

Revenue (1897) Department.

ROUTINE SERIES.

G.O., No. 722.

DATED 3rd April

[Despatch Abstract.]

Petition from S. C. Fernandez Lase
Sub Inspector, Salt & Shikharikhet. praying
for restoration dispoed of under Power
of C. P. & Rules.

BACK PAPERS.

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

FURTHER PAPERS.

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

Revenue (1897) Department.

CURRENT No. 2888

busp
2/4/97

dist.
Order & No. 722 d 3 April 97.
Para I of C Petition
Rules

From
J. C. Hernandez
late Sub-Inspector Salt &
Abkari Rev. Panani circle.

No.

186
3.4.97

To the Petitioner with papers etc.
as 6-4-97
as 3/4/97

Dated 3-97
Received 31-3-97
Registered 2-4-97.
Enclosures 15.
Spare copies

SUBJECT.

Praying for restoration with
advances of pay to his former
post.

as 2/4/97

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

PETITION

0296

REVENUE DEPT.

To

His Excellency

Sir Arthur Elibank Havelock, G. C. M. G., G. C. I. E.,

Governor of Fort St. George,

MADRAS.

Humble Memorial of S. C. Fernandez, Late Sub-Inspector, Salt and Abkari Revenue, Ponani Circle, dated Udipi 1st March 1897.

Most Respectfully Sheweth,

That Your Excellency's Memorialist humbly begs leave to submit this appeal from the Proceedings of the Board of Revenue (Separate Revenue), Mis. No. 3500 dated 19th August 1896, declining to interfere with the orders passed by the Deputy Commissioner of Salt and Abkari Revenue, Southern Division, in his Proceedings No. 1341, dated 28th March 1895, dismissing Memorialist from service, and to submit the following circumstances for kind and favourable consideration of Your Excellency's Government.

2. That Your Excellency's Memorialist begs to submit that, after receiving his lower secondary education as a free student in the Local Fund Middle School at Kundapur, whence he passed the Middle School Examination in the First Class, he entered permanent Government service as a peon in the Kundapur Circle of the Salt and Abkari Department on a salary of Rs. 7, and by his honest and zealous service and dint of industry he gradually rose to the post of Head Clerk of the Kundapur (afterwards termed the Udipi) Circle office in the year 1888; in September 1891 he was made Sub-Inspector of Rs. 30 in the Tellicherry Circle, was transferred to Udipi Circle in October 1893, and from there to Ponani Circle in December 1893, where he continued to do work till the 30th of April 1895, on which date he was dismissed under the Proceedings of the Deputy Commissioner No. 1341 dated 28th March 1895 quoted above.

3. That Your Excellency's Memorialist begs to submit that, during this pretty long period of full 10 years, his service in the several posts held by him was free from all faults, and no servant in the Department of his grade and of as much service can boast of a defaulter so clean.

4. That unfortunately for Your Excellency's Memorialist he was, without his seeking it, cited as a witness before the Head Assistant Magistrate of South Canara in a Criminal Case of defamation brought by the late K. Rama Rau, the then Sub-Inspector of Malpe Kotar in the Udipi Circle against one the late Furtado, a contractor for certain works to the said Kotar executed by him in March 1891, and before the District Munsif of Mangalore in a Civil Case filed by the said Furtado against the said Rama Rau and Mr. A. S. Kearns, the then Inspector of Udipi Circle, for recovery of certain monies alleged due to the said Furtado in respect of the said contract. In both these cases Memorialist was examined as a witness much against his will, and though he stated nothing untrue, he was yet reported by the said Mr. A. S. Kearns to his official superiors for virtually no other reason than that he had been cited by the said Furtado and gave

evidence, with the result that Memorialist was *unjustly dismissed* by the Deputy Commissioner under the said Proceedings No. 1341 dated 28th March 1895.

