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MADRAS RECORD OFFICE.

Government of Madras.

PUBLIC DEPARTMENT.

G.O. No. 2290

Press
Mis.

Dated 3rd. December 1883.

3. 12. 1883

Not to be folded or roughly handled

3RD DECEMBER 1883, No. 2290, PUBLIC.

GOVERNMENT OF MADRAS.

PUBLIC DEPARTMENT.

READ—the following paper :—

From G. S. FORBES, Esq., Officiating Under Secretary to the Government of India, Home Department (Public), to the Chief Secretary to Government, dated Simla, 13th November 1883, No. 50-1631.

I am directed to forward, for the information of His Excellency the Governor in Council, the accompanying copy of a resolution recorded by the Government of Bombay on the subject of dismissals of native subordinates for misconduct.

ENCLOSURE.

Extract from the Proceedings of the Government of Bombay, Judicial Department, No. 7170, dated Bombay Castle, 16th October 1883.

Read the following :—

Resolution of Government on the subject of the procedure that should be adopted when native subordinates in the Civil departments are dismissed from pensionable service for misconduct.

RESOLUTION.—The Court of Directors by despatch, No. 42, of 6th August 1851, enunciated their views on the habit imputed to European heads of offices and departments of inconsiderately dismissing native subordinates. This habit had been reported to the Court of Directors as deeply rooted. The Court quoted a member of the Agra Board of Revenue as observing that since he had entered the service "the Government have done much to temper the arbitrary severity with which their native officers are treated by their European fellow-servants, and they have in consequence materially increased the honesty and faithfulness of that deserving class of men, but more remains to be done, and he doubts not will be done by degrees." The purport of the instructions then laid down was that native subordinates were not to be dismissed merely in consequence of unfavourable opinions entertained towards them by their superiors, or for slight reasons, but on proof only of tangible delinquency in such matters as "fraud and dishonesty, continued and wilful negligence, and all offences involving moral disgrace," and a subordinate once dismissed, upon just grounds, was to be "permanently excluded from Government employ."

2. After twenty-eight years, *i.e.*, in July 1879, the habit adverted to was found to be still existent in sufficient force to induce the Government of India to republish these instructions of the Court of Directors with an expression of their own concurrence, and to add to them as follows :—

In all cases of the "dismissal of public servants, the charge against public servant should be reduced to writing, his defence should be either taken in, or reduced to writing, and the decision on such defence should also be in writing." As a reservation it was stated: "In the case of public servants who are dismissed in consequence of facts or inferences elicited at a judicial trial, or in the case of persons who abscond with an accusation over their heads, this procedure may be unnecessary or impossible."

3. In May last by resolution 1549 of the General department this Government further added the orders that "the dismissing authority should always record in English under his own handwriting a statement showing briefly, but clearly, the charges brought against the official, the evidence supporting those charges, the motives which are supposed to have influenced him, and the opinion of the dismissing authority on each charge."

4. Cases that have lately come before Government suggest that even additional fulness and precision should be given to the orders of Government.

5. The Governor in Council would first observe that the state of things now calling for correction is not quite the same as that which attracted the notice of the Court of Directors in 1851. The Court had in view the habit of dismissing native officials in consequence merely of

the unfavourable opinion of their superiors, or for slight reasons, but as a rule subordinates are now dismissed only on very precise charges of delinquency. The same disposition of mind, however, on the part of European superiors which in former days led to the dismissal of native subordinates on slight charges now too often leads to the hasty acceptance of evidence as establishing serious charges.

6. The Governor in Council will now state why the late rules do not sufficiently ensure that the defence of a native subordinate shall be patiently heard before his dismissal is recommended or ordered. The rules require that the charge shall be reduced to writing, that the defence shall be given in or reduced to writing, and that the decision shall be in writing, and comprise certain details. But all this is compatible with the disposal of the case in a very off-hand way. It would seem indeed as if the rules were sometimes taken as meaning that the charge against the accused might be communicated to him and his explanation taken by correspondence, whereas the first principles of justice require that he should be brought before the inquiring officer in person. Again, it is not enough that he should be told of the charge he has to meet; he should be told also of the evidence and arguments in support of the charge before he is required to defend himself. It is very unfair that he should not know the case against him until the inquiring officer has actually committed himself to a decision.

