

Revenue (1897) Department.

ROUTINE SERIES.

G.O., No. 2201

DATED 29th Nov 0

[Despatch Abstract.]

Recording petition from
S. Ramaswami Aiyar, late Sub-Inspector
Chidambore Circle, praying for a
review of his case.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

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18 4,000-19-7-97.

Revenue (1897) Department.

CURRENT No. *1219*.

Duplicate.

From

J. Ramaswami Aiyar
Late Sub-Inspector
Cuddalore Circle
(Now residing in Madras)
No.

Order R. no. 2201 of 29 Nov 97.

Recorded pending
Receipt of the original
petition submitted thro'
the proper Channel.

Dated

Received 25 Nov.

Registered 26 Nov.

Enclosures

Spare copies.

SUBJECT.

Praying for a review of his
case.

K. J.
26.11.97.

BACK PAPERS.

G.O.	No.	Department.	Date

FURTHER PAPERS.

G.O.	No.	Department.	Date.

PETITION

0005

REVENUE DEPT

To

His Excellency the Governor in Council,

Fort Saint George,

Madras.

PETITION

0027

REVENUE DEPT

The humble Review Petition of T. RAMASAMI AIYAR, late Sub-Inspector, Cuddalore Circle, now residing in No. 74, Vinaithirtha Mudali Street, Pursewalkum, Madras.

MAY IT PLEASE YOUR EXCELLENCY IN COUNCIL,

I, the Petitioner, put in an appeal to the Government—(Vide my printed appeal petition copy enclosed marked A) and the Government declined to interfere. I most humbly beg that Your Gracious Excellency in Council will kindly be pleased to review that order and do me justice, entering upon the merits of the case.

2. The grounds of Review are, that I have since that order secured copy of a document which I had not obtained when I first addressed the Government. This document which I enclose marked B proves clearly that I am quite innocent. The copy was obtained only on the 15th July 1897 as will be seen from the certificate of dates thereon.

Similarly it was a most unfortunate thing that I did not submit, with my first appeal to Government, the Assistant Inspector's deposition in the Magisterial Court.—Vide the list of records given in Enclosure A. This is a most important document and I now enclose it marked C.

These two documents, among others, conclusively prove that the Assistant Inspector either got up or connived at his informant named Amir Rahiman Merkayar,—my enemy—getting up a false case against me and that I am quite innocent. Under these circumstances I earnestly pray for a kind Review of the order in the light thrown upon the case by these two documents.

3. The case against me is that I and a number of Pariahs committed theft of Salt at about 8 P.M. on the night of the 7th August 1895.

I was put to the disgrace, anxiety, annoyance and expenses of a criminal prosecution and I was acquitted—Vide Enclosure D being the Judgment in the case, as also D 1, being a printed extract from D for facility of perusal.

The Department having chosen to put me before a Magistrate for theft of Salt by a public servant, the usual respect due to Judicial tribunals and the fairness and equity due to Government servants require that the Department should abide by the decision of the Court on the direct issue.

There have been many Government Orders and Board's Proceedings to the effect that if the Department choose to put their servants to the disgrace, anxiety, annoyance and expenses of criminal prosecution, rather than exercising their own powers over them, they are estopped from setting aside the Judicial decision on the direct issue and they should abide by it.

4. Deputy Commissioner's Proceedings, No. 3582, dated 22nd November 1895. The Deputy Commissioner, in passing the order of dismissal says "They have only been acquitted on the ground that the evidence against them was not sufficiently strong * * *."

With deference, I beg to submit that this view of the Magistrate's Judgment is incorrect.

In para. 23 of the Judgment, (Vide D and D 1), the Magistrate says.—
"Against the last three accused in the present case, there is no evidence whatever independent of that of the three accomplices * * *."

This sentence clearly shows that the only evidence available against me was that of three para peons and that there was no other evidence "whatever."

