

ORDINARY, MS.

Public	DEPARTMENT.
G.O., DATED	9-3-93
No.	1934

INDEXED

When given for copying.

[Despatch Abstract.]

I trust that the Govt of India be advised upon the question whether a Judge can be permitted to leave India during the vacation of his court & to avail himself of part leave from the end of the vacation without returning to this country.

The Government of India may
be telegraphed at an early
date

C.S.
873

Ch
Shankh.

BACK PAPER, No.

FURTHER PAPER, No. *Pubgo 239*
24-3-9

READ AGAIN ORDER OF GOVERNMENT, DATED
18 , No. , MISCELLANEOUS.

ENCLOSURES.

CURRENT No.

STATEMENT WITH DITTO.

ORDER OF GOVERNMENT.

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL (not paged).

A A

N.B.—

A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

C.S.
R.9/3

in a precisely similar case in 1883, basing his ruling on this very order of the Govt. of India, decided that a District Judge might not take furlough in continuation of a recess spent in Europe, the Accountant General has suggested that, with reference to rule 5 (1) of Chap. 79 of the Civil Account Code, a reference should be made to the Government of India as to the proper construction to be placed upon its order.

2. In Mr. Chapman's letter of 20. May 1880 No. 657, read in C. of I. Ind. Pro. of 16. July 1880 No. 1808, it is stated that ~~article~~ Sec. 25A of the Civil Leave Code [now article 359 of the C. S. R.] applies to an Officer who takes subsidiary leave and operates only to determine when subsidiary leave ends and ^{furlough or} special leave out of India begins and that Sec. 13. of the Civil Leave Code and Rules I subsidiary to it [now article 257 of the C. S. R.] ^{govern} the case of an Officer whose furlough or special leave begins in India, &c. their applicability is not ^{being} affected by the accident that the Officer may immediately quit the country.

Intends if he can count his men as such service ^{taken} within the period of the furlough applied for.

3. I am directed to enquire whether the above ruling is correctly ⁴⁰ interpreted in supposing that, as the Dist. Judge in question will not take any subsidiary leave in the event of his being permitted to take furlough in continuation of the vacation, the commencement of his leave will not be governed by article 359 of the C. S. R. but will fall under article 257, and that he can be permitted to count his furlough from the date of the re-opening of ^{his} court after the recess, provided his absence ^{during the recess} does not involve the immediate deputation of any Officer from another station to act for him or any formal transfer of charge.

4. I am to mention that the Officer whose request has given rise to the present correspondence will require at the beginning of the vacation about one month & thirty days to complete his 21 years active service, and ^{I am therefore} to point out that, if it is decided that his furlough shall count from the beginning of the recess, it will be necessary for him to return to this country to qualify for his annuity.

5. As the case is one of urgency I am to request that the orders of the

C. No 633 of 73.

Order 9 March 3 193.

The Government of India will
be addressed

N 194

Letter to the Secretary to the
G. of I. Dept. of Finance
Commerce

DESPATCHED

D.V.M.

M.S.

Sir,

A District Judge in this
Presidency, who has applied for six
months furlough, has requested
permission to leave India during
the vacation of his court and to
avail himself of the furlough from
the end of the vacation without
returning to this country. The
Accountant General, in reporting on
this application, has forwarded
copies of the marginally noted
correspondence and has stated
that, in his opinion, the ruling
of the Govt of India contained
in the last of these papers, when
read with the previous correspondence,
clearly admits of the grant of the
concession which has been asked
for. As, however, his predecessor

W. S. S. S.

From Acct. Genl. Bombay to G. of I.
No. 15998 of 19. 2. 76.
" G. of I. to Acct. Genl. Bombay
No. 1643 of 21. 3. 76
Proc of G. of I. Financial Dept. No.
1808 of 16. 7. 80

on the last working day before
the recess.

The Govt of India
will be asked to reply by
telegram and I shall let
you know the decision if
possible before you leave.

19/1 C. H. G. S. S.

I
to R. W. D. Esq. J. C. S.
Copy to Mr. W. D.
C/o D. Crawford, Madras

despatch 7/3/33

No 104

277 March 1893 D O

My dear Weld,

With reference to your letter of the 27th February No 1 and your D.O.'s of the 27th Feb and 1st March, I am to inform you that the Government has no objection to your going home for the recess, if a sentence of death case is not pending before the High Court, and that the question whether you can take furlough coming from the date of the re-opening of the Court without returning to India will be referred to the Govt of India. If the Govt of India decides that the concession cannot be granted, your furlough will be reckoned from the 7th April instead of from the 7th June and you will have to return to India for such period as may be required to complete your absence.