5. That the following are the facts of the case in connection with which Memorialist has been so dismissed:—At the time that Memorialist was Head Clerk of the Udupi Circle under the said Inspector Mr. A. S. Kearns, certain works for Rs. 235 were sanctioned for the Malpe Kotars in 1890-91. They were given by Mr. Kearns on contract to the above-said Furtado for execution. The supervision of the works was entrusted to the said Sub-Inspector Rama Rau. The whole amount sanctioned for the works, Rs. 235, was under the orders of the Inspector drawn in a lump sum and paid by Memorialist (as Head Clerk) to the said Rama Rau on the 12th March 1891 for disbursement to the said contractor. Rama Rau duly acknowledged receipt of the said Rs. 235 in the Tappal Book. The amount was paid to Rama Rau partly because he reported that Furtado had no money to purchase timber, and partly because the Inspector had entrusted Rama Rau to get the work done departmentally, if Furtado failed to turn out the work, in which case Rama Rau had to be provided with funds for the purpose. On 31st March 1891 the works were passed by the Inspector. As that was the last day of the official year and all accounts for the year had to be closed Furtado was required to send in his bills, and he and Rama Rau came to the office in the evening. Rama Rau prepared the bills (2, one for Rs. 224 on account of materials and the other for Rs. 11 on account of labour); Furtado signed them and presented them to the Inspector; the Inspector then signed the "*Paid*" encagements on the bills and handed them over to Memorialist, who prepared the Progress Report of the work for submission to the Assistant Commissioner. This, in short, is the sum and substance of what transpired to Memorialist's knowledge on the 31st March. About 2½ months later, the contractor appears to have orally complained to the Inspector that he had not been paid in full for the work done and that Rs. 135 was still due, and the Inspector appears to have told him that he could not take any action on verbal complaints. Accordingly, Furtado submitted to the Inspector a written complaint on the 15th June 1891 stating that, out of Rs. 235 the amount of his two bills, he had received on the 16th March 1891 only Rs. 100 from Rama Rau, and that the balance of Rs. 135 being not paid to him, Rama Rau might be ordered to make payment as early as possible. The Inspector sent this petition of Furtado to the said Rama Rau with these remarks "*Forwarded to Rama Rau for explanation and report within 2 days. The original tender was for Rs. 200 and not 235 as he states.*" On this petition the said Rama Rau appears to have furnished an explanation dated 1st July 1891, stating that out of Rs. 235 received by him on the 12th March he paid to Furtado Rs. 100 on the 16th March, obtaining from him a stamped receipt for the same, that *he again paid to Furtado Rs. 100 on the 31st March, for which however he said he obtained no receipt*, and that as for the balance of Rs. 25, he had spent himself Rs. 5 for coir, cadjans and bamboos supplied by him, and Rs. 30 he paid to one Venkataramanaya on account of timber supplied to the contractor for the said works, adding that he held receipts from the said Venkataramanaya for payment of the said Rs. 30 to him. On receipt of this explanation the Inspector, whose favourite supporting the plea of the Sub-Inspector, and proposing that the petitioner Furtado might be referred to the Civil Courts for recovery of the money and that the Sub-Inspector Rama Rau might be directed to prosecute him criminally for defamation. Accordingly, in September 1891 the Assistant Commissioner directed the Sub-Inspector to prosecute prosecution. The Sub-Inspector Rama Rau however did not care to lodge his complaint till July 1892. This complaint was evidently put in *after* Furtado had filed his Civil

suit on the 31st May 1892 in the District Munsif's Court against both the Inspector Mr. Kearns and the Sub-Inspector Rama Rau for the recovery of Rs. 135 alleged due to him. In this suit also the Board of Revenue appears to have been prevailed upon to sanction Government cost for defending the suit, which was granted in Board's Proceedings dated 4th July 1892 No. 570 Mis.

6. That of these two cases the defamation case tried by the Head Assistant Magistrate of South Canara (Calendar Case No. 30 of 1892) ended on 7th April 1893 in conviction of the contractor Furtado who was fined Rs. 400. Furtado appealed to the Sessions Judge who however quashed the conviction on 12th July 1893. The Civil suit filed by the said contractor Furtado against the Inspector Mr. Kearns and Sub-Inspector Rama Rau (O. S. No. 221 of 1892) was dismissed with costs on 30th December 1893 by the District Munsif of Mangalore.

7. That Your Excellency's Memorialist, who had been Head Clerk of the Udupi Circle at the time that the transaction relating to the above-said two cases—the defamation case and the Civil suit—took place, was at the instance of the said Furtado cited and examined in the defamation case as a witness for the defence when Memorialist was acting Sub-Inspector of Padubidri Range in the Udupi Circle under Mr. Kearns, and was also examined in the Civil suit as a witness for the Plaintiff when Memorialist was Sub-Inspector of Beypore Range in the Ponani Circle in the District of Malabar.

8. That it is with reference to the evidence of Your Excellency's Memorialist in these two cases that he is found fault with by the Deputy Commissioner and dismissed from service.