Now I earnestly beg that Your Most Gracious Excellency in Council will see whether the Magistrate gave me the acquittal on the technical ground that evidence of accomplices could not be used when uncorroborated or whether leaving alone the technicality of the Law about the evidence of accomplices,—or in other words, supposing for a while that these three para peons were not accomplices,—there was anything in substance which made the Magistrate reject the evidence of these three para peons as worthless.

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Enclosure No. 2
13 October 1897

5. *Evidence of Para peons.*—Worthlessness of—No doubt, it is fully discussed in paras. 25, 26, 27 and 28 that the evidence of these para peons (*the only available evidence against me*) was that of accomplices. But it was not rejected entirely for the technical reason that it was evidence of accomplices. In truth, the Magistrate knew and has stated that there is no rule of Law to reject the evidence of accomplices on that score alone. His words in the paras. quoted above clearly show that if their evidence had not been otherwise stained and impeachable, he was ready to use the evidence against me.

The reason why he did not use the evidence against me was that those three para peons were telling audacious lies all through. The following few extracts from the Judgment, among others show that the Magistrate did not believe their evidence as witnesses and not as accomplices:—

(1) "It is least likely that the Sub. Inspector and the Petty Officer would have ventured to send men into the Factory in their names for committing theft without previously taking all peons into their confidence, and it is still more unlikely that they would have staked their all by going in person and attempting to assist in the removal of the Salt when they found that the Para peons had offered strenuous opposition and resistance."

(2) Again the Magistrate alludes to another piece of audacious falsehood thus—
"A more deliberate piece of falsehood was never uttered by anybody * * *."

(3) Then coming up directly to the alleged connection of mine with the offence of theft, the Magistrate points out the physical impossibility of the story.

The story is that Vetti got out of the scene of the offence, came to me and took me there. The Magistrate has found it a physical impossibility that Vetti could have got out by the way the evidence says he did, and there was no other egress available. Hence it is an audacious lie that he got out at all, and hence it was a lie that he fetched me to the place. The Magistrate says—"When it is shown that the Vetti could not have got out of the drying ground whose both gates the Para peons had securely locked up, it necessarily follows that the object with which he is said to have gone out, viz., that of bringing the Sub-Inspector and the Petty Officer to the scene of offence would not also have been fulfilled."

(4) In another place the Magistrate says—" * * * give a lie to their assertion. Otherwise they would certainly not have made such an absurdly false statement and it is a question how far the evidence of these witnesses who were audacious enough to speak such an astounding falsehood could be relied on in other respects."

6. *Falsehood of Para peon's evidence.*—(Continued).—These passages quoted above were only a few out of many expressions used by the Magistrate to show that these three para peons who were the only witnesses against me were held by the Magistrate to be audacious liars.

It is no wonder, therefore, that the Magistrate rejected their evidence as worthless.

7. *Analysis of evidence.*—It will thus be seen—

- (1) That there were only three witnesses against me—three para peons.
- (2) That the Magistrate has found them all—all the three to be audacious liars.
- (3) That the Magistrate rejected their evidence as worthless and as audacious and astounding falsehood.
- (4) That the Magistrate rejected their evidence also on the score that it was uncorroborated evidence of accomplices.
- (5) That the Magistrate found that these para peons had a very strong motive to shift the blame on me.
- (6) That there was no other evidence whatever against me.

8. *Mistake of fact.*—It will thus be seen that the Deputy Commissioner's view that I was "acquitted on the ground that the evidence against me was not sufficiently strong" is not correct, and that I was acquitted for want of evidence, i.e., for absolute absence of evidence and not for insufficiency of evidence as held by the Deputy Commissioner.

9. Under these circumstances, I earnestly pray that the order of Dismissal passed by the Deputy Commissioner on this mistake of fact or misapprehension of the Judgment be cancelled and I be restored with back pay.

10. *Slack Supervision.*—Having thus shown that there is absolutely no evidence at all to show that I committed theft or was privy to it, I beg to submit a few words with reference to the side remarks or *Obiter dictum* of the Magistrate.

(1) That I must have been privy to the offence, or (2) That I must have been slack in my supervision.