In any case, you should hand over to the Sheriff.

This matter is urgent so far as his Lordship is concerned and I therefore submit a few lines of the Mr. Chamberlain at once as a decision might be arrived at in Council tomorrow if the Govt. does not mind that there is any question about the granting of the Rules on his Lordship's application. His opinion on this is for Granting leave from 7 June to 1st October of the recess after permission to hand over charge. This decision by letter or telegram from London. He has D.O. 21 Feb (No 29) accordingly he will take leave from his High Court for long as the termination of the recess will return to India after the recess. The Govt. must give his leave but this is admissible & further a letter from the Govt of India dated 20 May (D.O. No 657) in support of this view. His Lordship has interpreted this ruling differently & his Lordship says that if Govt accepts this view taken by him (his Lordship) & refuses to India with a recess. His Lordship's case is at least that after he takes leave as the former opinion likely the leave leaves from May to 24 May/94 in India. In my opinion that 354 applies to his Lordship & his followers are concerned from the day of his departure. I do not see how article 257 can be made applicable - as was certainly never intended to apply to such a case as the present.

Officer or any formal transfer of charge, be permitted to count his furlough from the first day on which the Court is open after the vacation.

6. In the Note to article 257. of the Civil Service Regulations it is laid down that, for the purposes of that article, an office is regarded as closed for business only on Sundays and gazetted holidays.

7. The question therefore appears to turn on the point whether Court vacations can be treated as gazetted holidays.

8. A very early reply is requested

Ag. Chief Secretary

Ch.
5/3

Note Even if it is decided that Court vacations are "gazetted holidays", Mr. Weld will not be able to add the furlough to his vacation if a ~~mere~~ sentence of death case is pending confirmation by the High Court and it becomes necessary to appoint an officer to act as D. J. of the Court during the vacation.

In Mr. Lister's case (Ep's 75 July 1884 No. 1494, & 18 July 1884, No. 1604) he took furlough in continuation of the vacation but ^{apparently} did not leave the country till the vacation was over, handing over charge by telegram from Pondicherry.

Mr. Duncan Irvine was permitted to leave the country during the vacation and retire at the end of it (vide D.O. of 26.3.91 + 80 7/7.4.61 No. 303 No. 1798) but ~~as~~ this was a case of retirement & not of furlough.

It It seems best to see what Mr. Rawlin's has to say. It is thought, however, that Mr. Clogston was right and that Court vacations cannot be varied as gazetted holidays. If they cannot be so treated, Mr. Weld's furlough commences from the date he hands over charge before the vacation.

Ch.
5/3

Public (1893) DEPARTMENT.

From

THE ACCOUNTANT-GENERAL,

MADRAS,

To

THE Chief Secy. to Govt.
Public Department

No. 647

Dated 4 } March 1893.
Received }

Enc. 3

No.



Subject.

Stating that Mr. Weld is eligible for furlough without special certificate for 6 months and forwarding copies of certain correspondence with reference to his request that he may be permitted to leave India during the ensuing recess and to avail himself of furlough from the end of the recess without returning to this country.

W2

Memo

The Accountant General is requested to state his grounds for disagreeing with Mr. Clogston's decision in 1883.

2. It is stated that under article 859 of the Civil Service Regulations furlough out of India begins on & includes the day of the departure of the vessel in which an officer sails, and if an officer remains in India after the end of his ^{subsidiary} leave his furlough dates from the beginning of his subsidiary leave, which is thereby cancelled. The Government of India, in para 2 of Finance and Commerce Dept. letter of 20. May 1880, No. 657, ruled that this article [then sec. 25A. of the Civil Leave Code] applies to an officer who takes subsidiary leave and operates only to determine when subsidiary leave ends and furlough out of India begins.

3. The Accountant General apparently contends that as Mr. Weld will not take any subsidiary leave, if he is permitted to count his furlough from the 7th June, he will, under this ruling of the Government of India, not

be compelled to count his furlough from the date of sailing of the vessel in which he leaves India.

4. Article 251 of the Civil Service Regulations rules that ordinarily if an officer makes over charge of his office before noon his leave in India begins on and includes the day on which he makes over charge, otherwise it begins on & includes the following day, but that if the absence of the officer does not involve the immediate deputation of any officer from another station to act for him or any formal transfer of charge then the absence may leave his station at the close of the last working day on which the office is open for business before his leave begins. The Government of India, in para 2 of the letter of May 1880, ruled that this article [then sec. 13 of the Civil Leave Code] governs the case of an officer whose furlough begins in India and that its applicability is not affected by the circumstance that the officer immediately quits the country.

