Political (1896) Department.

ORDINARY MS.

G.O., No. 154

Dated 3rd Mar: 1896

[Despatch Abstract.]

MIRZA MUHAMMAD ISMAIL KHAN.

Recording a letter from the Paymaster, Carnatic Stipends, forwarding, for the favourable consideration of Government, a petition from-----praying that he may be re-appointed Agent of Her ~~Ma~~ Highness Nawab Khair-un-nisa Begam.

BACK PAPERS.

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Through the Pay Master Carnatic Stipend

From

Mirza Muhammad Ismail
Khan Bahadur

To

The Honorable the Chief Secy:
to Government
Fort St George.

Sir

In December 1894 I forwarded to Government a brief statement of the facts connected with my employment as Agent of Her Highness Nawab Khyroon Nissa Begum and informed the Government that I had received notices preliminary to a suit being filed against me by Her Highness for an account of my receipts and disbursements during the whole period of my agency.

2. The suit contemplated has since been filed and after a protracted enquiry the first stage was disposed of by the

Hon

Honorable Mr. Justice Subramania Iyer
in a Judgment dated 31st January 1896.
I have acting on the advice of my legal
advisers instructed my attorneys to file an
immediate appeal against this Judgment, but
as the full text of the Judgment has in the
meantime been published in the papers and as
its perusal without an acquaintance with the
nature of the evidence tendered on behalf of
the defence is likely to induce Government
to take the Judge's view of the case, I am
anxious and crave leave, to submit such
comments on the Judgment and the case as
may prevent the formation of any immediate
opinion unfavorable to myself. It may be
noted that the learned Judge enters into no
critical examination of the evidence but
proceeds almost wholly on what he considers
the probabilities of the case and I shall
so far follow his example as to refrain here
from entering into the details which will be more

appropriately

appropriately laid before the Appellate
Court. I shall confine myself to pointing out
the more salient features of the case.

3. I would first point out that the learned
Judge in his Judgment fully confirms the
statements constantly put forward on my behalf
that the cause of Her Highnesses sudden and
unaccountable withdrawl of confidence in me
was in no way due to any failure or refusal
on my part to render accounts or to any
dissatisfaction with the manner in which
my duties as Manager were performed. This
assertion of mine is amply justified by the
following extract from the Judgment.

" The true circumstances of the
case were perhaps these. There was no
regular and systematic rendering of
accounts as alleged by the defendant. Nor
was the plaintiff solicitous of obtaining
accounts from the defendant as she
alleges. Since the defendant who is a close
relation of Feroze Hussain, had in the

latter

latter's time been sent for from Delhi to act as the Assistant Agent and had done his work to the satisfaction of the Plaintiff, it is quite clear that even after Feroze Hussain's death and up to a very recent period, the defendant and the plaintiff were as already stated, quite friendly to each other and that the defendant enjoyed her confidence. But disagreements appear to have arisen not long ago in consequence of the plaintiff having been persuaded to believe that the defendant was intriguing against the recognition by the Government of the appointment of the late Wajid Hussain the elder son of her foster daughter as her agent, and those who were ill disposed to the defendant took advantage of this state of things to induce the plaintiff to make a demand for accounts and to institute this suit. It may be that having regard to the comparatively long lapse of time with reference to which the

the account is demanded and other circumstances into which it is unnecessary to enter now, the defendant has felt that the easiest course for him in this case to adopt would be to say he accounted from time to time. Though able to read and write the plaintiff is a purdah nashin and even assuming that the defendant at his interviews with the plaintiff in the commencement of each month used to tell her in a general way as to how he proposed to disburse her money, that does not relieve him from the duty of regularly accounting to her when called upon to do so.

It is evident from the above extract that the learned judge is fully of opinion that the present charges against myself are attributable only to the pressure of Her Highness's present advisers who are in the words of the Judgment "ill disposed to the defendant". It may be added that Her Highness's own deposition and the whole

of

of the evidence fully establish the fact
that Her Highness had never, until the 24th June
1894, made any complaints about my accounts
or my failures to render them.

In the second place I would point
4. out that there is no finding that my accounts
have not been properly kept or that the
money received have not been properly dealt
with by me. The only issue decided was,
Has such an account been rendered as a principal
is in law entitled to demand from an Agent?
These accounts have yet to be taken and will
as I believe demonstrate that I have been
a faithful Steward. This assertion also
is confirmed by the following passage from
the Judgment.