11. *Magistrate's "Side remark" about my being "privy to the offence."*—In para. 31 the Magistrate draws certain inferences which evidently do not possess the value of a Judicial decision or Judgment, but are mere casual side remarks or *Obiter dicta*. No doubt in July 1857 it was laid down by the Government of India that "In the cases of public servants who

"are dismissed in consequence of facts or inferences elicited at a Judicial trial * * * this procedure (viz., that the charge against a public servant should be reduced to writing, his defence should be either taken in or reduced to writing, etc.), may be unnecessary or impossible."

This rule was misunderstood it seems and in 1833 the Government of India laid down the following rule:—

"Doubtless trials may occur in which the conduct of some public servant is so mixed up with the matter under adjudication that any after-enquiry 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."

Now under this rule of the Government of India, I, not having myself been convicted at the Judicial trial, have a right to defend myself Departmentally, and yet the Deputy Commissioner was not pleased to give me an opportunity of explaining away the side remarks or *Obiter dictum* of the Magistrate, which, by the bye, seem to be almost a contradiction of what has been stated in the preceding 30 paras. of the deliberate Judgment and is quite a surprise.

12. *The Magistrate's side remark No. 1.* In para. 31 of his Judgment, the Magistrate draws a violent inference from one circumstance alone. His words are as follow:—

"If the Sub-Inspector and the Petty Officer had not been privy to the theft, how could the para peons have intended to explain away the absence of seals on those heaps to them on the following day?"

This difficulty of the Magistrate, he never asked me, as 10th accused or of course as Sub-Inspector, to explain away. With due deference I beg to submit that a moment's thought will show that the absence of the seals on the heap argues (if anything at all) more in my favour than against me. The supposition that I was privy to the theft is quite inconsistent with the absence of seals on the heap. For if the salt had been taken out on my permission, I should have, to save appearances and to avoid observation and detection next day, arranged to seal up the heaps at once after the removal of the salt. The fact that the heaps tampered with remained unsealed shows that I had had no hand in it.

The theory of my defence is not that no theft took place. My theory is that my enemies, the Assistant Inspector's informant named Anir Rahiman Markayar in particular, arranged for a theft themselves. The para peons had no difficulty at all to explain away the absence of seals on the heaps any more than what they had to explain away the perceptible deficit in the heaps. Their only explanation for the deficit in the heaps and for the absence of seals on them next day they must already have had cut and dry. The theft was not stealthy pilfering: it had been organized on the scale of a daring robbery by an open attack on the watch peons. The Magistrate himself says that the three para peons (whom he finds to be real offenders or thieves have exaggerated the number of thieves and the quantity of salt—*Vide* para. 30 of the Judgment Enclosure D). So it is clear that they had their explanation cut and dry to the effect that the number of thieves was so large that they three were overpowered. This was their explanation for allowing the theft. This same explanation serves for the absence of seals.

If the para peons had intended to defend themselves by saying that no salt was removed, then only—and not till then—they would have had the difficulty of explaining away the absence of seals on the heaps. But they plainly admit theft or rather daring robbery and removal of salt. Hence they never felt the want of an explanation for absence of seals.

The Magistrate's inference on the point is therefore incorrect; and it is clear from the perusal of the Judgment that the Magistrate has no other reason at all or evidence at all to infer that I must have been privy to the offence.

I appeal to the most gracious heart of Your Excellency in Council to see and decide whether from the single circumstance of the absence of seals on heaps which have been admittedly robbed in an open daring manner, an inference that I must have been privy to the offence is a legitimate deduction, or at all fair to a public servant of 19 years' unblemished service under Government.

13. *Magistrate's inference about slack supervision.*—In the same para. 31 and from the same circumstance, viz., absence of seals on the heap, the Magistrate alternatively infers that my supervision over the Factory was so very careless that there was room to pass off salt without my knowledge.