9. That Your Excellency's Memorialist begs to submit below the several points raised against him by the Deputy Commissioner in the said Proceedings No. 1341 dated 28th March 1895 under appeal and to answer them *seriatim*. But before entering into the same, Memorialist thinks it necessary to refer to a few observations which he is compelled to make on the evidence in the cases.—(a) The charge of defamation brought by Rama Rau against Furtado could not have been well founded, inasmuch as Furtado's claim does not appear from the evidence to be entirely false. It is undisputed that Rama Rau did receive from the office, on the 12th March 1891, Rs. 235 in a lump sum, which he has acknowledged by his signature in the Tappal Book, and that out of this sum he paid Furtado only Rs. 100 on the 16th March and duly obtained from him a stamped receipt, which Rama Rau retained with him and produced before the Court of the Head Assistant Magistrate on the 27th October 1892 (Exhibit A in Calendar Case No. 30 of 1892 on the file of that Court and Exhibit IV in O. S. No. 221 of 1892 on the file of the District Munsif of Mangalore). The question is only regarding the balance of Rs. 135. It may be true that Rama Rau had spent Rs. 5 out of his pocket for some materials, and so he possibly retained this sum of Rs. 5 out of the said Rs. 135. It may be equally true that as he alleges he had undertaken to pay Venkataramanaya Rs. 30 on behalf of Furtado for the value of timber purchased by the latter from the former for the said works. But this amount of Rs. 30 Rama Rau admittedly discharged only *after* the 31st March, for he deposes that he paid it in two instalments, Rs. 13 on the 8th April and Rs. 17 on the 9th April, and has produced two receipts obtained by him from Venkataramanaya for the said payments (Exhibits B and C in Cal. Case No. 30 of 1892 and Exhibits IX and X in O. S. No. 221 of 1892 on the file of the District Munsif). There can consequently be no doubt that the remaining Rs. 100 was still due to Furtado and was perhaps not paid to him. If Rama Rau had paid it to Furtado, Rama Rau would have taken care to obtain from him a receipt, as he did in the case of the Rs. 100 *previously* paid to Furtado on the 16th March and also as he did in the case of Rs. 30 *subsequently* paid to Venkataramanaya on the 8th and 9th April. And in his

explanation dated 1st July 1891 Rama Rau, after mentioning the said two items of Rs. 5 and Rs. 30 expended by him, said that he had paid this balance of Rs. 100 to Furtado on the evening of the 31st March, but that he obtained no receipt from him. The real dispute between Rama Rau and Furtado must have been therefore in respect of this 100 Rs. only. But in his petition dated 15th June to the Inspector Furtado claimed Rs. 135, while the amount actually due to him was probably only Rs. 100 as just now shewn, and Rama Rau at first admitted in the said explanation that Rs. 100 was due, but alleged that he had paid the same on the 31st March though he obtained no receipt, but afterwards brought in a different story, at one time alleging that the Inspector paid the full amount of Rs. 135 to Furtado on the 31st March and at another that he himself paid it in the presence of the Inspector. But the facts that Rama Rau had got the whole sum of Rs. 235 sanctioned for the works in advance from the office from the Head Clerk (Memorialist) on the 12th March when the Inspector was out in camp, that Rama Rau had duly acknowledged receipt of the same in the Tappal Book of the Udipi Circle office, that therefore Rama Rau was himself responsible for due disbursement of the said amount hardly requiring the presence of the Inspector while making payments out of the same, that Rama Rau had himself paid to Furtado Rs. 100 out of the said sum on the 16th March when also the Inspector was out in camp, and that Rama Rau had enough care to obtain from Furtado a stamped receipt for the same, make it hardly probable that Rama Rau had any necessity to pay the balance only in the presence of the Inspector. On the other hand the facts that Rama Rau had retained to himself Rs. 5 out of this balance in discharge of his own money spent by him for materials and that he had undertaken to pay to a third person Venkataramanaya for Furtado Rs. 30, which as a matter of fact he paid after the 31st March on the 8th and 9th April, evidently without the Inspector being present, both of which facts are in evidence, make it highly probable that there were private dealings between Rama Rau and Furtado in connection with the said amount and that Rama Rau could not have produced any money before the Inspector. It is not for Memorialist to discuss whether Rama Rau paid Furtado the remaining Rs. 100 or not. It may be that Rama Rau spent the money for his own use and relied on Furtado in giving him time, but the latter exposed him before he could arrange for the discharge of the amount. Or it may be that Rama Rau paid the amount, but as he did not obtain a receipt Furtado made bold to bring a false claim and for a larger amount (Rs. 135) than that actually due (Rs. 100). But looking to the circumstances of Rama Rau appearing in his own evidence before the District Munsif in the above-said O. S. No. 221 of 1892, wherein he says:—“There were two decrees against me; I have paid them off; one was in favour of Manjeshwar Shiva Rau for Rs. 200 and odd, and the other in favour of Haji Budan for Rs. 60 or 70,” and looking also to the fact that he did not, according to his own admission, pay to Venkataramanaya the above-said small sum of Rs. 30 he had undertaken to pay him on behalf of the contractor till 8th and 9th April, though as he says he had received it from the contractor on 31st March, and that even when he did make the payment of those Rs. 30 he could do so only in instalments of Rs. 13 and Rs. 17, it appears likely that Rama Rau might have experienced similar difficulty in paying the said Rs. 100 also, and that therefore Furtado's claim in respect of the same may have been true. (b) The Inspector could not have known anything and as a matter of fact did not evidently know anything about the payment or otherwise by Rama Rau. For, if it was true that Rs. 135 had been paid in his presence, there was no necessity whatever for the Inspector to endorse on Furtado's petition dated 15th June 1891 complaining against non-payment to him by Rama Rau as follows “Forwarded to Rama Rau for explanation and report within 2 days. The original tender was for Rs. 200 and not Rs. 235 as he states.” These sentences most

