

Pension (1898) Department.

ORDINARY MS.

G.O., No. 397

DATED 8<sup>th</sup> June

[Despatch Abstract.]

Reducing the pension of Mr. Nicholas  
Bruto, late Tahsildar of Mangalore S. Canara  
D<sup>o</sup>, to Rs 75/- p.m.

# BACK PAPERS.

| G.O. | No.  | Department. | Date.   | G.O. | No. | Department. | Date. |
|------|------|-------------|---------|------|-----|-------------|-------|
| "    | 1191 | Pers        | 25-9-94 |      |     |             |       |

# FURTHER PAPERS.

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*Let this be done with the necessary papers for the pension.*  
*H. H.*  
*In approval with reference to the granting of the claim from which this induction has taken place. I think it will be from the date of the pension originally*

*H. H.*

*28*  
*Approved - of the induction is taken place from the date of the order*

*28*  
*4/6/98*

*Sum is amended.*

*H. H.*

# Pension Department.

Read endorsement of the Revenue Department, No. 893 Rev., dated 27th March 1898, transferring

(1) Proceedings of the Board of Revenue, Land Revenue, Refce. No. 46 (Confidential No. 14) dated 28th March 1898.

(2) Petition from Mr. Nicholas Brito dated 26th March 1898.

Order 397 of 8 June 1898

On a careful consideration of the case, His Excellency the Governor in Council sees no reason to doubt the accuracy of the findings of the Civil Courts that Mr. Nicholas Brito had, while employed in the service of Government, acquired land with his own money and on his behalf within his jurisdiction and that he "intended to conceal the acquisition of the land from the authorities and "acted dishonestly and in contravention of the rules of his Department. Mr. Brito's contention that the finding at the Departmental enquiries of 1893-94 overrides the subsequent judgements of the Civil Courts is clearly untenable. In the opinion of Government it is established beyond doubt that Mr. Brito transgressed a most important Departmental rule.

The question now arises whether the pension granted to Mr. Brito in September 1894 should be withheld or reduced. That pension was the maximum admissible to him under the rules and was granted by the Government in the belief that his conduct and character had been thoroughly satisfactory. The facts now brought to light show that Mr. Brito's service was far from satisfactory and in no way meriting the distinction of a full pension. His Excellency in Council accordingly resolves to direct that the amount of the pension be reduced from Rs. 112-8-0 per mensem to Rs. 75 per mensem with effect from the date at which it was granted. The necessary recovery should be effected in monthly instalments of one-third the pension now allowed.

Ulla  
30.7.98

To the AG  
BC of Rev. L. R.  
C. Mr. B. S. Canada.

I think it should be from the date of this order. It would be very curious of this order. It makes the man refund. Moreover, I doubt if we could make him refund of land.  
Me  
6.6.98  
28  
4.1.99

0  
18 4,000-19-7-97.

# Pension Revenue (1898) Department.

CURRENT No. 426  
~~2478~~

Read also Cus. 2477 798

From

Endorsement n° 893 R dy 27<sup>th</sup> May 1898  
Order  
Mr. Nicholas Brito  
Pensioned Tahitian of  
Mangalore Taluk  
South Canada Dist.

Transferred to the Pension Department

Atmarjintun  
As Under Secy to Govt

To

The Pension Dept with notes in original

10.11.98  
16.5.98

No.

Dated 26 Mar

Received 28

Registered 29

Enclosures

Spare copies.

SUBJECT.

Praying that he may be continued to enjoy the pension earned by him in spite of the remarks of the High Court re: the unrealment of the acquisition of certain lands.

BACK PAPERS.

| G.O. | No. | Department. | Date. |
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FURTHER PAPERS.

| G.O. | No. | Department. | Date. |
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PETITION

0224

REVENUE DEPT.

His Excellency the Rt. Honorable,

SIR ARTHUR ELIBANK HAVELOCK, G.C.M.G., G.C.I.E.,

Governor of Fort St. George,

MADRAS.

The humble petition of NICHOLAS BRITO, Pensioned  
Tahsildar of Mangalore Taluq, in the District  
of South Canara.