If salt was carried away stealthily or clandestinely, then it may be a question for enquiry as to whether I had not made sufficient and efficient arrangements to prevent such theft. In this case the prosecution itself has proved that the Factory had been properly guarded and that the watch peons knew and protested the theft. In fact, it was a daring violent robbery by force and resistance. How then can I be said to be slack in my supervision? If the allegations were that the drying ground had not been properly locked, or that there were no para peons or such laches, then an inference of careless supervision may be legitimate. Here there are no such allegations. The allegations are that a large number forcibly carried away salt under my orders and with my help.

The Magistrate has found that I could not have helped so and the quotations given above about the falsehood of witnesses prove it.

13. (a) Under these circumstances, the supposition of carelessness on my part is strongly negated by the facts embodied in the Judgment.

If, for instance, it be in evidence that I was leaving my seals in charge of others, which would facilitate clandestine seals, I might be held to be careless. But it is in evidence on the other hand that I was very careful to have the seals always in my sight. *Vide* also Enclosure B.

14. Under these circumstances, I earnestly pray that I may be acquitted of the charges.

- (1) Of being privy to the offence, and
- (2) Of careless supervision.

15. *No Departmental Enquiry.*—It is a pity that no Departmental enquiry was held after my acquittal by the Magistrate, although, under the rule—the safe rule—laid down by the Government of India quoted above, I am entitled to have such a Departmental enquiry. If such Departmental enquiry had been held, I could have proved to the satisfaction of the Assistant and Deputy Commissioners.—

- (1) That a certain licensee at whose misdeeds I could not and would not connive, combined with certain peons, etc., got up a theft;
- (2) That it was a very easy thing for a licensee dealing always with Pariah coolies and for peons always hand in glove with licensees and their Pariah coolies, to get a handful of men to carry away salt;
- (3) That they could easily induce some Pariahs to carry away salt by making them believe that the Sub-Inspector had given sanction to the deed and that they need not fear;
- (4) That Mr. Colquhan, the Assistant Inspector, a very thick friend of the licensee, who was dissatisfied with me connived at such combination and dodge of theft actively or at least was duped to believe his friend's version against me;
- (5) That, in short, the whole was a premeditated dodge by which (1) a theft, nay a daring robbery took place at so early an hour as 8 P.M. (2) the Assistant Inspector about 2½ miles away had timely intimation *before* the event, just in time for him to arrive at the scene of offence to catch the thieves in the very act;
- (6) That, as noticed by the Magistrate, the introduction of empty gunny bags as if they contained salt while no salt was ever put into them and all such Romantic events were indications of a dodge of theft.
- (7) That the *Defacto* thieves did not steal for their benefit but merely to implicate me and the Petty Officer—their enemies—into theft.

16. *No opportunity for Ventilation.*—But most unfortunately for me no such Departmental opportunity was given me to ventilate the case fully. In the Criminal prosecution, there was no necessity to enter into such details for my defence. The prosecution itself failed to make out a *prima facie* case against me, and hence the Counsel for my defence advised me that there was no necessity at all for my citing any witnesses for defence or entering upon the discussion of the origin and truth of the case.

As, however, no opportunity was given me Departmentally to show by whom the gang of thieves was got up and how the gang was induced to steal so openly as that, I have no other alternative now than of relying entirely on whatever materials have been elicited in the Judicial trial, however meagre they may be for the purpose of giving a true idea of the case.

17. *Assistant Inspector Mr. Colquhan's state of mind.*—His sworn deposition has the following words:—

- (1) "On the 23rd July also I had received similar information."
- (2) "The information was that salt was being passed out of the Factory illegally."
- (3) "I reported the 1st information to the Circle Inspector."
- (4) "A Licensee of the Kudikadu Factory was my informant, his name is Amir Rahiman Merkayar."

Now the questions for decision are:—

1st.—Whether it is true that on 23rd July such information was at all given.

2nd.—Whether, if true, the Assistant Inspector and Inspector took statements from him then and there.

3rd.—Whether the informant stated specific instances or events, or was merely giving vague undefined rumourlike information.

4th.—What action the Assistant Inspector and the Inspector took thereon to prevent such illegal passing out of salt.