7. The necessary orders so far are that an inquiry in judicial form should precede an order or recommendation for dismissal. It is not meant that the admission of evidence should be restricted by the law of judicial evidence. All evidence which, in the opinion of the inquiring officer, conduces to moral conviction should be admissible, but in whatever form received it should be noted and explained to the person charged. Much evidence could be recorded simply in the form of questions to which the person charged should be required to give specific answers. He should be allowed besides to place on record a full written statement of his defence.

8. In the next place some principle should be laid down for guidance in those cases where there is strong suspicion rather than actual proof against the person implicated. The intention of Government is that no servant of theirs should be dismissed except on proof, but *proof* in the great majority of cases, even in a court of justice, means no more than a preponderance of probabilities, and the estimate of what the preponderance ought to be and is varies with the temperament of the judging officer. Executive officers in the matter of dismissals have to discharge the judicial function, but do not always possess the judicial faculty. It is necessary, therefore, to lay down as a general rule that no subordinate should be dismissed except on grounds capable of being stated. There is a distinction between judicial inquiries and departmental inquiries as regards the admissibility of evidence, but there should be no distinction as regards the decision being based solely on the evidence admitted.

9. It may, indeed, be thought that in some cases a compromising suspicion is in itself a sufficient reason for removing a subordinate from the service of Government, but, if so, this should be honestly stated, and there should be no pretence of proof when there is only suspicion. The subordinate should not be dismissed with disgrace, but allowed to resign, or simply relieved of his office. And in such cases it is more necessary than ever that the exact case against him should be carefully recorded, in order that he may, if possible, satisfy any other employer who has the means of livelihood in his gift.

10. The possibility of men being removed from the public service on mere suspicion suggests the difficult question of the moral liability of Government in such cases to make compassionate allowances. It has been decided, and the Governor in Council thinks rightly, that the admission of such liability would work mischief to the public service in its general effect. But 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, who has reached a time of life when it would be most improbable that he could turn to any other occupation for a livelihood. 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, and should not be inflicted on hap-hazard principles. The Pension rules, moreover, provide that a portion of the pension may be withheld from those whose service has not been entirely approved.

11. The Governor in Council considers that in proportion as the evidence falls short of full proof, consideration should be given to the previous character of the subordinate concerned, and especially to any specific instances of good or bad service that may have been officially noted in his case. It would seem sometimes as if previous good conduct was regarded as an aggravation of a man's offence as showing concealment of his true character. It would in the opinion of the Governor in Council, apart from the question of evidence, work well for the service of the public, if subordinate were able to feel that a good character and acts of good service would stand them in real stead when their conduct is exposed to question.

The admission, however, of evidence of previous bad character requires great caution. It was argued lately in a petition that if one fault is taken as evidence of another, the first punishment of a small fine expands into dismissal by a sort of natural growth. It is certainly not uncommon for dismissing officers to support a weak case by reference to previous punishments for misconduct, too slight for confidence that it received close attention.

12. Controlling officers, as for instance Commissioners, to whom orders of dismissal are submitted for confirmation, or on appeal, should be reminded that they have an individual responsibility of their own. They must of course on certain points, like all appellate authorities, place confidence on the judgment of the officer who has personally conducted the inquiry, but they should withhold this confidence unless it is clear from the proceedings that the inquiring officer has acted with care and fairness. No defects, in the record of inquiry, should be passed over with such reflections as that the inquiring officer is a very careful man, and that he probably knows a good deal more about the case than he has been able to say. If there are such defects, the case should be remanded for further inquiry, and the controlling officer should commit himself to no opinion of his own till the case is as complete as it can be made.

13. Lastly, the Governor in Council observes that the reservation of the Government of India quoted in paragraph 2 of this resolution to the effect that the prescribed procedure might be unnecessary "in the case of public servants who are dismissed in consequence of facts or inferences elicited at a judicial trial," has been, in some cases, misunderstood. Doubtless trials may occur in which the conduct of some public servant is so mixed up with the matter under adjudication that any after inquiry into it by the head of his department would be superfluous, but what oftener happens is that some censure is passed on a public servant in a side remark from the bench, which he has no opportunity of answering, or which the presiding officer may not have thought of sufficient importance to require verification. It would be extremely hazardous and unfair to accept such a remark as a deliberate judgment, and there seems no safe general rule except that a public servant, unless himself convicted at a judicial trial, has a right to defend himself departmentally against any imputation that he may have therein incurred.

