

Public Works (1898) Department.

RAILWAY BRANCH.

G.O., No. 9/5. *Reg*

DATED 13th July 1898.

100
10

[Despatch Abstract.]

*Pay or Salary of an officer which is
liable to attachment on a Court Decree*

*Govt of India circular containing
Explanation of what constitutes —, Comm.
of the Dy. Asst. & officers concerned*

Government of India circular containing explanation of what constitutes —, communicated to the Railway Administrations and officers concerned.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Railway.

Read the following paper:—

From—The Secretary to the Government of India, P.W. Dept., General.
To—The Joint Secretary to the Government of Madras, P.W. Dept., Ry. Branch.
Dated—Simla, 29th June 1898, Circular No. 9, Public Works.

[Explanation of what constitutes "pay" or "salary" of an officer which is liable to attachment on a Court decree.]

The Govts. of Madras and Bombay, P.W. Dept., General and Railway Branches.
The Governments of Bengal, the North-Western Provinces and Oudh and the Punjab.
The Government of Burma, Public Works Department, General and Railway Branches.
The Chief Commissioners of the Central Provinces, Assam and Coorg.
The Resident at Hyderabad.
The Agents to the Governor-General for Rajputana, Central India and Baluchistan.
The Accountant-General, Public Works Department.
The Directors of Railway Construction and Traffic.
The Consulting Engineers to the Govt. of India for Rys., Calcutta, Lucknow and Assam.
The Director-General of Telegraphs.

The following is forwarded to the Local Governments, Administrations and officers noted on the margin for information.

ENCLOSURE No. 1 to above.

From—The Deputy Secretary to the Government of India, Military Department.
To—The Adjutant-General in India.
Dated—Simla, the 11th June 1898, Judicial No. 1035 C.

I am directed to acknowledge the receipt of your letter, No. 108 D., dated the 13th January 1898, enquiring what constitutes the "pay" or "salary" of officers, which is liable to attachment to the extent of a moiety under the provisions of section 136 of Army Act as amended by the Army (Annual) Act, 1895, and of section 266 (h) of the Civil Procedure Code, *i.e.*, whether the salary which is liable to attachment includes such items as horse allowance and tentage, which are allowances granted to an officer for specific purposes entailed by the duties he may be called upon to perform, and such items as local allowances and house-rent, and whether subscriptions to funds and deductions for income-tax should be excluded from the aggregate salary for the purpose of attachment.

2. With reference thereto, I am to forward the enclosed copy of a letter, No. 493, dated 27th May 1898, from the Solicitor to the Government of India, submitting the opinion of the Honourable the Advocate-General of Bengal, and to say that, until the Courts rule otherwise, heads of departments may be guided by the opinion expressed by the Advocate-General.

Copy, with copy of the papers noted in the margin, forwarded to—

The Foreign Department, for information.
The Home Department, for information.
The Revenue and Agricultural Department, for information.
The Finance and Commerce Department, for information.
The Public Works Department, for information.
The Legislative Department, for information.
The Director-General of Ordnance in India, for information and guidance.
The Commissary-General-in-Chief, for information and guidance.
The Director-General, Indian Medical Service, for information and guidance.
The Director, Army Remount Department, for information and guidance.
The Director-General of Military Works in India, for information and guidance.
The Director, Royal Indian Marine, for information and guidance.
The Military Secretary to His Excellency the Viceroy, for information and guidance.

The Controller of Military Accounts, ^{Punjab} ^{Bengal} ^{Madras} ^{Bombay} Command, for information and guidance.
The Accountant-General, Military Department, for information and guidance.

ENCLOSURE No. 2 to above.

From—The Adjutant-General in India.
To—The Secretary to the Government of India, Military Department.
Dated—Simla, the 13th January 1898, No. 108 D., Judicial.

I have the honour, by direction of the Commander-in-Chief, to forward the marginally-noted correspondence having reference to the attachment of half the pay and allowances of Major W. G. Alban, 24th Bombay Infantry, in satisfaction of Civil Court decrees.

Endorsement from the Lieutenant-General Commanding the Forces, Bombay, No. 381—8515, dated 6th October 1897, and annexures.
Copy of Adjutant-General in India's letter, No. 107 D., dated 13th January 1898.

2. It will be seen from this department letter No. 107 D., dated 13th January 1898 (copy attached), that the Lieutenant-General Commanding the Forces, Bombay, has been informed that, in respect of decrees obtained prior to 31st December 1895, on behalf of the total emoluments of Major Alban, has been rightly stopped, under the expression "one-half of such pay and public money" appearing in section 151 (3), Army Act, which still has force in respect of decrees obtained thereunder.