RESPECTFULLY SHEWETH,

That the Petitioner has been given to understand that the Hon'ble Board of Revenue has submitted, for the orders of Your Excellency's Government, a report submitted by the Collector of South Canara with reference to the remarks made by the Hon'ble Judges of the High Court in Appeal Suit No. 134 of 1896, to the following effect: "No doubt the Plaintiff intended to conceal the acquisition of the lands from the authorities and acted dishonestly and in contravention of the rules of his Department." The Plaintiff therein alluded to is Your Excellency's Petitioner, and he therefore ventures to approach Your Excellency with this humble petition in the firm belief that the facts herein mentioned will meet with Your Excellency's favorable consideration.

2. That Petitioner humbly begs to refer Your Excellency to the petitions put in by him before the Hon'ble Mr. Nicholson and Mr. Pinhey on the 29th October and 16th December 1897, respectively, which Petitioner believes have been sent to Government with the records of the case, from which Your Excellency will observe that the identical question, now raised by the Hon'ble Judges of the High Court, was thoroughly enquired into and set at rest by Messrs. Brodie and Power, the former Collectors of the District, and finally by the Hon'ble Board of Revenue.

3 That Petitioner after a lengthened service of 38 years, no less than 28 years of which were passed as Tahsildar in the South Canara District, retired in July 1894 on a well earned pension.

4. That in the course of this service Petitioner received from successive heads of the District the highest encomiums on his character and ability, in proof of which petitioner begs to refer Your Excellency to the printed collection of his testimonials, which he has submitted as an enclosure to the petition put in by him before the Hon'ble Mr. Nicholson. Foremost among them stand the testimonials given to him by Government, and among others, by the Hon'ble Messrs. J. Sturrock, A.T. Arundel, G. Stokes, and Messrs. H.S. Thomas, W.H. Comyn, A.McC. Webster, E. E. Spencer, E. Gibson, and H. Bradley, from which Your Excellency will observe that Peti-

tioner had borne an unblemished character for honesty and integrity during his long service. So much were Petitioner's services appreciated that, when Petitioner was at his own request transferred from the Udipi Taluq, the pay of the Tahsil of which was Rs. 225, to the Mangalore Taluq, the pay of the Tahsil of the latter Taluq was raised from Rs. 200 to 225 so that petitioner <sup>might</sup> ~~may~~ not suffer loss by the transfer.

5. For easy reference Petitioner begs most respectfully to quote some of the encomiums bestowed on his conduct at a critical time in the Udipi Taluq. In his report submitted to Government by Mr. W. H. Comyn, the then District Magistrate of South Canara, he stated as follows:— "Owing to the presence of the Temple and Mutts at Udipi and to its large resident and fluctuating Brahmin population, the local Brahmin influence is very strong, and the place has in this small Canara world always been noted for its intrigues. To ensure good administration it is necessary that the Tahsildar and Taluq Magistrate should not only not be a Brahmin, but should be a man who would be independent of the prevailing Brahmin influence. Such a man is the present Tahsildar N. Brito, a Roman Catholic, who has held the post for a number of years and has always been considered the right man in the right place. He is a man of strict views and of remarkable energy and independence of character. Respected as he is by all classes in his Taluq generally, he has never been popular with the Brahmins of Udipi and the adherents of the Mutts in the different villages, who would rather have a man more easy going and more in sympathy with themselves and their religion at the head of local affairs." In their order thereon dated 9th April 1880, No. 822, the Government recorded the following remarks: "Government are pleased to note the terms in which the District Magistrate speaks of the Tahsildar, Mr. N. Brito, on this delicate and difficult occasion."

6. In connection with the same dispute the late Mr. E. E. Spencer, the then Head Assistant and Divisional Magistrate, wrote as follows: "The firmness of N. Brito, Taluq Magistrate of Udipi, in dealing with the turbulent priests of that place is deserving of peculiar consideration." Again he wrote: "I cannot close this communication without bringing to your notice the rare mixture of firmness and tact with which the Tahsildar of Udipi, N. Brito, has brought the matter (i. e., Udipi Temple dispute) to a quiet conclusion, where either intemperate zeal or the slightest sign of timidity might have brought about a good deal of trouble. The Udipi priests are naturally embittered against an official who fearlessly teaches them to respect the law, a lesson it is high time they learnt and laid to heart."