14. The system enjoined might result occasionally in undesirable individuals being retained in the service who would otherwise be got rid of, but the Governor in Council is satisfied that its general tendency would be to raise the tone of the native subordinate service. Any disposition on the part of superiors to seek opportunities of making examples, and to act on general impressions in disposing of specific charges, is calculated to encourage the prevailing habit of intrigue and false accusations among their native subordinates. So far as dismissals are examples rather of the precariousness of the Government service than of a strictly just discipline, their effect must be demoralising. Such examples, instead of having a deterrent effect, must rather suggest the use of opportunities for laying by provision for the future, in case the Government pension should never be attained.

15. The Governor in Council has purposely confined these remarks to dismissals for misconduct. Dismissals for inefficiency, though equally falling within the scope of the observations of the Court of Directors in 1851, depend on a different set of principles, and His Excellency in Council has not observed any need for correction in the practice of dealing with this class of cases.

16. The case of peons differs in some respects from that of Government servants of a superior class. Though their service is pensionable, they belong to the class of cultivators and the lower rank of domestic servants; their parents have put themselves to no sacrifices to educate them for the public service, and they require to be kept very strictly in hand. But however unwilling the Government may be in such cases to interfere with the discretion of Departmental authorities, it will be gathered from what has been said that the Governor in Council expects from the responsible officers the exercise of a fair and impartial consideration of the case even of the humblest servants of Government. Loose decisions and inconsiderate dismissals are stains upon the administration.

ORDER—dated 3rd December 1883, No. 2290, Public.

In communicating the foregoing letter and its enclosure to heads of departments, the Governor in Council observes that the principles succinctly enunciated by the Government of Bombay are identical with those which have from time to time been enunciated at Madras, in reference to this important subject.

(True Extract.)

C. G. MASTER,
Chief Secretary.

To the Secretariat Departments.
" Heads of departments including Collectors and District Judges.

Exd P. Seetharam.

Original
Govt. of (1883) Madras.

PUBLIC.

Issued

Recd.

Encl.

G.O., 3rd December 1883, No. 2290.

DECEMBER.

Dismissals for misconduct.

Communicating to heads of departments, with remarks, letter from Government of India forwarding copy of a resolution recorded by the Bombay Government on the subject of dismissals of native subordinates for misconduct.

28/10/83
Enclosure
Extract from the Proceedings of the Government of Bombay, Judicial Department, No. 7170, dated Bombay Castle, 14th October 1883.

READ the following :—

Resolution of Government on the subject of the procedure that should be adopted when Native subordinates in the Civil Departments are dismissed from pensionable service for misconduct.

RESOLUTION.—The Court of Directors by Despatch No. 42 of 6th August 1851 enunciated their views on the habit imputed to European Heads of Offices and Departments of inconsiderately dismissing Native subordinates. This habit had been reported to the Court of Directors as deeply rooted. The Court quoted a member of the Agra Board of Revenue as observing that since he had entered the service “the Government have done much to temper the arbitrary severity with which their Native officers are treated by their European fellow-servants, and they have in consequence materially increased the honesty and faithfulness of that deserving class of men, but more remains to be done, and he doubts not will be done by degrees.” The purport of the instructions then laid down was that Native subordinates were not to be dismissed merely in consequence of unfavorable opinions entertained towards them by their superiors, or for slight reasons, but on proof only of tangible delinquency in such matters as “fraud and dishonesty, continued and wilful negligence, and all offences involving moral disgrace,” and a subordinate once dismissed, upon just grounds, was to be “permanently excluded from Government employ.”

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In all cases of the “dismissal of public servants, the charge against a public servant should be reduced to writing, his defence should be either taken in, or reduced to writing, and the decision on such defence should also be in writing.” As a reservation it was stated : “In the case of public servants who are dismissed in consequence of facts or inferences elicited at a judicial trial, or in the case of persons who abscond with an accusation over their heads, this procedure may be unnecessary or impossible.”

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21-11-11 BII ✓
28-10-12 BII ✓

21-11-13 ✓
25-5-14 ✓
29/6/15 - BII ✓

8-11-15 BII ✓
7-3-16 II ✓

8-7-16
15-3-18 BII ✓
10-1-20 ✓
21-2-21 ✓
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Government Records.

Public Department

G. O. (Printed).

Dated 3-12- 1883.

No. 2290.