M.R.O. 14—13,000—27-9-24

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 2966-2966A. Press ~~Mis.~~

602-603.

Dated 18 .

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 28th November 1865.

No. 602. Read the following Proceedings of the Madras Government in the Military Department, dated 23rd November 1865.

Read the following letter from the Acting Controller of Military Accounts, to the Secretary to Government, Military Department, dated Fort Saint George, 17th November 1865 E.

1. I have the honor to forward a letter from the Examiner, Pay Department, dated 13th November 1865, No. 4,202, relative to Major Elliot's liability to Income Tax on the arrears of pay issued consequent on his promotion to Major retrospectively in G. O. G., dated 25th August 1865, No. 309.

2. The Examiner, Pay Department, was on the 4th ultimo informed that the arrears are not liable to Income Tax, because they were not *payable* until the 25th August 1865.

3. The promotion was not notified until that date, and the money was therefore neither due, subject to audit, nor payable before that date, and is exempt under the provisions of Section 100 of the Act XXXII. of 1860.

4. The arrears are apparently in the same predicament as interest which accrues on or after the 1st August, some portion of which is for a period prior to that date.

5. This is in accordance with the Notification of the Government of India, dated 16th May 1865, No. 212, and with the Act itself.

6. It does not appear to me that the decision communicated in the letter of the Secretary to the Government of India, Financial Department, to the Government of Bombay, dated 18th October 1865, No. 2,975, is intended to modify the Notification of the 16th May, but to declare that salaries for a period *after* the 1st August 1865, which may have been paid *before* that date, are not liable, as they might have been supposed to be under the terms of the previous Notification, which did not dispose of that particular case. The addition that salaries for a period up to 30th June 1865, which may have been or may be paid after 1st August 1865, are liable to Income Tax, is in strict accordance with the previous Notification and the Act as a general rule, but does not precisely define the several conditions which render an income liable or exempt.

7. I am, therefore, of opinion that arrears due on promotions notified subsequent to the 31st July 1865, are exempt under the terms of the Act, as there is no title till that Notification appears, and the position of such Officers is very different as regards the provisions of the Act from any Officer, who, in the words of the Examiner, "from circumstances beyond his control was unable to draw his pay or any portion of it for any period prior to 30th June until after the 1st August." There is a positive disqualification from drawing the money in the one case, while there may be none in the other.

8. As the question is however one that should be authoritatively determined, I have the honor to submit it.

Proceedings of the Madras Government, Revenue Department, 28th November 1865.

From the Pay Examiner, to the Acting Controller of Military Accounts, dated Fort Saint George, 13th November 1865, No. 4,202.

1. With reference to your letter dated 4th October 1865, No. 624, in which you decided that Major C. S. Elliot was not liable to Income Tax on the arrears of pay drawn, consequent on his promotion to Major retrospectively in G. O. G. 25th August 1865, No. 309, I have the honor to solicit attention to a recent decision of the Government of India on this point, published in page 1,097 of the Gazette of India, dated 21st October 1865.

Letter to Government of Bombay, No. 2,975, 18th October 1865.

2. It will be observed that in this decision no reference is made to salaries *due* or *payable* before the 1st August 1865, but the liability rests upon the fact that the salaries upon which the tax is leviable were *for a period up to 30th June* 1865, although the payments were made after 1st August 1865, and the view that the liability to the tax does not depend on the date of payment seems further supported by the exemption of advances of pay for periods after 1st August 1865, paid before that date. Under this decision, it appears to me, that Major Elliot is liable to Income Tax on the arrears of pay due before 30th June 1865. The fact that he could not draw the arrears until after the 1st August would not seem to give him claim to exemption, or if so, I would submit that any Officer who, from circumstances beyond his control, was unable to draw his pay or any portion of it for any period prior to 30th June until after the 1st August would have an equal claim to exemption.

Referred to the Revenue Department.