3. I am now to address you in view to your obtaining an authoritative ruling from the Government of India as to what constitutes "pay" for the purposes of section 136 of the Army Act in respect of decrees obtained against military officers subsequent to the repeal of section 151 and which are for execution under the Code of Civil Procedure.

4. It appears to the Commander-in-Chief that inasmuch as the effect of the repeal of section 151 of the Army Act has been to place the military officer in precisely the same position (in respect of attachment of his pay) as any other Government servant, his liability and the measure of protection extended to him should be the same. The analogy which naturally suggests itself is the case of the covenanted civilian in whose case it is believed (a) subscription to funds, (b) deduction for income-tax, and (c) local allowances are generally excluded from the aggregate salary with reference to the question of attachment. It seems only equitable that the same practice should prevail when the pay of a military officer is attached under the provisions of the Code of Civil Procedure. His Excellency is further of opinion that such items as horse allowance and tentage which are allowances granted to an officer for specific purposes entailed by the duties he may be called upon to perform, should also be excluded from the computation.

ENCLOSURE No. 3 to above.

From—The Deputy Secretary to the Government of India, Military Department.
To—The Solicitor to the Government of India.
Dated—Simla, the 16th May 1898, No. 866 C., Judicial.

I am directed to forward the correspondence noted in the margin, regarding the attachment of an officer's salary under the decree of a Civil Court, and to request that the Government of India may be favoured with an expression of the opinion of the Hon'ble the Advocate-General on the question raised therein, as to what constitutes the "salary" of officers which is liable to attachment to the extent of a moiety under the provisions of section 136 of the Army Act as amended by the Army (Annual) Act, 1895, and of section 266 (h) of the Civil Procedure Code, *i.e.*, whether the salary which is liable to attachment includes such items as horse allowance and tentage which are allowances granted to an officer for specific purposes entailed by the duties he may be called upon to perform, and such items as local allowances and house-rent, and whether subscriptions to funds and deductions for income-tax should be excluded from the aggregate salary for the purpose of attachment.

ENCLOSURE No. 4 to above.

From—The Solicitor to the Government of India.
To—The Secretary to the Government of India, Military Department.
Dated—Fort William, 27th May 1898, No. 493.

Referring to your No. 866 C., dated 16th instant, I have the honour to forward herewith copies of the case I submitted to the Hon'ble the Advocate-General and of his opinion thereon. I return all the papers which accompanied your letter under reference.

No. 915 Ry., 13TH JULY 1898.

Case submitted to the Hon'ble the Advocate-General.

The Solicitor to the Government of India forwards herewith a letter from the Military Department, No. 866 C., dated 16th instant, with its enclosures, regarding the attachment of an officer's salary under the decree of a Civil Court, and requests that the Hon'ble the Advocate-General will favour the Government of India with an expression of his opinion on the question raised therein as to what constitutes the "salary" of officers, which is liable to attachment to the extent of a moiety under the provisions of section 136 of the Army Act as amended by the (Annual) Act, 1895, and of section 266 (h) of the Civil Procedure Code, *i.e.*, whether the salary which is liable to attachment includes such items as horse allowance and tentage which are allowances granted to an officer for specific purposes entailed by the duties he may be called upon to perform, and such items as local allowances and house-rent, and whether subscriptions to funds and deductions for income-tax should be excluded from the aggregate salary for the purpose of attachment.

Opinion of the Hon'ble the Advocate General.

I am of opinion that the salary which is liable to attachment does not include such items as horse allowance and tentage which are allowances granted to an officer for specific purposes, nor such items as local allowances and house-rent.

I am also of opinion that subscriptions to funds and deductions for income-tax should be excluded from the aggregate salary for the purpose of attachment.

26th May 1898.

(Signed) G. C. PAUL,
Advocate-General.

ORDER—No. 915 Ry., dated 13th July 1898.

Communicated to Railway Administrations and officers concerned for information.
(True Extract.)

FRANCIS J. E. SPRING,
Joint Secretary.

To the Agent and Manager, Madras Railway.
" Agent, South Indian Railway.
" Agent and Chief Engineer, Nilgiri Railway.
" Consulting Engineer for Railways.
" Examiner, Guaranteed Railway Accounts.
" Examiner, Public Works Accounts.

Exd. T. K. Narayana Aiyangar.