7. Mr. H. Bradley, the present Collector of Coimbatore, wrote about Petitioner as follows: "Mr. Nicholas Brito, now Tahsildar of Mangalore, has been under me for about 18 months as Tahsildar of Udipi. I have always found him energetic and hard working. He is remarkably active. At Udipi he showed great pluck in very trying circumstances keeping the place quiet by sheer force of character."

8. After the termination of the Udipi Temple dispute, Petitioner applied for a transfer to Mangalore, and the late Mr. W. H. Comyn while reporting on the Udipi Temple dispute to Government wrote as follows:—"Some time ago the Tahsildar, N. Brito, requested me on account of certain domestic reasons to transfer him to Mangalore Taluq on reduced pay, and recently he has renewed this request partly for the same reason and partly because he is weary of the constant and unmerited abuse and vituperations which have been heaped upon him in this matter."

I should be glad to do anything, in my power to meet the wishes of a thoroughly deserving officer. But I have told him that his transfer at this junction is out of the question, and that he must stay and weather out the storm. His removal at the present time would be popularly ascribed to the agitation which has been set on foot against him and would be regarded as a signal triumph by the party interested in his downfall. It would also strike a blow at the influence of his successor, whose position in the Taluq would thus be rendered extremely difficult, and who, unless he were a man of exceptionally independent spirit, would soon degenerate into a mere puppet in the hands of the Brahminical party, in which case, it is needless to remark, there would be an end to all good administration." After his deplorable demise, the Hon'ble Mr. Sturrock<sup>k</sup> who immediately succeeded him kindly displayed an equal interest in Petitioner's welfare, and wrote to the Board in April 1881 as follows: "Mr. Nicholas Brito, having done more than 13 years' good work in the Udipi Taluq, about 1 year and 3 months as Sub-Magistrate and 12 years and 5 months as Tahsildar, is now desirous of having a change to Mangalore, which, as already reported, has lately fallen vacant. Under the present classification of the Taluqs this would involve a reduction of pay, which seems hard as Mr. Brito's services as Tahsildar have been marked by more than usual energy and ability. And as recent statistics as well as the correspondence with Mr. Pelly seemed to show that there is no particular reason why Udipi, rather than Mangalore, should be placed in the higher grade of the Taluqs. The difficulty would be met by making Mangalore a 2nd class Taluq and reducing Udipi to the 3rd class in which Mangalore is now placed." Accordingly the Board and the Government approved of the Petitioner's transfer to Mangalore and conceded the salary of Rs. 225 to Petitioner as a personal favor. In 1883 when the Government ordered the restoration of the original classification whereby the Mangalore Tahsildar was given only Rs. 200 a month, the Hon'ble Mr. Sturrock again addressed the Board as follows: "If however the Government do not agree with me that a permanent revision is called for, I have the honor respectfully to ask that the elevation of the Mangalore Taluq to the 2nd class, sanctioned in G. O. dated 23th May 1881, No 847, may not be disturbed during Mr. Brito's service as Tahsildar. He has settled down in Mangalore superintending the education of his children, which is the object for which he desired the change from Udipi solicited in my letter recorded with the G. O., above quoted, and he would now rather remain in Mangalore on Rs. 200 than go to Kassergod on Rs. 225. Had the Government told him in 1881 that if his transfer was sanctioned, he would have to go on reduced pay, he would have had no just cause for complaint, but I submit it would be very hard on him now to reverse the order then passed with the effect of either reducing his pay or sending him to a less agreeable station and what is generally considered a less important post than those he has continuously held since 1868." But though the Board objected to this proposal, His Excellency Sir Monstuart E. Grant Duff, the then Governor of Madras, when then on tour in the District on the personal representation of the Hon'ble Mr. Sturrock<sup>k</sup>, was graciously pleased to direct Petitioner to continue to be in the Mangalore Taluq on Rs. 225 (vide G. O. No. 138 of 12th November 1883).