"Much stress was laid on the
dates of the transactions as to which accounts
are demanded and the lateness of present
claim. No doubt the defendant may be
entitled when the accounts comes to be taken
in the words of the Judicial Committee in
Harrinath Rai Vs Krishna Kumar Bakshi relied
upon, on behalf of the defendant to all such

intendments

intendments and presumptions as are made
in favor of one who is called upon to render an
account of transactions which have taken place
long ago, though under circumstances which
present any absolute bar by lapse of time.
(I. L. R. XII Calcutta at page 154) but as no
such bar exists in the present case, the delay
on the part of the plaintiff relied upon on
behalf of the defendant, is not at this stage
of any avail to him. My finding therefore
upon the issue raised is against him and
I refer the case to a Judge in Chambers for
accounts being taken.

5. The learned Judge lays stress on the
fact that when called on for an account, I did
not at once say I had rendered an account
but stated through my attorneys that I was
willing to render an account were I in possession
of the vouchers which I asserted (and the
assertion, I submit, has been proved substantially
true) were on the premises of Her Highness
to which I was denied access. I venture to
submit that such a proceeding on my part

shows

shows excess of anxiety to account; and that my offer was much more honorable than an attempt to shelter myself under the plea that an account had already been rendered. Naturally when Her Highness adopted the extreme course of filing a suit against me, I was fully justified in relying upon every legitimate defence open to me. I submit however that even should this stricture of the learned Judge be deemed well founded my offence amounts to nothing more than an error of Judgment. This is rendered all the more conclusive when I remind Government that in my letters to the Honorable Chief Secy: to Government dated 28th June 1894, I distinctly stated that I had rendered monthly accounts to Her Highness exactly in the manner mentioned in my evidence and I requested Government to order an enquiry into the accounts to be made by the Pay Master. A reference to this letter will show conclusively that my defence was not as suggested by the Judge a second thought but was made by me in identical terms four days after I received the notices from Her Highness.

6. The evidence rendered to establish my contention is hardly questioned by the learned Judge. It was urged on my behalf in the first place, that the evidence of N. N. herself, set up a case of remarkable improbability. I do not desire to reflect unduly upon N. N. who in her evidence made statements as to myself, my employment and my pay which were conclusively disproved by documentary evidence but I am bound to point out that the made allegation which even the Judge could not accept. The gist of her statement was that Feroze Hussain her son-in-law rendered her detailed accounts regularly every month that he paid all expenses including her monthly salary of Rs 1000/ and handed her as the balance for her private purse Rupees 3000 to Rs 3500 per mensem. There would thus lie a monthly expenditure of Rs 3300 to

Rs

Rupees 3800. She further stated that I though
appointed with a strict undertaking to account
monthly, paid her only Rs 1100 to R. 1300 a month,
This would taking into account the difference
between the salaries of Feroze Hussain and
myself show a monthly expenditure of R. 5000 to
Rs 5200. That is to say the establishment
expenditure was practically according to
H. H's evidence doubled and yet, although,
as now asserted, I refused to render accounts
from the very first month, H. H. can name no
one to whom she complained for a period of
five years and eight months. It seems as
incredible that H. H. should have tamely
submitted to such a reduction of income
and refused to render accounts from a paid
servant when she had been accustomed to
receive a much larger income and regular
accounts from her former agent. On the other
hand some of the accounts found & examined
under the orders of the Court showed that
Feroze Hussain's monthly payments to H. H
varied from Rs 1100 to R. 1500 only

7. The direct evidence as to rendering
accounts was practically unimpeached

and

and the only evidence to the contrary and as
to her complaints was that of two menial
Servants whose names are not even mentioned
by H. H.

8. The next important fact was as to the
records. I asserted that the office work
was regularly carried on in rooms on the
Mudah Bagh proper, that the accounts were
kept in Almirahs placed there, and that on
my leaving, when served with the notice, I
locked & sealed these Almirahs in the presence
of various witnesses who were called on my behalf. The
evidence of these witnesses was unimpeached, and
included that of a Police Constable who had
been sent by Colonel Cox, Commissioner of
Police to whom I communicated my intention
of so securing the Almirahs and who sent
the Constable for the express purpose of being
present, as is evident from the following letters of
Col. Cox in reply to my application for the
name and number of the Constable.

Egmore, Madras
8th November 1895

Dear Sir

It was 1st Class Constable Md Sikandar

No

~~accompanied~~ me to the Un[illegible] Sept.
in July 1894 to receive charge of Col. Stewarts
things and who was present to witness the
precaution you took for the safety of the
Records during your absence from the
Umdah Bagh."

I am Dear Sir
Yours truly
Sd N. H. A. Cox

Owing to the circumstance to be presently
stated, this letter was unfortunately
not given in evidence. It may be added
in reply to the suggestion that he should
have formally called on N. A. to send some
one to take over charge, that it was proved
that N. A. refused to see me, that I con-
considered my suspensions would be only
temporary and that on my return from
Colaba and, whether I had gone to interview
the Members of the Government, I was refused
admission to the premises by the Sepoy
at the Gate, as I informed Government by
telegram and letter on 17th July 1894.

