vide* EXHIBIT **M.**) to be relieved of the Estate Engineership on account of failing health, the effects of a carbuncle for which Memorialist had been treated at the General Hospital.

(2) That in the Materials at Site Statement which was jointly signed by Memorialist and his successor, at the time he handed over charge to the latter in May 1895, Memorialist made a note on that document to the effect that Mr. Fletcher had, under his contract, to deliver 300 garce of lime (*vide* EXHIBIT **N**).

The foregoing acts, Memorialist respectfully submits, strongly negative the supposition that the certificates were dishonest or fraudulent, for had Memorialist been in collusion with the contractor, it is unlikely that he would have asked to be permitted to revert to his permanent appointment, while large advances remained unadjusted. Besides, in addition to the entry made in the Materials at Site Statement, Your Lordship will observe that Memorialist, in his letters of the 10th and 22nd April 1895, printed in the Appendix to his Review Petition (EXHIBIT **B**.), brought to the special notice of the acting Agent that advances were outstanding on the contractor and that he had made default to carry out his contract. Memorialist, in the circumstances, respectfully trusts that, having regard to all the facts stated above, Your Lordship will be pleased to take a more lenient view of the character of the certificates on which the advances were made, and acquit Memorialist of the improper motives which the local Government attribute to Memorialist and consider "show his unfitness to remain in the service."

11. That, in reference to the foregoing letters, Memorialist begs further to state he has reason to believe that, on their receipt, the acting Agent informed the Board of Revenue of Mr. Fletcher's default and solicited orders, and that they directed the Agent to withhold such monies as were due to Mr. Fletcher on account of other works and to attach his property for any further balance due. In these circumstances, Memorialist respectfully submits that it was not open to Mr. Willock to re-open this matter on his return from Europe, as the Board of Revenue, in their capacity as Court of Wards, to which practically Memorialist was subordinate, saw no reason to censure Memorialist and had given their orders in the matter to the acting Agent. The matter was therefore *res judicata.*

12. That, next, in regard to the *second* charge which the Government of Madras in its order (EXHIBIT **A**) considers "*not completely substantiated,*" Memorialist begs respectfully to submit two authenticated extracts from the cash book of the Divisional Officer, Vizagapatam, dated the 8th January and 5th February 1896 (EXHIBITS **O** & **P**), for Your Lordship's perusal and inspection, from which it will be observed that Rs. 111 in the first instance, and Rs. 55-8-0 in the second, were brought to account as "value of limestone recovered." These Exhibits were submitted to the Government of Madras by Memorialist with his Review Petition (EXHIBIT **B**), but failed to elicit from that Government any expression of opinion as to whether they were accepted in vindication of the charge that Memorialist had made a present of the limestone to Mr. Fletcher.

13. That in order to epitomize the several contentions and arguments urged by Memorialist in preceding paragraphs against his removal from the service, Memorialist craves leave to solicit Your Lordship's patient and careful consideration of the following summary:—

(1.) That Memorialist was, in accordance with special terms, arranged between the Agent and the Government of Madras, temporarily withdrawn from Government employ and deputed as Engineer of the Jeypore Rajah's Estate, (*vide* EXHIBIT **G.**)

(2.) That Memorialist's appointment as Estate Engineer was considered as duty on *foreign* service.

(3.) That the position assigned to Memorialist was that of a Local Fund Engineer —a position which merely subordinated Memorialist to the Agent, who assumed towards Memorialist the position of the President of a District Board (*vide* EXHIBIT **F**.)

(4.) That it was not fair and proper that the Public Works Code should be applied to Memorialist's case as that Code was not applicable or in force in the Rajah's Estate, neither was it prescribed by the Agent for Memorialist's guidance.

(5.) That Mr. Willock's complaint bore date six months after Memorialist had reverted to the Public Works Department, and related to works executed during his absence in England.

(6.) That no complaint had been made by Mr. Willock's *locum tenens*, during his incumbency, nor any fault found with Memorialist's work by him.

(7.) That Memorialist acted to the best of his discretion in making advances, and was controlled in this respect by the *practice* prevailing among all Officers of the Estate.

(8.) That the bill or certificate used by Memorialist has been erroneously considered in the light in which it is treated in respect to works executed in the plains, and regardless of the special circumstances and practices prevailing in the Agency Tracts.

(9.) That there was no collusion about the advances—*vide* Memorialist's letters to the acting Agent, dated the 10th and 22nd April 1895, Nos. 29 and 66, respectively (printed in the Appendix to EXHIBIT **B**.)

(10.) That orders having been passed by the Court of Wards, Mr. Willock was not in order in re-opening the matter six months after Memorialist had left Jeypore and when he was practically *ex-officio functus*.

14. Lastly, Memorialist craves liberty having regard to the fact that the Government of Madras have come to unfavorable conclusions against Memorialist more on *suspicion* of fraud than on *proof* of it, to invite Your Lordship's kind attention to the very proper and equitable principles laid down in a Resolution of the Government of Bombay, dated the 16th October 1883, which the Government of Madras say in their Order of the 3rd December 1883, No. 2990, are "identical with those enunciated by itself from time to time" and which they therefore adopted and circulated for the guidance of all Heads of Departments.

It is there distinctly laid down that "*the intention of Government is that no servant of theirs should be dismissed except on proof*"; (para. 8),

that there should be "*no pretence of proof when there is only suspicion*; (para. 9),

and, "*if a man has earned or nearly earned his pension his would not be a proper case for removal on suspicion. He would necessarily be an old servant of Government * * and the sudden beggary of a man whose working days are drawing*

to a close is as serious an exercise of power as the penal sentence of a Court of Justice;" (para. 10),

and lastly, "*that in proportion as the evidence falls short of proof, consideration should be given to the previous character of the subordinate concerned, and also to any specific instances of good * * service that may have been officially noted in his case*" (para. 11).