5. The Accountant General apparently contends that Mr. Weld may, under this ruling, provided his absence does not involve the immediate deputation of another officer

ruling of the Government of India contained in the last of these papers, when read with the previous correspondence, clearly admits of the grant of the concession which Mr. Weld seeks.

Mr. Clogston, however, in a precisely similar case in 1883, basing his ruling on this very order of the Government of India, decided that a District Judge might not take furlough in continuation of a recess spent in Europe. As under Rule 5(1) of Chapter 79 of the Civil Account Code I may not give a decision reversing any important ruling of any of my predecessors without reference to the Government of India, I would suggest that the Madras Government, should it agree with me as to the interpretation of the order of 1880 of the Government of India, should make a reference to the latter as to the proper construction to be placed upon its order.

I have the honor to be,
Sir,

Your most obed^t Serv^t,

Herbert
Accountant General.

Gazetted Audit Department.

Fort Saint George,
Accountant General's office,
4th March 1893.

N^o 647

From

J. W. Rawlins Esq.,
Accountant General,
Madras

To

The Chief Secretary to Government,
Public Department.

Sir,

In reply to your Endorsement N^o 396 dated the 1st of March 1893 on letter N^o 1 dated the 27th February 1893 from Mr. M. R. Weld, District Judge of Kurnool, I have the honor to state that Mr. Weld is eligible for furlough without medical certificate for six months under Article 340 (b) of the Civil Service Regulations.

With reference to Mr. Weld's request that he may be permitted to leave India during the ensuing recess and to avail himself of furlough from the end of the recess without

From Accountant General Bombay to Government of India
N^o 15995 dated 19th February 1876.
From Government of India to Accountant General Bombay
N^o 1643 dated 21st March 1876.
Proceedings of Government of India Financial Department.
N^o 1808 dated 16th July 1880.

} returning to this country,
I beg to forward copies of
the marginally noted correspondence and to state
that in my opinion the
ruling

Last - pay certificate to enable the Officer to draw
absentee allowance in England, I became acquainted
with the date of his actual sailing; but it is for
Government to decide whether it desires this infor-
- mation to be used to frustrate any attempt to
claim the day as service, if the Code, as represented,
does not forbid it.

4. It is evidently for the advantage of Govern-
- ment that subsidiary leave should not be taken,
as expense is thus commonly saved; and, ⁱⁿ the view
of the case now urged, I beg again to submit
it for the consideration of Government.

5. Further, I see nothing in the Code to forbid
the exercise of the discretion given to Local Govern-
- ments to allow leave to count from the first working
day after making over change, and this point
also it may perhaps be well to suggest for consi-
- deration.

6. I take the opportunity to enquire whether the
- contained in your No 286, dated 15 January
1873, that a Member of Council may draw salary
for the day of his embarkation is still in force, it
does not appear to have been introduced into the Code

No 651, dated 20th May 1880.

From - R. B. Chapman, Esq. Secy: to the Govt:
of India, Dept: of Finance and Commerce
To - The Accountant General Bombay. In

In reply to your letter No 1376 L-A dated 21st
April last, I am directed to say that on reconsidera-
- tion the Governor General in Council has decided
that Section 25 A of the Civil Service Code, applies
to an Officer who takes subsidiary leave and operates
only to determine when subsidiary leave ends and
furlough or special leave out of India begins.

2. Section 13 of the Civil Service Code and Rules
subsidiary to it govern the case of an Officer whose
furlough or special leave begins in India and their
applicability is not affected by the accident that the
Officer may immediately quit the Country.

3. The decision about the leave of Members of
Council to which you refer was not incorporated
in the Code, because the leave and allowances of a
Member of Council are regulated by statute; but
the Governor General in Council considers that the
salary of a Member of Council cannot be withheld
for the day of his embarkation.

Ordered that copy of this correspondence be forwarded

to -

The Comptroller General.

The Senior Accountants General

(Accountant Genl: Bombay excepted)

x x x x
x x x x

(True copy)

By order &c
Sd/- J. L. Lindsay
Under Secretary to the Govt: of India
Accountant General

No 1643

Copy

No 1808

Government of India

Department of Finance and Commerce
Leave &c.

Trinlo, the 16th July 1880

Read the following: —

No 1376 L-A, dated 21st April 1880

From - E. Gay Esq. Accountant General, Bombay

To - The Secy: to the Govt. of India Dept. of Finance and Commerce.

I have the honor to refer to my predecessor's letter No 15995 L-A. of 19th February 1876, and to your reply No 1643 of 21st March following, in which it is stated that the Governor General in Council does not consider it necessary to alter the rule by which the day of sailing for Europe is made a part of furlough in the cases of those officers who retain charge of the Office up to the afternoon of that day.