9. Petitioner's position and character naturally created for him many enemies, one of whom in 1892 accused him of having acquired lands in the name of his brother-in-law, Manuel Lobo, without rendering an account of them to Government. This accuser had no personal interest in the matter, but brought forward these charges out of spite, because the Petitioner in

his duty as Tahsildar, stopped the unlawful construction of a groyne on the bed of a river. The matter was fully enquired into by Mr. V. A. Brodie, the then Collector of South Canara, and Petitioner was fully acquitted of this accusation. Petitioner's accuser appealed to the Board of Revenue, who on receipt of a further favorable report from Mr. G. F. T. Power, the successor of Mr. Brodie, accepted the conclusion arrived at by Mr. Brodie and fully exonerated Petitioner from all blame as a public servant. As a proof that the enquiry brought out nothing against Petitioner's conduct, Petitioner may mention that though Petitioner attained his 55th year of age shortly after the enquiry, he was retained in service for a year more, i.e., till July 1894 when he of his own accord applied to be allowed to retire from service.

10. Nearly 4 years have elapsed since Petitioner retired from service and began to draw his pension, graciously granted him by Government. Now at this late hour, when Petitioner in his gray hairs, with one foot in the grave, hoped that he would be allowed to enjoy the bounty of Government and the rest which he needed after a long and arduous service, charges decided upon once for all are ripped up against him. In the Departmental enquiry held by Mr. Brodie, Petitioner's defence was that he had from time to time entrusted his savings to his wife's brother Manuel Lobo, a bachelor, for augmentation, and that, if the said Manuel Lobo acquired lands with them, it was without Petitioner's knowledge. Messrs. Brodie and Power, who had a wide experience of the peoples and tenures of the District, after a full and protracted enquiry, were satisfied with this explanation and exonerated Petitioner from all blame. In July 1894 Petitioner retired from service. In October of the same year Petitioner demanded an account from Manuel Lobo of the aforesaid savings, when he said that in lieu of the money Petitioner might as well take up the properties in which he had acquired interest by means of that money. As legally advised, he took possession of all the title deeds and other documents relating to the said properties, as well as of the lands which had been absolutely purchased. But, subsequently, when Petitioner asked for a formal transfer of the said documents as they stood in his name he refused to do so as will be seen from the letters addressed to him by Petitioner's pleader. Petitioner, therefore, was forced to file Original Suit No. 33 before the Sub Court of Mangalore asking for a declaration of his title to the two properties absolutely purchased, and of his title to recover the monies which had been invested in the other properties on mortgage security. Petitioner's Suit was decided in his favor, and the Hon'ble Judges of the High Court in upholding this decree of the Sub Court casually remarked, in the face of the elaborate decisions arrived at by the former Collectors Messrs. Brodie and Power and ultimately by the Hon'ble Board of Revenue, that as contended by counsel for the opposite party: "The Plaintiff, i.e., Petitioner, intended to conceal the acquisition of the lands from the authorities and acted in contravention of the rules of his Department."

11. That Petitioner respectfully begs to submit that it is a fundamental principle of justice, that a man once acquitted cannot be tried again for the same offence. Petitioner had once been acquitted of these charges by two Collectors and the Board of Revenue. The accusation was made in or about April 1892 and the matter was finally disposed of in 1894. For two years Petitioner suffered all the anxiety and worry incidental to such an enquiry. The accuser was given ample time and opportunity to substantiate his charges. Witnesses were examined and cross-examined. If the conclusions arrived at in such an enquiry are not regard-

ed as final, and the matter is still allowed to be re-opened after such a lapse of time as four years, Petitioner begs to submit that it would be against the principle of common justice, and cruel and hard on Petitioner.

12. That Mr. Brodie, with his several years' experience of the District and his intimate knowledge of the local factions and intrigues, came to the conclusion that the lands were acquired by Manuel Lobo without the knowledge or connivance of the Petitioner; that in every case the full value of the property had been paid; that no official influence of any sort had been exercised; that there was no fraud or under-hand dealings in the matter; and that the petitioner was innocent and had not transgressed either the spirit or the letter of the Rules. Petitioner's accuser made a most desperate attempt to have Mr. Brodie's order upset by the Board, and on the matter being sent back to Mr. Power, that gentleman kept the papers pending for one year, during which period he kept the petitioner under strict surveillance and watched every action of his. The result was, however, complete exoneration, and the recommendation for Petitioner's retension in service for one year, he having then <sup>the</sup> completed 55th year of his age.

