Public Works (1899) Department.

G.O., No. 2787 W

DATED 27 Oct **1899.**

[Despatch Abstract.]

Mr. W. G. Molesworth, Asst Engr.

Regretting that the application of ——— ~~for privilege leave~~ for furlough on medical certificate in continuation of privilege leave cannot be granted and ~~directing that he be~~ considering him as absent from duty for the whole period from the 29th July 99 to the date of termination of the leave recommended by the medical board, such absence being treated as furlough on medical certificate

Dr.

Indexed. 23/10

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

For orders

His Excellency the Governor

PUBLIC WORKS DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ the following

Application from Mr. W. G. Molesworth, Assistant Engineer, dated 13th September 1899.
Endorst. thereon by the C.A. to Govt. No. 2063 d/ 15 — do —
Endorst. by the Exar. P.W. Accts. No. 3082 B/E d/ 18 — do —

No: 2787 W. d/ 21.10

Mr. Molesworth applies for privilege leave for 1 month and 9 days from the 29th July 1899, and for furlough on medical Certificate for 3 months from the 14th September 1899.

A.E.H.
7.10.99

2. The Circumstances under which this application is made are as follows:—

On the 29th July last, Mr. Molesworth was admitted into hospital. He was too ill at the time to apply in writing for privilege leave, and Continued to be so for about a month. On the 2nd September, while still absent from duty, he appeared before a

Notification Sent Separately
to C through Saw
JM
10/10/99

HE 5/10 Q 9.0

(40—1,000—21-4-94.)

a Medical Board, which then recommended him for 3 months' leave to Australia. On the 7th Idem, he returned to duty, and on the 13th, submitted the application in question.

3. The Govt. considers that in the circumstances above set forth, Mr Molesworth's application must be dealt with under the Note to Article 891 of the C.S. Regulations, wherein it is laid down that "Formal joining "at the end of privilege "leave with the intention of "taking other leave within "a few days is not per-"mitted, as the other leave "granted in such cir-"cumstances would "practically be in conti-"nuation of the privilege "leave". It would be an evasion of this rule to comply with Mr. Molesworth's request and

grant

grant him privilege leave from the 29th July to the 6th September, and furlough from the 14th September for 3 months, in the face of the fact that the furlough was recommended by the Medical Board before the proposed privilege leave had expired. His Excellency the Governor in Council, therefore, regrets that Mr Molesworth's application cannot be granted, and accordingly directs that he be considered as absent from duty for the whole period from the 29th July 1899 to the date of termination of the leave recommended by the Medical Board, and that such absence be treated as furlough on medical certificate

under

under Article 343 of the C.S. Regulations.

6.10.91

W

H.E.

Note with reference to the Mr Arundel's remarks on my note dated 30.9.91 I beg to point out that the latter was only intended to afford information, which is one of the duties of a Secretary and not to invite dissent.

6.10.91

To The C.A. to Govt.
" Exar. P.W. Accts.
with a Notification for publication

Sent separately per [illegible] Vide 'Saw'.

caw

Chbr

Is the Hon: Member correct in his statement of procedure with Note regarding my ? of 30.9?

6.10.91

W

The Hon: Member says that it is ultra vires for a Secretary to intervene in discussions of Heads by adding any remark marking dissent. This pronouncement must, it is thought, be accepted as correct; though it is not a matter upon which rules exist. It is more of the nature of an axiom. Whether your remark is objectionable on this ground must be a matter of opinion. It may be urged per contra that it was only intended to afford information. There is nothing ultra vires in this – but it would no doubt

No: 7704

(1) one
from the 29th July,

on

Article 343 of

have been better in the
light, perhaps, the H.M.
now says that ^the reply should
have gone to H.E. in the
first instance.

I have never seen an
objection of this kind raised
before.

N.G.
5 Oct. 99

Seen
HW
6 10 [illegible]

Current No: 7704

D.W.
W

Mr. Molesworth, Assistant Engineer, 3rd grade, attached to the C.A. 1st Dn., found it necessary to be in hospital on the 29th July last, and ~~for~~ a month from that date, was, according to his own statement, unable to "sign or receive any papers". He says that his intention at this time was to apply for privilege leave for the period of his absence from duty, and not for any sick leave immediately or soon after the expiry of the privilege leave.