[For General Distribution.]

Circular No. 9 Public Works.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

GENERAL.

Simla, the 29th June 1898.

Explanation of what constitutes "pay" or "salary" of an officer
which is liable to attachment on a Court Decree.

The following is forwarded to the Local Governments, Administrations

The Governments of Madras and Bombay, Public Works Department, General and Officers noted
and Railway Branches.
The Governments of Bengal, the North-Western Provinces and Oudh, and the
Panjab.
The Government of Burma, Public Works Department, General and Railway
Branches.
The Chief Commissioners of the Central Provinces, Assam, and Coorg.
The Resident at Hyderabad.
The Agents to the Governor-General for Rajputana, Central India, and Baluch-
istan.
The Accountant-General, Public Works Department.
The Directors of Railway Construction and Traffic.
The Consulting Engineers to the Government of India for Railways, Calcutta,
Lucknow, and Assam.
The Director-General of Telegraphs.

By order,

Sukumarshi
Offg. Under-Secy. to the Govt. of India.

Judicial No. 1035-C., dated Simla, the 11th June 1898.

From—LIEUTENANT-COLONEL E. G. BARROW, Deputy Secretary to the Govern-
ment of India, Military Department.

To—The Adjutant-General in India.

I am directed to acknowledge the receipt of your letter No. 108-D., dated the 13th January 1898, enquiring what constitutes the "pay" or "salary" of officers, which is liable to attachment to the extent of a moiety under the provisions of section 136 of Army Act as amended by the Army (Annual) Act 1895, and of section 266 (h) of the Civil Procedure Code, *i.e.*, whether the salary which is liable to attachment includes such items as horse allowance and tentage, which are allowances granted to an officer for specific purposes entailed by the duties he may be called upon to perform, and such items as local allowances and house-rent, and whether subscriptions to funds and deductions for income-tax should be excluded from the aggregate salary for the purpose of attachment.

2. With reference thereto, I am to forward the enclosed copy of a letter No. 493, dated 27th May 1898, from the Solicitor to the Government of India, submitting the opinion of the Hon'ble the Advocate-General of Bengal, and to say that, until the Courts rule otherwise, Heads of Departments may be guided by the opinion expressed by the Advocate-General.

To The Secy to the Govt of Madras
Mysore Railway Branch



From the Adjutant-General in India, No. 108, dated 13th January 1898.

To the Solicitor to the Government of India, No. 866-C., dated 16th May 1898.

From the Solicitor to the Government of India, No. 493, dated 27th May 1898, and enclosures.

Copy, with copy of the papers noted in the margin, forwarded to—

The Foreign Department, for information.

The Home Department, for information.

The Revenue and Agricultural Department, for information.

The Finance and Commerce Department, for information.

The Public Works Department, for information.

The Legislative Department, for information.

The Director-General of Ordnance in India, for information and guidance.

The Commissary-General-in-Chief, for information and guidance.

The Director-General, Indian Medical Service, for information and guidance.

The Director, Army Remount Department, for information and guidance.

The Director-General of Military Works in India, for information and guidance.

The Director, Royal Indian Marine, for information and guidance.

The Military Secretary to His Excellency the Viceroy, for information and guidance.

The Controller of Military Accounts, ^{Punjab}_{Bengal}_{Madras}_{Bombay} Command, for information and guidance.

The Accountant-General, Military Department, for information and guidance.

No. 108-D., "Judicial," dated Simla, the 13th January 1898.

From—The Adjutant-General in India,

To—The Secretary to the Government of India, Military Department.

I have the honor, by direction of the Commander-in-Chief, to forward the marginally noted correspondence having reference to the attachment of half the pay and allowances of Major W. G. Alban, 24th Bombay Infantry, in satisfaction of Civil Court decrees.

Endorsement from the Lieutenant-General Commanding the Forces, Bombay, No. 381-8515, dated 6th October 1897, and annexures.
Copy of Adjutant-General in India's letter No. 107-D., dated 13th January 1898.

2. It will be seen from this department letter No. 107-D., dated 13th January 1898 (copy attached), that the Lieutenant-General Commanding the Forces, Bombay, has been informed that, in respect of decrees obtained prior to 31st December 1895, on behalf of the total emoluments of Major Alban, has been rightly stopped, under the expression "one-half of such pay and public money" appearing in section 151 (3), Army Act, which still has force in respect of decrees obtained thereunder.