Q. On these considerations the learned
Judge states that he was inclined to
place

place confidence in my statement. But his opinion
based on the evidence and probabilities of the case,
was completely changed by one circumstance, namely
the discovery during the course of the trial, of the
number of the records in a small bungalow
appurtenant to the Umdah Bagh which had been
occupied by my Zanana as a private residence.
The examination of the bungalow was made on the
motion of plaintiff's Counsel, which was acceded
to with alacrity by my Counsel. The result seems to
have led the learned Judge to believe that I had
set up a false story about leaving the accounts in
the large house and hence to form an opinion generally
unfavorable to my case. In doing so he failed
to give effect to evidence that was clear, consistent
and unimpeached and relied in addition to one fact
which of itself proved nothing upon evidence which
was full of contradictions and improbabilities. I
refrain as already stated from criticising and
weighing this evidence in detail. That will be done
on the appeal and could not be effectively done here
without full examination of the depositions, but I must
point out the leading considerations.

...saw attention first to the inherent improbability
of my setting up a false story as alleged. If I had
really removed the accounts and destroyed or concealed
them I might well make the assertion with a view to shield
myself and if they had been afterwards found where
so concealed under my control, I should have been
clearly convicted of the falsehood. But my assertion
was from the first that the accounts were kept on the
premises of plaintiff herself in Umdah Bagh, and
it could make no possible difference to my case whether
they were kept in one room or another, so long as they were
under her power and inaccessible to me.

11. Secondly the plaintiff completely changed her
case. It should be noted that as I pleaded account
rendered the onus of proof lay upon me though
defendant; I had therefore to begin and all my
witnesses were examined first. The suggestion to
be drawn from their Cross-examination and from
the evidence of plaintiff's first witness was that
I had removed the accounts altogether from the
premises. After the opening of the small bungalow
the case changed, it was asserted that the office
had never been in the Umdah Bagh proper, but
in the verandah of my Zenana bungalow, and that
I kept the records in my Zenana where no one could
get access, although no such suggestion was ever made
before by A. N. or by those conducting the case on her
behalf either to the Court or to the Commission who first
met at Umdah Bagh to take out the accounts from the
sealed room in the main building where the accounts are
other records were kept by me. My Counsel claimed
the right to put in rebutting evidence to prove that
the office was held in the large building, that Almirahs
were there as stated, and further that no accounts were
kept in the small Zenana bungalow. At the request
of the Court he stated that among these witnesses
were Mrs Firth & Miss Wells, the medical attendant
of the ladies of my family. This evidence the
Judge declined to admit, but it is to be observed
that he does not refer to this in his Judgment. The
rejection of this evidence forms one of the specific grounds
of appeal.

12. The records were found in an incomplete state
and the learned Judge lays much stress upon the
fact that the Jochiwara abstracts were not there.
Now the removal of the abstracts could not assist me
in

in the least so long as the household accounts, wages books &c. from which they were compiled were left, as was for the most part the case, and the account book of the tradesmen and dowcars existed to verify the payments made to them in cases where the vouchers were absent. The Judge says I probably took them for my own protection. But they would be no protection to me unless sealed by the Begum and this the learned Judge declines to believe. His Lordships two conclusions are inconsistent. On the other hand the sealed Jochuwaras would be the most important documents to be made away with by the Agents of H. H. and unless they were abstracted the removal of and tampering with the accounts would have proved absolutely futile and nugatory. Either I submitted my accounts and received the seal of H. H. on the Jochuwara abstract in proof of their correctness, in which case that abstract would be of immense value to me to preserve and to my opponents to destroy; or I submitted no accounts and received no seal of approval, in which case the Jochuwara abstracts would be useless to both sides. The very fact that so much has been risked

by

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and

by some one to prevent these abstracts being used as evidence, is the surest proof that they bore the seal impressed on them by H. H. as a token of his satisfaction.

13. With reference to the remarks of the learned Judge as to the Jochuwara abstracts of Feroze Hussain bearing no seal, it may be mentioned that H. H. was naturally not so particular with his son-in-law and that she states in her own evidence that Feroze Hussain always kept his seal and did so until his death.

14. I believe the considerations thus briefly and broadly stated will be sufficient to induce the Govt to take a more correct view of the case, especially as I have every reason to believe that when my appeal is argued the disadvantages under which I laboured at the hearing of the suit from the peculiar course the case took owing to legal technicalities, will be removed, and it will be found that I have duly and fully accounted to H. H. At the same time I would again beg to remind the Government that even if the Judgment be confirmed it does no more than this. That proper accounts were not rendered but neither were they refused, because they were not demanded, and that it is only the laches of the plaintiff herself which renders me liable to be called on to render an account after a lapse of 5 years and 8 months. Should it however be finally necessary to render an account I shall only be able to render