On the 2nd Instant, while still absent from duty, he appeared before a Medical Board, which has recommended him for 3 months' sick leave to Australia.

On the 7th Instant, he returned to duty, and on the 13th Instant, submitted two applications,

(1) one for privilege leave from the 29th July, the date on

on which he had to seek admission into hospital, to the 6th ~~Sep~~ Instant — a period of one month and nine days, and

(2) the other for the 3 months' sick leave recommended by the Medical Board, of which he appears to have availed himself from the 14th Instant in anticipation of the sanction of Govt.

The point for consideration is whether under the circumstances mentioned above, Mr. Molesworth has a claim to the privilege leave applied for.

Whatever his original intention might have been, there can be no doubt that he joined for duty on the 7th Instant, that is, 5 days after passing the Medical Board, with the intention of availing himself, a few days after, of the sick leave recommended by the Board. As this is diametrically opposed to the principle enunciated in the first sentence of Rule 1, Article 891 of the C. S. Regulations it is submitted that Mr. Molesworth can only be recommended for furlough on medical certificate for 4 months and 16 days from the 29th July last, including

(1) the 7 days he was on duty from the 7th to the 13th Instant, and

(2) the 3 months' sick leave recommended by the Medical Board.

For orders.

21.9.97

W. The above is a very rigid* interpretation of the rule, which please see. There is no doubt that had Mr. Molesworth been well enough to do so he would have submitted his application with the necessary certificate which would have been a *boná fide* one. It is left to the discretion of Govt. to grant the leave and this may be recommended in this case as there has been no intentional evasion of the rule HU 21/9

*and incorrect. The intention to evade the rule must be when the *privilege leave* is first applied for.

We submit for sanction

21.9.97

W. This case seems a specially hard one. Nor is it submitted entirely discretionary with Govt to grant the leave or refuse it. The circumstances under which Mr Molesworth was taken ill rendered it impossible for him to submit his application for privilege leave sooner and therefore there is no deliberate evasion of the rules. The evasion must take place at the time of the commencement of the leave.

H.E.C.
20/9

Note for H. E. the Governor.

With reference to His Excellency's orders in the attached Note, I beg to point out that if Mr. Molesworth had been in full possession of his faculties when he went into hospital, he would have then applied for privilege leave, & been able to sign the certificate that he had no intention of taking any other form of leave for 3 months after his return to duty. He was, however, too ill for anything of the kind, & could, therefore, only submit this application on ~~return to duty~~ recovery & at a time when it was unavoidably made simultaneously with his application for furlough. I respectfully submit that

(1) The above action cannot be called a deliberate & intentional evasion of the rule, as

such evasion must take place at the time of the commencement of the privilege leave. ~~where~~

2. If we take advantage of Mr Molesworth's incapacity to refuse him the privilege leave due to him, we ~~fine~~ virtually fine a deserving officer 1/2 his pay for one month & nine days & deprive him of his Residency allowance for an omission which was entirely beyond his control.

3. It is ~~entirely~~ within the discretion of Govt. to grant or refuse the leave, & that a hard case of this kind in which an officer suffers from no fault of his own is pre-eminently one for exercising that discretion in a manner favourable to him.

I trust therefore that His Excellency will be pleased to reconsider his decision.

21-9-11

Fair cp

4

Mr. Molesworth's leave

Note for His Excellency the Governor

With reference to His Excellency's orders on the attached Note, I beg to point out that if Mr. Molesworth had been in full possession of his faculties when he went into hospital, he would have then applied for privilege leave, and been able to sign the Certificate that he had no intention of taking any other form of leave for 3 months after his return to duty. He was, however, too ill for anything of the kind, and could, therefore, only submit his application on recovery and at a time when it was unavoidably made simultaneously with his application for furlough.