unmistakably bear the truth. In the first place, the very fact that Rama Rau was asked explanation shows that neither the Inspector himself paid the Rs. 135 nor was it paid in his presence by the Sub-Inspector Rama Rau, for, *if the Inspector knew of it there was no necessity to demand an explanation.* Secondly, the very brief period of 2 days allowed to Rama Rau within which to explain shows that the Inspector was at this time displeased with Rama Rau for his not making the payment. Thirdly, the Inspector evidently exhibits a surprise that Furtado should have claimed Rs. 235, while his claim according to the Inspector was only Rs. 200; if the total amount due to Furtado was only Rs. 200 as asserted by the Inspector in the said endorsement, and if, out of this, Rs. 100 had been already paid, then the balance due on the 31st March was only Rs. 100, and how could Rs. 135 have been paid to the Inspector or in the presence of the Inspector as afterwards alleged by him? This endorsement therefore demolishes the Inspector's theory of payment on the 31st March, and shows most clearly that somehow or other he allowed himself to be entirely swayed by Rama Rau and to give his evidence at the different stages as it pleased him as will be shown later on.

10. That the whole of the Deputy Commissioner's said Proceedings No. 1341 dated 28th March 1895 under appeal rests on the assumption that in the above-said Criminal and Civil cases the Inspector Mr. Kearns and the Sub-Inspector Rama Rau spoke the truth and that Memorialist did not. But there could be no room for any such inference, for, the Deputy Commissioner ought to have seen that as remarked by the Head Assistant Magistrate “*the Inspector admits that the only real evidence of payment having been made in this case is his own memory*” and “*the holding of the receipted bills is itself no evidence that payment has been made*” (vide para 13 of the Judgment). When therefore there is no documentary evidence to prove the payment and the whole question of payment rests on the memory of Mr. Kearns, the Deputy Commissioner, while charging Memorialist with having given false evidence, has urged no reasons why the memory of Mr. Kearns should be relied on rather than that of Memorialist, even if the Deputy Commissioner saw any discrepancy between the evidence of these two, which there is not, as Memorialist will show further on.

11. That Your Excellency's Memorialist next proceeds to point out that the evidence of neither the Inspector Mr. Kearns nor that of the Sub-Inspector Rama Rau could be true, as the following inconsistencies appearing in their evidence would show. Memorialist has already shown in para 9 supra why the payment of Rs. 135 on the 31st March to Furtado could not have been possibly made either *by the Inspector Mr. Kearns, or in the presence of the Inspector by the Sub-Inspector Rama Rau.* And the following inconsistencies simply confirm this. Before the Head Assistant Magistrate Rama Rau in his examination-in-chief deposed “on March 31st Rs. 135 were paid to accused by the Inspector in his office and receipt taken * * When the Inspector paid the Rs. 135 to accused, I took from him Rs. 5 the value of coir and cadjans supplied by me and Rs. 30 to pay the witness Venkataramanaya for timber which he would not supply except on cash payment or on my security,” but in his cross-examination he said “In my explanation I said that *I had paid Rs. 100 to accused and held Rs. 30 in deposit*” and before the District Munsif he swore “It was *I* that paid Rs. 135 to Plaintiff in the presence of 1st Defendant.” Thus, this important party to the cases at one time says that it was the Inspector who paid Rs. 135, and at another that it was he himself who had made the payment, and the sum is differently mentioned as Rs. 135 and Rs. 100. In the explanation he appears to have said, according to his own statement before the Head Assistant Magistrate, that he paid only Rs. 100, retaining Rs. 30 in deposit to pay to Venkataramanaya and deducting Rs. 5 for coir and cadjans supplied with his private funds, but before the District Munsif he asserted that he paid down all the 135 Rs.