3. I am now to address you in view to your obtaining an authoritative ruling from the Government of India as to what constitutes "pay" for the purposes of section 136 of the Army Act in respect of decrees obtained against military officers subsequent to the repeal of section 151, and which are for execution under the Code of Civil Procedure.

4. It appears to the Commander-in-Chief that inasmuch as the effect of the repeal of section 151 of the Army Act has been to place the military officer in precisely the same position (in respect of attachment of his pay) as any other Government servant, his liability and the measure of protection extended to him should be the same. The analogy which naturally suggests itself is the case of the covenanted civilian in whose case it is believed (a) subscription to funds, (b) deduction for income-tax, and (c) local allowances are generally excluded from the aggregate salary with reference to the question of attachment. It seems only equitable that the same practice should prevail when the pay of a military officer is attached under the provisions of the Code of Civil Procedure. His Excellency is further of opinion that such items as horse allowance and tentage which are allowances granted to an officer for specific purposes entailed by the duties he may be called upon to perform, should also be excluded from the computation.

No. 866-C, "Judicial," dated Simla, the 16th May 1898.

From—LIEUTENANT-COLONEL E. G. BARROW, Deputy Secretary to the Government of India, Military Department,

To—The Solicitor to the Government of India.

I am directed to forward the correspondence, noted in the margin, regarding the attachment of an officer's salary under the decree of a Civil Court, and to request that the Government of India may be favoured with an expression of the opinion of the Hon'ble the Advocate-General on the question raised therein, as to what constitutes the "salary" of officers which is liable to attachment to the extent of a moiety under the provisions of section 136 of the Army Act as amended by the Army (Annual) Act, 1895, and of section 266 (h) of the Civil Procedure Code, i.e., whether the salary which is liable to attachment includes such items as horse allowance and tentage which are allowances granted to an officer for specific purposes entailed by the duties he may be called upon to perform, and such items as local allowances and house-rent, and whether subscriptions to funds and deductions for income-tax should be excluded from the aggregate salary for the purpose of attachment.

No. 493, dated Fort William, the 27th May 1898.

From—W. K. EDDIS, Esq., Solicitor to the Government of India,

To—The Secretary to the Government of India, Military Department.

Referring to your No. 866-C, dated 16th instant, I have the honour to forward herewith copies of the case I submitted to the Hon'ble the Advocate-General and of his opinion thereon.

I return all the papers which accompanied your letter under reference.

Case submitted to the Hon'ble the Advocate-General.

The Solicitor to the Government of India forwards herewith a letter from the Military Department, No. 866-C., dated 16th instant, with its enclosures, regarding the attachment of an officer's salary under the decree of a Civil Court, and requests that the Hon'ble the Advocate-General will favour the Government of India with an expression of his opinion on the question raised therein as to what constitutes the "salary" of officers, which is liable to attachment to the extent of a moiety under the provisions of section 136 of the Army Act as amended by the (Annual) Act, 1895, and of section 266 (h) of the Civil Procedure Code, i.e., whether the salary which is liable to attachment includes such items as horse allowance and tentage which are allowances granted to an officer for specific purposes entailed by the duties he may be called upon to perform, and such items as local allowances and house-rent, and whether subscriptions to funds and deductions for income-tax should be excluded from the aggregate salary for the purpose of attachment.

Opinion of the Hon'ble the Advocate-General.

I am of opinion that the salary which is liable to attachment does not include such items as horse allowance and tentage which are allowances granted to an officer for specific purposes nor such items as local allowances and house-rent.

I am also of opinion that subscriptions to funds and deductions for income-tax should be excluded from the aggregate salary for the purpose of attachment.

26th May 1898.

(Sd.) G. C. PAUL,
Advocate-General.

Public ^{Works} (1898) Department.

Railway
CURRENT No. 840

AP

Print

From

The Govt of India

Order No. 915. Ry. dated 13/7/98.

Communicated to
Railway Administrations
& Officers concerned for
information.

Gen No. 9 Public Works

Dated 29th June 1898

Received } 11-7-98

Registered

Enclosures

Spare copies

JMS

R

12/7/98

SUBJECT.

Explanation of what
constitutes "pay" or "salary"
of an officer which is liable
to attachment on a Court
decree.

- Deputy Secy. to Govt. Ry.
- Asst. Secy. to Govt. Ry.
- Asst. to Ch. Secy. to Govt. Ry.
- Consulting Engineer to Govt. Ry.
- Examiner of Ry. Accounts
- Examiner of Ry. Works

Despatched on 28/7/98

11/7/98

3 copies only

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.