17. (a) *The most important omission.*—The Inspector and his records were not examined at all on these points. Beyond Assistant Inspector's own statement it is not in evidence that on 23rd July any such information was given at all.

The Assistant Inspector says in his deposition that the Inspector and himself "arranged to see what was going on. We were watching regularly from that day. I asked 'the Range Sub. Inspector and the informant to watch.'"

- (1) Was this true?
- (2) If true, was it enough?
- (3) Why did they not put the Police on the watch, seeing that a factory officer a Sub. Inspector was to be the thief?
- (4) If true, did the Range Sub. Inspector watch as ordered?
- (5) If he did watch, why did he not find out and report the preparations for theft on 7th August—a matter said to have been found out and reported by the other special watch, *viz.*, the informant.

It is stated that the informant told the Assistant Inspector that "men had collected" and that they were going to "receive salt that night from the Sub. Inspector." This information is given at 7-30 P.M. over 2½ miles away. So the informant must have seen the men collected at least 30 minutes earlier to allow the informant walking over two and a half miles to give the information! If so, why did not the Range Sub. Inspector put on special guard to watch me on the first information of 23rd July, notice the "collection of men" and other preparations.

Why was not the Range Sub. Inspector examined at all? Is he not to blame for his omission?

If the informant of the Assistant Inspector, Amir Rahiman Merkayar, had not been so very moral and loyal to the Government to take all the trouble to go to the Assistant Inspector 2½ miles off and tell him of the preparations of theft, this theft was to go undetected? Was it so? If so, is not the Range Sub. Inspector to blame for not watching?

Is not the Assistant and the Inspector to blame for not having put the Police too on guard on first information.

18. If the Inspector and the Range Sub. Inspector had only been examined on these lines in the Court or Departmentally, the *fiction of the first information would have been out at once.*

19. Granting, however, that there was a first information on 23rd July as alleged, it simply strengthens my theory that Amir Rahiman Merkayar offended at my strictness with him, began to conceive a hatred from that time and was making preparations for a theft—not for his own gain but for implicating me in it.

20. *Amir Rahiman Merkayar's motive to ruin me.*—This informant is an influential licensee and the Contractor of Salt works in the Cuddalore Circle. Now that this personage figures prominently in at least three capacities in this case, *viz.* (1) As informant on 23rd July. (2) As the chief or practically the only watch set on me by the Assistant Inspector and the Inspector? and (3) As the informant of the intended theft on 7th August just a few hours before the event—it is necessary to say a few words as to his feelings toward me.

(a) *His hatred.*—His irregular scraping and my prohibition. On or about the 26th May 1895, when I was there he began scraping salt at 7-30 A.M., an unauthorized hour, in my absence, without brine test in the salt beds which had been rejected the previous day for over density of brine beyond 30° U. P. and also in other beds on the pretext that the higher the sun rises the stronger the density would grow. I strongly opposed this procedure and put a stop to it. After a strong persistence and only after 9 A.M. he was allowed to scrape only in a few beds of reasonable density which gave him only 35 maunds as estimated for the day. This is the only man that scraped that day and no others, the others having scraped the previous day. I totally refused the other beds to be scraped. This irritated him very much.

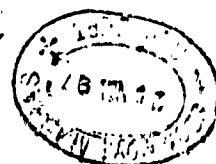
(b) *His undue influence with the Asst. Inspector.*—The antecedents and the subsequent events show that such *Irregular scraping* by him had the connivance of the Asst. Inspector, who was a great friend of the licensee.

Proofs for friendship.—At this stage, it is not possible to give better evidence than these few circumstances.

1st Circumstance.—The Asst. Inspector placed so much faith in this Licensee's words on 23rd July, that he and the Inspector are said to have at once believed his words without the least attempt at verification of such an important information affecting Salt Revenue by means of independent information.

Duplicate .

Review Petition Submitted
by J. Ramasamy Raju late
Sub-Inspector of Salt Cuddalore
Circle.



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189

READ AGAIN G.O., No.
189

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CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

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