2. It is now represented to me that, without any alteration of rule, an officer may claim to take his furlough partly in and partly out of India; that by doing so he subjects himself to the loss of subsidiary leave, but that the Code attaches no other penalty; and that, having made that sacrifice, he is free to claim active service for the day on the afternoon of which he made over charge.

3. It is true that, in consequence of furnishing a

The Accountant General,
Bombay

Sir,

Financial Department

In reply to your letter No ^{L.A.} 15995 dated 19th February 1876, I am directed to say that the furlough of an officer in Bombay who remains in charge of his office up to the afternoon of his departure from Bombay must in accordance with section 18 (a) of the Civil Leave Code, begin on the day of the departure of the vessel in which the officer sails. The Governor General in Council does not consider it necessary to make any alteration in the rule.

I have &c

For the Under Secretary }
The 21st March 1880 }
D. Barbour
Under Secretary to Govt of India

(True Copies)

Accountant General

3
Pub. Accountant General

3

673

CURRENT No. 633
From Public

27 March 1893 No 396
Referred to the Accountant.

M. R. W. & Co. Esqrs.
District Judge
Idumob

General for favour of very early
report.

W. C. C. Esq.
Ag. Chief Secretary

The Chief Secretary
to Government
Fort St. George
Madras

C.L.
1/3. 1/3.

Dated 27.
Depd. 27. } February 1893
Rec.

1/0. 1/0. SECRETARY
1 MAR 93
Subject

Requesting that
Govt may be pleased
to grant him 6 months
furlough from the 7th
June 1893 & to allow
him to deliver over
charge to his successor
by a letter or a Delegation

1893
Pub. Dept.
No. 1
173

Copy

No L. a. of 1876-77
15995

The Secretary to the Government of India
Financial Department
19th February 1876.

Sir,

It occasionally happens that officers
employed in Bombay when proceeding on furlough
on leave on Medical Certificate to Europe do not
apply for subsidiary leave but remain in charge
of their offices upto the afternoon of the day of
their departure from Bombay.

I have the honor to request that I may be
favoured with instructions as to whether, in such
cases, the leave should commence from the day
following that on which the officer gives up
charge of his office, in accordance with section
6 of the Civil Leave Code 2^d Edition, or whether
under Section 18 (a) of the Code it should commence
from the day of the departure of the vessel in
which the officer sails; it seems to me to be a
question whether the latter section is intended
to be applicable to an officer who does not
obtain subsidiary leave previous to embarkation
and who continues to perform his duties upto
the evening of the day on which he embarks.

I have the honor
to be, Sir,
Yours faithfully,
J. L. Lushington
Accountant General

^G
I therefore request that Government
may be pleased to permit me
to hand over charge to my successor
by letter or telegram without
returning to Erumood.

I have the honor to be,

Sir,

Your Most Obedient Servant

W. W. W. W.

District Judge.

2



[G. 9.]

D-0

Current No. 92

DEPARTMENT.

From

M. R. Weld Esq. J. C. S.

Kurnool

No.

Dated 1-3-93

Received 11-3-93

Enclosures

SUBJECT.

Regarding leaving

Duties during recess - ~~Re~~

Recd 2398 24/3

No 1

District Court of Kurnool.
Dated 27 February 1893.

From.

M. R. Weld Esquire,
District Judge
Kurnool.

To.

The Chief Secretary
to Government
Fort St. George.
Madras.

Sir,

I have the honor
to apply for six (6) months
furlough from or after the 7th
of next June.

I intend to adjourn the
District and Sessions Court for
the Annual recess from the 7th
April to 7th June next and I
would ask Government to permit
me to avail myself of furlough
from the end of the recess without
returning to Kurnool as the
Accountant General in his letter
No 3847 dated the 22nd December last
informs me that if permitted by
Government to make over charge
by letter or telegram there is no
account objection to my doing so

Kurrul

1.3.



My dear Mr. Jolson,

In my last I spoke of returning to India after recess, if permitted to go to Europe for recess, & then, if permitted, taking furlough immediately after recess or as soon after as I may be permitted to do so, but I did not ask if I could be let go on furlough without returning to India after the recess, because I did not think such a thing possible. If however it is possible in my case, where recess completes residence, of course I do not want to return to India as I purpose resigning the service when my 25 years are up on the 1st of

[$\frac{9}{5}$] J.O.

Current No. 79

DEPARTMENT.

From H. R. Wald Esq.

Kurumb.

No.

Dated 27th February }
Received 1st March } 1893.

Enclosures

SUBJECT.

Enquiring whether he may leave
India during the recess & whether
he ^{can} ~~could~~ have furlough from the
6th June next.