I respectfully submit that

(1) The above action cannot be called a deliberate and intentional evasion of the rule, as such evasion must take place at the time of the commencement of the privilege leave,

Issue order accordingly

5-10-11

HE 25/9 R 29/9

(2)

2) If we take advantage of Mr. Molesworth's incapacity, to refuse him the privilege leave due to him, we virtually ~~give~~ fine a deserving Officer 1/2 his pay for one month and nine days and deprive him of his Presidency allowance for an omission which was entirely beyond his control.

3. It is within the discretion of Government to grant or refuse the leave, and that a hard case of this kind in which an Officer suffers from no fault of his own, is preeminently one for exercising that discretion in a manner favourable to him.

I trust, therefore, that His Excellency will be pleased to reconsider his decision

25.9.99

As far as I can understand these Rules, it seems to me that not merely must an officer sign the certificate that it is ~~and~~ his intention to return to duty and serve for three months, but that he must also actually return and serve for three months. Mr. De Winton seems to think that the signing of the certificate without the fulfilment of the conditions, should suffice. In this, I ~~think~~ think he misinterprets the Rules. But, I am not familiar with the practical working of the Rules, and I may be wrong; and I should be very sorry to injure Mr. Molesworth. I should like the case to be circulated to Hon. Members. I will accept their views, – even though it may be not my own, as at present advised.

A.E.H.
29.9.99

1) The Hon'ble Mr. Arundel C.S.I.
2) The Hon'ble Mr. Winterbotham

Circulated to Hon. Members as above directed. His Excellency has overlooked the last part of Art 891 CSR.

L Bell
30.9.99

I quite agree with H.E. that it would be an evasion of the rule to comply with Mr. Molesworth's request and grant him privilege leave from 29th July to 6th Septr. and furlough from 14th Septr. for three months. It is true that it is not absolutely necessary for an officer after signing the certificate under Art 891 for privilege leave to return & serve three months before taking furlough. But he must "explain his change of mind," i.e. to the satisfaction of Govt. But the note to Art. 891 makes such a case as Mr. Molesworth's perfectly plain. "Formal joining at the end of privilege leave with the intention of taking other leave within a few days is not permitted, as the other leave granted in such circumstances would practically be in continuation of privilege leave." To grant Mr. Molesworth's application would be to ignore this prohibition. Looked at from another point of view the proposal is untenable. If Mr. Molesworth while in Hospital had been able to apply for leave his medical attendants would have told him that leave

HRus 2/10 ER 3/10

Mr. Molesworth appeared before the Medical Board on the 2nd Septr. & was then recommended for 3 months' furlough; i.e. before the proposed privilege leave had expired.

for a month & nine days was quite insufficient in a case of enteric fever of a serious character. He could not have obtained the necessary leave – four months & about 13 days without taking furlough.

I must demur to the second sentence of the Secy's note dated 30.9.99, pointing out H.E's oversight of the last part of Art. 891 C.S.R. As I noted some time ago on a file in another Departmt. it is *ultra vires* & unconstitutional for a Secy. in circulating a note of a member of Govt. to add any remark inviting dissent. Such remark should be submitted to the member – in this case H.E. – who noted on the case, and, ~~now~~ after being seen by him, can *then* be legitimately circulated to the other members.

AEA 2.10.99.

I concur –
The case is a hard one; but under the rule that no leave can be taken in continuation of privilege leave similar hard cases are continually occurring – E.G. a sick man takes 3 months privilege leave – He is compelled to extend the leave for a fortnight – The whole must then be commuted to furlough, & a deserving officer is thus fined half his pay for 3 months –
Just Mr. Molesworth's case except that he rejoined for six days in order to evade this inconvenient rule –

H.S. –
3 – 10 – 99.

His Excellency the Governor

P. W. Department.

Read the following:—

Application from Mr. Molesworth d/ 13. 9. 99
Endorst. thereon by the C.A. to Govt. No. 2063 d/ 15.9.99
— Do — by the Examiner, P.W. Accts. No. 3082 B/E d/ 18.9.99

Mr. Molesworth's leave

FOR ORDERS.