13. That the remark of the Sub Judge and the High Court that Petitioner had transgressed the rule, does not deserve any consideration on the face of the decision arrived at by two Collectors and the Board of Revenue. The Judgment of the Sub Judge itself shows that it is not supported by the evidence on record. The question, moreover, was not one for the Courts to decide, and it was incidentally referred to by the Judges merely because it was urged by the Defendant, whose sole object in filing an appeal seems to have been to satisfy the malicious cravings of Abreo, who wanted the finding of the revenue authorities to be discredited in some way or another. The High Court dismissed the appeal without hearing the Petitioner's Vakils who were instructed to explain the true facts of the case.

14. That Petitioner, in conclusion, most humbly prays that your Excellency's Government will be pleased to disregard the remark of the High Court upon a question, the merits of which it did not discuss, to declare as two Collectors and the Board of Revenue have done, the innocence of the Petitioner, and to allow the Petitioner to continue to enjoy the pension earned by him by 38 years of distinguished service and kindly bestowed on him by Government, and to die in peace in grateful remembrance of the benevolence and justice of the British Government.

MADRAS,  
26th March, 1898.

Your Excellency's  
most humble and obedient servant,

*R. S. S. S.*

Confidential

Revenue (1898) Department.

CURRENT No. 2477

*confidential no 28*



From Board of Revenue  
(Land Revenue)

Order

*the persons who  
are not but  
what is  
the road of  
the person in reference  
to the most important  
particulars*  
*1/4/98*

Ref. No. 46  
Conf. No. 14

Dated 28 March 1898

Received 29<sup>th</sup> do

Registered 29<sup>th</sup> do

Enclosures 6

Spare copies —

SUBJECT.

Submitting to Govt letter from  
the collector of South Kanara reporting  
with reference to the remark of the  
High Court in Appeal No. 134  
1896, that Mr. Drito, late Tahildar  
of Mangalore, had contravened  
the rules of the department by  
acquiring certain lands.

BACK PAPERS.

| G.O. | No. | Department. | Date. |
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FURTHER PAPERS.

| G.O. | No. | Department. | Date. |
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1898.

Board of Revenue

(Land Revenue),

MADRAS.

To

True Copy of Board's

Proceedings, dated 10th April 1894 ~~1898~~

No. 1913 Misc.

Subject.



## Proceedings of the Board of Revenue

(Land Revenue).

NO.1913 Misc.Dated 10th April 1894.

Read the following:-

(1) Petition from C.S.M.Abreo, Head Clerk, Head Assistant Collector's office, Kondapur, South Canara District dated 18th April 1893 and the following reference thereon dated 9th May 1893.

Referred to the Collector of South Canara for full report, which should be accompanied by the records of the enquiry -- already made and of any further investigation which the acting Collector may find necessary for the full elucidation of the facts.

(2) Also petition from Mr.C.S.M.Abreo, Head Clerk, Head Asstt. Collector's office, South Canara, dated ----- submitting an authenticated and duly stamped copy of a certain order.

(3) Also letter from the Collector of South Canara No.893, dated 6<sup>th</sup> March 1894.

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### Resolution

Having received a report from the Collector in the matter, set forth in the petition the Board finds no reason to interfere and accordingly dismisses the petition.

(True Copy & Extract)

(sd) L.M.Wynch

Secretary.

To the Collector of S.Canara with &ca.

(True Copy)

Ld. Wamkannu

24 MAR 189

Asst Secretary.

Dis: No. <sup>182</sup><sub>Ver.</sub> 498.

SOUTH CANARA, COLLECTOR'S OFFICE,

Camp Hoarding, 24<sup>th</sup> February 1898.

FROM,

A. F. Pinkey, Esq.,

Ag. COLLECTOR OF

South Canara,

TO

THE SECRETARY TO THE

COMMISSIONERS OF Land Revenue,

Madræs.

SIR,

I have the honor to submit the  
for the orders of the Board of Revenue.