(Signed) H. MARSHALL, Colonel,
Secretary to Government.

No. 603. ORDER THEREON, 28th November 1865, No. 2,966.

Miscellaneous.

As the case must be one of very wide-spread occurrence in connection with promotions of Staff Corps, &c., Officers, the Government resolve to refer it for the decision of the Supreme Government.

(Here enter 28th November 1865, No. 2,966A.)

(True Extract.)

(Signed) W. HUDLESTON,
Acting Secretary to Government.

To the Military Department.

Exd. S. T. Augustin.

REVENUE DEPARTMENT.
FORT SAINT GEORGE,
28th November 1865.

No. 2,966A.

No. 603A.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA.

SIR,

Miscellaneous.

1. In G. O. G. Military Department, dated 25th August 1865, No. 309, Major C. S. Elliot of the Madras Staff Corps was promoted to the rank of Major retrospectively from the 10th February 1863. A question has now been raised as to whether that Officer is liable or not to Income Tax on the arrears of pay up to 30th June 1865, issued to him consequent on his promotion.

2. As the case must be one of very wide-spread occurrence in connection with promotions of Staff Corps, &c., Officers, the Government direct me to submit it for the decision of the Government of India. The papers* on the subject are enclosed.

* Proceedings Military Department, 23rd November 1865, with letters from Acting Controller Military Accounts, and Pay Examiner, dated respectively 17th and 13th idem.

I have the honor to be,
Sir,
Your most obedient servant,

(Signed) W. HUDLESTON,
Acting Secretary to Government.

Exd. S. T. Augustin.

Order thereon 23rd November 1865

Referred to the Revenue

Department

Fort St George
23rd November 1865

Sgnd J. M. Marshall Col
Secretary to Govt

Recd

No 2906 of 1865.

The Secretary to the Govt of India

28th Novr 1865.

Sir,

I have &c &c &c

Dept dated 23rd Augt 1865 No 309. Majors C. S. Elliot of the Madras Staff Corps was promoted to be Major retrospectively from the 10th Feb 1863.

2. I am directed to request you will cause the attention of the Military Auditor General to be called to the matter in which Major Elliot is liable to Income Tax on the Arrears of Pay consequent on his promotion to Major retrospectively, and to request that the necessary orders of Govt may be issued on the subject.

I have &c &c &c

(Sd) C. Trevelyan

Secy to the Govt of India

No 602 & 603.

Rev = 1865 Oct 4

Govt of Madras No 3388.

Proceedings of the Madras Govt in the Military Dept

Dated 23rd Nov 3 Room
Received 24th " 1865.

No

Referring &c letter from the Govt of India Accounts forwarding one from the Govt of Bengal, Dept, relative to Major Elliot's liability to Income Tax on the arrears of pay issued consequent on his promotion to Major retrospectively & requesting orders of Govt on the subject &c No 2906. 28 Nov with an order

No 2966.

As the case must become of very wide-spread occurrence in connection with promotions of Staff Corps officers, the Govt resolve to refer it for the decision of the Supreme Govt. —

28th November 65.

(Here enter 28th November 1865 No 2966A)

Govt of India Secretary Dept 9th Decr
to the Judl Dept

C1 Dec 9 65

occurrence in connec-
-tion with promotions of
Staff Corps &c. Officers,
the Govt. direct me to
submit it for the decision
of the Govt of India.
The papers on the
subject are enclosed

+ Pro Mil Dept 23d Nov. 1885 with letters from Offg Comd Mily Accts and Pay Examiner Dated respectively 4th & 13th idem.

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Revenue 1865 Deptt.
Pro: of Govt for Nov

No 2966A

To
The Secretary to the
Govt of India.
Dy 28th Nov 65

From the Secy to the Govt
of India Dy 17th Jany 66
No 328—

Referring for decision a
question of liability to Income
Tax on arrears of Pay of
Major Elliot retrospectively
promoted—

No 603A—