On the 29th July last, Mr. Molesworth, Assistant Engineer, 3rd grade, attached to the Consulting Architect's Division, ~~took ill~~ was attacked with enteric fever, which necessitated his admission into hospital. For a month from that date, he was unable to sign or receive any papers. His intention at this time was, as he says, to apply for privilege leave until his recovery, and not to apply for any sick leave on the expiry of the privilege leave.

On the 2nd Instant, while still absent from duty, he appeared before a Medical Board, which has recommended him for 3 months' leave to Australia.

On the 7th Instant, he

returned

HE22/9R25/7

43—500-27-4-94.

returned to duty, and on the 13th Instant, submitted two applications,

(1) one for privilege leave from the 29th July (the date of his admission into hospital) to the 6th Instant — a period of one month and nine days, and

(2) the other for 3 months' furlough with effect from the 14th Instant, being the leave recommended by the Medical Board.

The question that now arises for decision is whether in applying for furlough a week after his return to duty on the 7th Instant from an absence which he wishes to be treated as privilege leave, Mr. Molesworth deliberately violates the principle enunciated as Rule 1 under Article 891 of the Civil Service Regulations. Should it be held that Mr. Molesworth's application involves no deliberate or intentional evasion of the aforesaid rule, the privilege leave as well as the furlough may be granted, as applied for.

Otherwise

The application involves an evasion of the Rules.

A.G.H.

I am sorry for it, but this is the course that must be followed.

A.G.H.
24.9.99

Otherwise, the whole period from the 29th July to the date of the expiry of the leave recommended by the Medical Board will have to be treated as furlough on medical Certificate.

There is no doubt that had Mr. Molesworth been well enough to do so, he would have submitted his application for privilege leave long before his return to duty on the 7th Instant, together with the Certificate prescribed in Article 891 of the C.S. Regulations, to the effect that he had no intention of taking any leave within 3 months after the expiry of the privilege leave. Such Certificate would then have been a *bona fide* one. It is recommended, therefore, that both the privilege leave and the furlough applied for by Mr. Molesworth be granted, there being no intentional evasion of rules on his part.

HLL
22/9/99

22.9.99

FOR ORDERS.

Public Works (1899) Department.

CURRENT No. 7704

Soon

From The Examiner P. W. Accounts, Madras & Coorg

Order

No. 3082 B/2

Dated 18th September 1899.

Received } 19-9-99
Registered }

Enclosures ~~2~~ Plans nil } Total
Others - 2 } 2

Spare copies.

SUBJECT.

Application for leave from Mr. W. G. Molesworth Asstt. Engineer 3rd grade — forwards —

o 45517

BACK PAPERS.

No.	Date.

FURTHER PAPERS.

No.	Date.

8

Civil Medical Form No. 37.

FOR GAZETTED OFFICERS ONLY.

Proceedings of a Civil Medical Board assembled at General Hospital Madras *on the* 2d *day of* September 1899

EXAMINER,
P. W. ACCOUNTS.
16 SEP 1899
No.........................

to report on the state of health of Mr. W. G. Molesworth of the Public Works Department

President Lieut: Colonel W. A. Lee, I. M. S.

Members Major F. J. Crawford, I. M. S.
Captain H. St. J. Fraser, I. M. S.

INSTRUCTIONS.

With the cognizance of the head of his office, or if he is himself the head of the office, of the head of his department: the applicant must present himself with 3 copies of the statement of his case in a cover sealed by his medical attendant at the seat of the Government under which he is serving, or at such other place as may be appointed by that Government where a committee of medical officers can be assembled under the orders of the Surgeon-General. The board should see that the applicant fulfils these conditions.

Before deciding whether to grant or refuse the certificate the medical board may in a doubtful case, detain an applicant under professional observation during a period not exceeding fourteen days.

If it can be avoided, the medical attendant on a case should not be a member of the board which considers it, and under no circumstances can he sit as president. He should, however be required to attend the board to furnish any information whenever his presence is considered necessary.