2. Early in 1892 certain charges were  
Mr. Abco, Head Clerk, Head Assistant Collector's Office,  
against Mr. N. Brito, then Tahsildar of Mangalore  
but since retired on a pension. The charges were  
to the effect that he had contravened the rules  
of the Public Service by acquiring lands teemami  
in the Saluk he administered. A protracted  
enquiry was held and the matter ultimately  
went up to the Board with the result that  
Mr. N. Brito was exonerated from blame on  
the ground that he had merely invested a  
part of his savings with his relative Mr.  
Lobo who had employed the money as he  
saw fit. The Board's disposal bears N<sup>o</sup>. 1913, <sup>misc.</sup>  
dated

Classed A

dated 10<sup>th</sup> April 1894.

3. After taking pension, i.e. on 11<sup>th</sup> July 1895, Mr. Brito had to seek the aid of the Civil Courts against Mr. Lobo. The suit was dealt with originally by the Subordinate Judge and recently on appeal by the High Court. Both Courts gave Mr. Brito the relief he sought but found as a fact that the transaction by which the land had been acquired was not as alleged. High Court judgment which the finding of the Subordinate Judge the following:-

"No doubt the Plaintiff intended to conceal the acquisition of the land from the authorities and acted dishonestly and in contravention of the rules of his department."

These facts have been brought to notice by the District Judge

4. A perusal of the judgment of the original and appellate Courts shows that the very point that was at issue in the departmental enquiry was also in issue in the suit. The Board of Revenue exonerated Mr. Brito.

The

The Courts have found against him on that issue.

5. Mr. Brito having come to know somewhat that the Judge had drawn attention to the matter, has put in on 29<sup>th</sup> October 1897 and 16<sup>th</sup> December 1897 two lengthy petitions, fearing, apparently, that his pension is in danger. Before taking action I decided to look into the record of the previous departmental enquiry. As this was voluminous and the papers in disorder I could not find time to do so till now amidst the pressure of other work.

6. It appears to me that it is not for me to take action further than to bring the facts to the notice of the Board. I therefore submit herewith the following papers:-

(1) Letter of District Judge, No. 2923, dated 26<sup>th</sup> October 1897 with enclosures

(a) Appellate judgment

(b) Printed papers.

(2) Petition of Mr. N. Brito dated 29<sup>th</sup> October 1897 with enclosures

(3) Petition of Mr. N. Brito dated 16<sup>th</sup> December 1897 with enclosures.

7 The opinion I have formed is that the

decision of the Courts must be considered  
conclusive on the point dealt with: when the  
case was dealt with departmentally it was  
on the petition of a third party. In the  
suit the issue was fought out between  
the principals to the transaction. Mr. Brito  
got no costs in either Court and his  
memorandum of objection was dismissed.

I have the honor to be,  
Sir,

Your most obedient servant,  
Arthur L. L. L.  
of Collector—

copy  
the  
Comp  
with

CONFIDENTIAL.

Reference on Petn Regr. No. 526 of 1898.

In replying the above should be quoted.

(LAND REVENUE.)



READ

Letter from A. F. Puiheg, Esq.,  
South Canara to the Secretary to the  
Land Revenue, dated 24 Feb 1898

Reference No. 46, dated 28 March 1898.  
Conf No 14

Submitted to Government.

2. In April 1893, C. S. M. Abreo, the then Head  
Clerk of the Head Assistant Collector's office, South Canara  
(District, presented a lengthy petition to the Board alleging  
that Mr N. Brito, the then Tahsilwar of Mangalore, had  
acquired lands within his jurisdiction and had lent money  
to persons subject to his official control, contrary to the  
rules of the service. The Board called for a full report  
from the collector, Mr G. F. J. Power. This officer, adopting  
the view of Mr V. A. Brodie, a former Collector of the Dis-  
trict, reported that C. S. M. Abreo's petitions, including  
the one submitted to the Board, were full of malicious  
insinuations, exaggerations and misrepresentations; and

decis

3. The Board accepted this view and dismissed the complaint  
con. The Tahsildar has since retired from the service on  
pension, and it appears that after his retirement he had  
to seek the aid of the civil courts to obtain possession of  
certain property. The question of how the said property had been  
acquired was an issue in the suit. The Sub Judge stated that  
the evidence before him showed clearly that the acquisitions  
had been made with plaintiff's (Mr. Brito's) money, in defendant's  
name, ~~though~~ he found it difficult to believe that the  
defendant had done nothing and the plaintiff everything  
name. The High Court said "No doubt  
tended to conceal the acquisition of the  
authorities and acted dishonestly and in  
contravention of the rules of his department." The District  
Judge brought these remarks to the collector's notice, and  
the latter has now submitted the matter for the Board's  
orders.