Memorialist accordingly begs to bring to your Lordship's kind notice that he is an A. C. E. of the Civil Engineering College, that he obtained his first appointment in the Department of Public Works as Overseer, 3rd Grade, in April 1876, and after rapid promotions as Overseer, 1st Grade (1877), Supervisor, 2nd Grade (1880), and Supervisor, 1st Grade (1881), he was appointed Sub-Engineer, 3rd Grade, in 1889. In all grades Memorialist spared no pains to render satisfaction in the discharge of his duties and to secure the good-will of his superiors. Memorialist begs also, with pride and satisfaction, to refer Your Lordship to the valuable testimony borne to his good work in the documents which will be found printed in the paper attached to this Memorial. It will be there observed that Mr. Traill, the Executive Engineer, Vizagapatam Division, in March 1891, wrote of Memorialist as follows:—

"Mr. French, Sub-Engineer, took charge of the Sub-Division on Mr. Loam's getting ill in July last, and the improvement in the progress of work during the last six months has been most marked. He *at once* succeeded in getting carpenters and in finishing off the roofs of the Koraput buildings that had been at a stand still for months. He retained all the labour which Mr. Loam and Mr. Harris had and procured more. He cleared off numerous arrears of office work and managed to submit his accounts more regularly than they ever had been in Mr. Loam's time. He is energetic without being fussy or annoying his subordinates, and has a quiet, steady systematic way of carrying out all he does. Promptness in making payments is one of the secrets of his success. I was so satisfied with the results of his work that on Mr. Loam's recovery in October last I continued to keep Mr. French in charge, putting Mr. Loam on to special duty * * * . I should mention that for much of this time Mr. French was quite unaided, having no Overseer or Sub-Overseer under him."

In their Order thereon, dated 2nd May 1891, No. 1217, the Government of Madras, in the Public Works Department, was pleased to remark that it considered

"Mr. Traill's report on Mr. French's work is very creditable to the latter officer."

In the next document, which is an extract from Mr. Willock's Tour Statement as Governor's Agent, it will be observed that he was pleased to say that,

"Mr. French, the Sub-Engineer, has certainly a talent for getting work done in the Agency."

In consequence of the very favorable opinion then held by Mr. Willock of Memorialist's *capacity for getting work executed in the Agency* he decided, in February 1892, to secure Memorialist's services as a Special Engineer of the Jeypore

Estate and in his letter of the 25th February 1892, No. 191, he recommended Memorialist to the Government of Madras in the following flattering terms :—

"There is an excellent man at hand in Mr. E. French, Sub-Engineer of the Public Works Department who has been in charge of the Government works above the Ghats * * and to whom all the progress which has been made in that time is due."

The full text of Mr. Willock's letter will be found printed in G. O., 27th April 1892, No. 804, Judicial, (EXHIBIT **G**) to which reference is kindly invited. Next, it will be observed that Mr. Willock, for a *third* time, refers in commendatory terms to the work done by Memorialist, and that, on the 9th January 1893, he writes :—

"I have been much struck with the way Agency works under the Department, Public Works progressed when he (Mr. French) was put in charge and attribute the great change to *his energy and ability*."

This is not all, for, for the *fourth* time, Mr. Willock, in his letter to the Board of Revenue, dated 23rd November 1892, bears unqualified testimony to Memorialist's good work as follows :—

"We have in the new Estate Engineer, Mr. French, a man quite capable of building all I ever contemplated."

Again, in his letter of February 1896, wherein he thought fit to formulate charges against Memorialist, Mr. Willock writes :—

"Work under the D.P.W. on the Potinghi-Koraput Road and the Civil Buildings at Koraput made but little progress until Mr. French took charge about two years previously. He at once showed great aptitude for making use of the labour available *and meeting the difficulties unavoidable in dealing with works in the Agency*. The road and buildings proceeded rapidly under his supervision, and when the question of finding an Estate Engineer arose his success pointed him out as a promising officer for the post."

Memorialist therefore very earnestly prays that Your Lordship will be graciously pleased to bestow a very generous and careful consideration to the following facts :—

(i) Memorialist's long and unblemished career in the P. W. Department dating since April 1876, as testified to by his Service Register (herewith submitted, EXHIBIT **Q**) ;

(ii) the excellent services rendered by Memorialist in the execution of several important and difficult works in unhealthy and malarious portions of the Ceded Districts from 1880 to 1889, and in the Agency Tracts of the Vizagapatam District from 1890 to 1896 ; and

(iii) the unstinted approval expressed by the Agent, of his good work, as testified to in the extracts given in the preceding paragraph ;

and that with reference to

(iv) the very exceptional position filled by Memorialist in the Jeypore Estate as Estate Engineer during the period to which Mr. Willock's complaint relates, and

(v) the explanations given in connection with the charges laid against Memorialist,

Your Lordship will be graciously pleased to acquit Memorialist of any improper conduct which unfits him to remain in the public service, and to cancel the order of dismissal and to direct Memorialist's restoration to his appointment in the P. W. Department, with all arrears of pay, and thus remove the shame and disgrace brought on him by dismissal from the service ;—or that it may be Your Lordship's pleasure, having regard to Memorialist's long and efficient service, to admit him to a pension proportionate to the service rendered by him since April 1876, and with effect from the date of Memorialist's removal from the service.

NELLORE,
February 1898.

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