The medical board, after a careful examination of the officer, and consideration of the medical attendant's statement of the case, will record in the proceedings as follows:—

(*a*) Whether change of climate *in* or *out of India* is necessary.

(*b*) The period of absence recommended in or out of India, care being taken that leave in excess of the period to which the sick officer is entitled by regulations is not recommended.

(*c*) In the case of an officer requiring furlo' or leave of absence owing to illness caused directly by intemperance, the medical board, whilst recording their opinion, will confine their recommendation to the officer appearing periodically before fresh boards, or to the treatment of the case as one of discipline, whichever may be deemed necessary.

In urgent cases when a medical board considers it absolutely necessary that an officer recommended for change of air, *either in or out of India*, should proceed in anticipation of sanction, a recommendation to that effect should be made in the proceedings.

We do hereby certify that according to the best of our professional judgment, after a careful personal examination of the case, we consider the health of Mr W. G. Molesworth of the Public Works Dept service to be such as to render leave of absence to Australia for a period of three months absolutely necessary for his recovery. when he can be spared from duty.

W A Lee Lt. Col., I. M. S.
President.

F J Crawford Major, I. M. S.
H. Fraser Captain, I. M. S.
Members.

500-9.5-95.

8

PWE2
7704/99

A

Roc ①619

EXAMINER,
P. W. ACCOUNTS.
16 1899
No.

Chepauk
13 – 9 – 99

To

The Consulting Architect
to Government
Madras.

Sir,

B

In forwarding my application for privelege Leave, I beg to state that I was in hospital on the 29th of July, the date at which I apply for my leave to commence and was physically unfit to sign any or receive any papers until a month after that date. At the time I did not know I was suffering from enteric fever and had no intention of applying for sick leave after my privelege leave had expired.

I have the honor to be
Sir
Your Most obedient Servt.

W G Molesworth

Assistant Engr.

No. 2083
15.9.99

To Examiner P.W. Accounts
The leave applications of Mr. Molesworth are forwarded for favour of report.

[illegible]
14/9/99

P. W. D. Form No. 115.

EXAM
P. W. ACCOUNTS
No.

Application for Leave.

Applicant's name in full Walter Guy Molesworth
Rank Asst Engr. 3d Grade.
Division or office Cons. Archt.
Nature of leave applied for Privilege leave.
Period of leave One month & 9 days.
From what date 29 ~~31~~ 7. 99. (Forenoon) to 7th Septr. 99. (Forenoon).

In case of application for leave other than privilege, signature of the applicant should be above the certificate at. *

☞ *

Certified that I have no present intention of applying for any other leave, or of retiring from the Government service within a period of three months from the date on which I may rejoin from the above leave, if granted.

Signature of applicant. W G Molesworth
Asst Engr.

No. , dated 189 .

Recommended.

Executive Engineer,
Division.

No. , Dated 189 .

Recommended.

Superintending Engineer,
Circle.

Report on Application for Leave.

Statement of leave granted to Mr. W. G. Molesworth previous to this application.

Nature of Leave.																				Remarks.
(a)					(a)					(a)					(a)					
From	To	Y.	M.	D.	From	To	Y.	M.	D.	From	To	Y.	M.	D.	From	To	Y.	M.	D.	
Has had no leave since date (29th November 1897) of joining his first appointment.																				

(a) Here note the nature of leave.

No. 3082 B/E

With reference to the above application ~~for~~ (b) Privilege leave for one month & 9 days July 1899 may be granted to Mr. W. G. Molesworth, Asst. Engr. 3rd grade under ~~section~~ Article 291 of the Civil Service Regulations ~~Code~~.

Madras
September 1899.

To
The Consulting Architect to Government
Through: The Chief Engineer, P. W. Depmt.

H Rammer
Offg. Examiner, P. W. Accounts,
Madras Province.

(b) Here enter the nature of leave.

PWE
7701/99

NOTES.

Reference to P. W. D. Code.
Chap. IV, paras. 30 to 32.