4. The Board is not in possession of the facts  
relating to the grant of pension to Mr. Brito, and the  
papers will therefore be submitted for the orders of  
Government.

Recd  
Secretary

To  
The Secretary to Government, Revenue Department,  
with the collector's letter & its enclosures & with spare copy  
of P.O. No 1172/93 & G.R. No 367 of 1894 (all to be returned)  
& with copy of B.P. No 1913/10-4-94

B.P. 1913/10-4-94

B.P. No 46 28 March 8  
No 2477/93

For order

Please see the facts  
precised in the B.P. (current  
Flag A.

Briefly in the  
Revenue Enquiry it was  
found not to be proved  
that the Talukdar had  
acquired property without  
his sanction in  
contravention of the rules.  
After his retirement, the  
Civil Court found <sup>in his suit</sup> that  
he had acquired lands  
in his own interest.

The Board does not  
express any opinion as  
whether the evidence  
adduced in the Civil  
Court should be taken  
as upsetting the result  
of the departmental  
Enquiry. With reference  
to the last para of the  
B.P. it is submitted that  
in G.O. No 1191 of 25<sup>th</sup> Sept 94

"The acquisitions were made by the Pltff  
himself with his money in defen-  
dant's name & perhaps with his  
assistance" (Sub Judge's Just para 11  
p. 13 of app. record in H Court.) et seq  
"No doubt the Pltff intended to conceal  
the acquisition of the land from the  
authorities & acted dishonestly &  
in contravention of the rules of  
his department" H Ct Just. Mos (2nd A)

Flag B

the Tabulou was granted a superannuation pension of the maximum amount admissible; his conduct & character being stated as good, & nothing of the present matter having been brought to notice.

Submitted the Board may be asked to consider carefully the evidence now adduced before the Civil Court & to state whether it now sees any reason to modify its decision on the Revenue Enquiry as set forth in O.P. 1913 dated 10 April 94. It asks them to report to the Board <sup>now</sup> holds the Tabulou guilty of having violated the rules for the conduct of Govt servants, it will be for Govt to consider whether his pension should be reduced or withdrawn.

14/4/98

been dismissed, or, at least, mean of long & approved service, suspended for a long having period. If the order granting a pension were final & irrevocable, the pension could not be reduced, but it certainly is not ~~case~~. There are cases provided in O.P. it must be reduced or altogether withdrawn. Accordingly, I think there are grounds to reduce it, if the service has been less satisfactory than was believed at the time the pension was granted. Of course, such reductions are a punishment there are no other reductions of pay and he, when the pension was granted, will be in the service, & they must be inflicted with caution & with the necessary. I think, however, this is a case of the grant, that a reduction must be made. The pension granted was Rs 112.5.0. In my opinion it should be reduced to about one-third to Rs 75.0. The punishment, I propose, would

1913 P.M.  
10-4

by its many values is higher, and paid into the officers, but, as I have said, such a punishment in the case of a pensioner is wrong.

Circ

To  
Hon. Secy H. Bles  
H.E. the Premier

15.5.98

17/5/98

I am inclined to think Mr. Brito deserves this. But, before concluding, I should like to know if there are any regulations, precedents or other authority, which would justify the reduction of a Pension which once granted

and granted.

20.5.98

Since writing the above my attention has been called to the reply in the Office note on pages 5-8, in reply to Mr. Brown's query on page 4. I had omitted to read this reply. There appears to be no regulations or precedent for the reduction of a Pension in such a case as this. But, I think the reduction may be made on the basis of general principle. At any rate, there is no injustice done.

3

H.M.

I do not think there is any necessity to return this to the Board.

The departmental inquiry was necessarily more or less one-sided & incomplete. The suit in the Civil Court brought the whole facts under investigation.

Both the Sub Judge & the H. Court have <sup>on evidence properly before them</sup> found that the acquisitions were made by Brito with his own money in the name & perhaps with the assistance of others with the object of concealing his breach of the departmental rules on the subject.