1. All applications for leave must be made to, or through the departmental superiors of the applicant in this form; in the case of accountants and members of the upper and lower subordinates, petty or office establishments they should be accompanied by a duly attested extract from the applicant's service book, showing his previous leave and service. This form is not applicable to applications for furlough from Military officers and subordinates, see Vol. 1, Chap. V, paras. 12, 14, 47 and 100.

2. All applications for leave from officers for whom leave and service registers are maintained, will be forwarded by the applicant through the usual channel to the Examiner, who will draw up a statement of previous leave granted to the applicant. If the leave can be granted under the rules, the Examiner will certify the fact. The Examiner will then forward the application and certificate to the officer vested with power to grant the leave or to the local Government or the Administrative Head of a Railway by whom it will be submitted, when necessary, to higher authority.

P. W. D. Form N

PROVINCE.

Application for Leave.

FROM

THE

To

THE

Orders by sanctioning authority.

C G P.—No. 201 Adj—11-3-98—803.

P. W. D. Form No. 115.

EXAM
P. W. ACCOUNTS.
6 [illegible] 1899
No.

Application for Leave

Applicant's name in full Walter Grey Molesworth
Rank Asstt. Engr. 3rd Gr.
Division or office Cauvery Circle
Nature of leave applied for Furlo on Medical Certificate
Period of leave Three months
From what date 14.9.99

In case of application for leave other than privilege, signature of the applicant should be above the certificate at. *

☞ * WG Molesworth

Certified that I have no present intention of applying for any other leave, or of retiring from the Government service within a period of three months from the date on which I may rejoin from the above leave, if granted.

Signature of applicant.

No. , dated 189 .
Recommended.

Executive Engineer,
Division.

No. , Dated 189 .
Recommended.

Superintending Engineer,
Circle.

Report on Application for Leave.

Statement of leave granted to Mr. W. G. Molesworth previous to this application.

NATURE OF LEAVE.																					Remarks.
(a)					(a)					(a)					(a)						
From	To	Y.	M.	D.	From	To	Y.	M.	D.	From	To	Y.	M.	D.	From	To	Y.	M.	D.		

Has had no leave except privilege leave now reported to be admissible from 29.7.99 to 6.9.99 since date (29.11.97) of joining his first appointment.

(a) Here note the nature of leave.

No. 3082 B/2

ith reference to the above application ~~for~~ (b) Furlough on (Medical Certificate) for 3 months [illegible] September 1899 may be granted to Mr. W.G. Molesworth, Assistant Engineer, 3rd grade under ~~section~~ 343 of the Civil Service Regulations ~~Code~~. The absence of Mr. Molesworth from 29th July 1899 was on the plea of [illegible] considering that he was recommended for leave by the Medical Board on the 2nd September 1899, it is for Government to decide with reference to [illegible]791 Rule 1 whether there was any deliberate or intentional evasion of the rule.

H Rainier
Offg. Examiner, P. W. Accounts,
Madras Province.

Madras
September 1899.

Forwarded to Secretary to Government, Public Works Department

(b) Here enter the nature of leave.

[illegible] 18/9/99

P. W. D. Form No

PROVINCE.

NOTES.

Reference to P. W. D. Code.

Chap. IV, paras. 30 to 32.

1. All applications for leave must be made to, or through the departmental superiors of the applicant in this form; in the case of accountants and members of the upper and lower subordinates, petty or office establishments they should be accompanied by a duly attested extract from the applicant's service book, showing his previous leave and service. This form is not applicable to applications for furlough from Military officers and subordinates, see Vol. 1, Chap. V, paras. 12, 14, 47 and 100.

2. All applications for leave from officers for whom leave and service registers are maintained, will be forwarded by the applicant through the usual channel to the Examiner, who will draw up a statement of previous leave granted to the applicant. If the leave can be granted under the rules, the Examiner will certify the fact. The Examiner will then forward the application and certificate to the officer vested with power to grant the leave or to the local Government or the Administrative Head of a Railway by whom it will be submitted, when necessary, to higher authority.

Application for Leave.

FROM

THE ______________________

____

To

THE ______________________

____

Orders by sanctioning authority.

C G P.—No. 201 Adj—11-3-98—803.