The whole of Brito's appeal is merely ~~an~~ argument to the effect that the departmental finding ~~is~~ overrides the civil court finding & is conclusive. But this view is untenable. Common sense too supports the findings of the Civil Court.

was not in connection. Therefore  
concern with Hon. Member.

A.H.

20.5.98

Is it likely that Brito did  
not know what was being  
done with his money: or  
how it was being invested?

It is not necessary to  
import fraud into the case or  
to assume that Brito's  
official influence was <sup>actually</sup> used  
in connection with his ac-  
quisitions.

But he clearly trans-  
gressed a most important  
depart-<sup>ment</sup>-rule.

Brito was I believe  
a good T.A. & holds excellent  
official testimonials: &  
did long service. The dis-  
pleasure of Govt. must be  
shown: & perhaps it will  
be sufficient to reduce  
his pension.

In 1894 he received  
the max<sup>m</sup> superannuation  
pension of Rs 112-8-0. I  
? be inclined to reduce this  
to Rs 40.

S.H.  
23/4/8

What precedents are there  
for reducing a pension the  
cause of misconduct in  
service proved against him?

JH

26.4.98

P.M.

Please search  
out

11/4  
27/4/8

5  
NOTE FOR THE UNDER SECRETARY.

Sir,

The records have been searched and enquiries  
also made in the Acct. Genl's office, but no precedents  
can be traced. In the case disposed of by G.O.  
1078 Pension, of 12-11-96, a half pension has been  
visionally given to the individual therein referred to  
subject to reduction subsequently if the misconduct  
in service be proved.

In G.O. 254 Pension, the pension has  
not been granted to the individual therein referred to  
pending the result of the departmental enquiry  
his misconduct while in service.

11/4  
4.5.98

See

Please see the H.M.  
note of 26.4.98  
above. Then see to

to no precedent  
which exactly fits  
the case.

Art 383 of the C.S.  
is as follows:-

"Future good  
conduct is an implied  
condition of every grant  
of pension. The Govt.  
deserves to take the right  
of withholding or  
withdrawing a pension  
if the pensioner be  
convicted of serious  
crime or be guilty of

This would seem to be a conviction of  
misconduct which takes place after the  
grant of the pension.

A.H.

grave misconduct."

In this case, had the Govt known of the man's misconduct when his application was before it, there can be very little doubt, I submit, but that the pension granted him would have been less than the maximum admissible.

There does not seem to be any good reason why, on subsequent proof of misconduct committed when in service, Govt should not reduce the pension granted. Were the misconduct & the period thereof subsequent to grant of pension, there could be no possible doubt about the matter. Since the rule is clear. It would seem to apply a fortiori if the misconduct occurred whilst the applicant was in Govt service & therefore all the more bound to be of good behaviour. W.H.  
9.5.98

7  
Am.

There doesn't seem to be any cases here where a man's pensioner's misconduct formed the subject of inquiry after he had retired & taken his pension. But the principle is undoubted that Govt may withdraw a pension if the pensioner be guilty of grave misconduct. Art. 383 C.R. may be held to in the case of withdrawal of pension to apply to misconduct subsequent to the grant of the pension.

But it is an established principle (Art 514 a) that the full pension is not to be given unless the service rendered has been really approved.

In view the payment of a pension is entirely in the hands of the Crown. The Crown may reduce or withhold a pension, & no suit will lie in a civil court.

If the Crown, subsequently to granting a pension, dis-

covers the existence of circ.  
that wd have influenced  
the amount of it, if these circs  
had been then known, the fact  
wd be perfectly justified in  
making the reduction they wd.  
otherwise have made.

The reduction proposed  
was recommended on the  
basis of general principle.

*S. J.*  
10/5/58

See

Please see draft 50.  
below. I am not sure  
as to the date from  
which it was intended  
that the reduction  
should have effect &  
so have put two  
alternative endings  
to the draft.

*W. J.*  
30.5.58

It is not clear what was intended  
as this change to H. M. in approval.

*M. J.*  
1/6/58

When given for copying \_\_\_\_\_  
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When examined \_\_\_\_\_  
When signed \_\_\_\_\_

189

READ AGAIN G.O., No. \_\_\_\_\_, DATED \_\_\_\_\_  
189

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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