Again, before the Head Assistant Magistrate Rama Rau deposed "*The Inspector paid it to accused and the clerk prepared vouchers,*" but before the District Munsif he said "*Plaintiff came there and I prepared 2 bills for Rs. 224 and Rs. 11 respectively * * I then placed Rs. 135 on the 1st Defendant's table and paid it over to the Plaintiff who took the money.*" Before the Head Assistant Magistrate the Inspector Mr. Kearns in his examination-in-chief deposed "*The statement that Rs. 135 were not paid is false. It was paid in my presence,*" but in cross-examination he was forced to say "*Rama Rau in his explanation did not say that the amount had been paid in my presence. He said he had paid Rs. 100 at the beginning of the month and that he had taken Rs. 35 for some work he got done.*" This latter statement of Mr. Kearns clearly makes it impossible that Rs. 135 could have been paid in his presence on the 31st March. Again, at one place Mr. Kearns deposed "*The enfacement 'paid' is never made till after the money is paid,*" but in cross-examination he stated the truth that "*Payments do not need to be made in my presence for me to put the 'paid' enfacement on bills.*" Consequently, the fact that Mr. Kearns signed the 'paid' enfacements does not show that payment was made. Again, the Inspector in his examination-in-chief deposed that Rama Rau was required to prosecute Furtado "*to clear up his character* and the prosecution is conducted at the Public cost," but in cross-examination he stated that "*the prosecution was really to clear up the business of the loan.*" Again, the Inspector before the Head Assistant Magistrate deposed "*If it was established that the Sub-Inspector had borrowed from the contractor he would not be punished,*" but before the District Munsif he said "*The borrowing of money by any officer of our Department from a contractor is penal.*" Besides this, there are many wrong details of departmental procedure given by the Inspector in both Courts, but with these Memorialist is not concerned. There are, further, several important inconsistencies between the statements of Rama Rau and those of Mr. Kearns on one and the same point or points. For instance, before the Head Assistant Magistrate Rama Rau deposed "*I put the Rs. 135 on the Inspector's table and then made accused take them and count them,*" but quite contrary to this, Mr. Kearns deposed "*The money was not counted out on my table; it was probably counted on the floor.*" Again, before the District Munsif Mr. Kearns said "*The money was counted over by the 2nd Defendant to the Plaintiff; it had been brought tied in a piece of cloth,*" but Rama Rau himself had said "*I brought Rs. 135 in Silver Rupees in my office box out of which I took the money and placed the same on the 1st Defendant's table.*" Such is the nature of the evidence tendered to prove payment! And Mr. Kearns expressly stated before the Head Assistant Magistrate "*The only real evidence of the payment in question is my own recollection of seeing it made,*" but before the District Munsif "*Receipted bills and my recollection are the only evidence of the payment of Rs. 135.*" The Head Assistant Magistrate has most clearly shewn, in para 13 of his Judgment, by referring to departmental procedure, that receipted bills could be no evidence. Hence, the recollection of Mr. Kearns is the only evidence in both the cases. And what is stranger still is that in the defamation case filed by Rama Rau the only prosecution witnesses regarding payment are Rama Rau and Mr. Kearns, and in the Civil Suit filed by Furtado against Mr. Kearns and Rama Rau, they are also themselves the only two defence witnesses and none else.

12. That, while the evidence of these two only witnesses, Mr. Kearns and Rama Rau, contains such palpable inconsistencies as clearly strike at the very root of the payment theory set up by them and unmistakably establish that they could not have spoken the truth, it is simply absurd to attempt to make out that, because Memorialist's evidence did not favour them, he is therefore guilty of perjury. Before finding Memorialist guilty of such a serious charge it has to be seen whether his evidence was contradic-

tory to that given by either Mr. Kearns or by Rama Rau and whether Memorialist's conduct was otherwise blameworthy, and for this purpose it is necessary to deal in detail with the points raised by the Deputy Commissioner in his Proceedings No. 1341 dated 28th March 1895 under appeal.

13. That the Deputy Commissioner in the said Proceedings No. 1341 dated 28th March 1895 evidently assumes (i) that Memorialist gave false evidence in the above-said cases, (ii) that Memorialist did it deliberately and with full intention, (iii) that there were reasons for Memorialist to give such false evidence, (iv) that Memorialist abused the confidence reposed by the Inspector in him as Head Clerk of the Circle office, and hence concludes that Memorialist is not a man that can be safely retained in Government Service and must therefore be dismissed.

14. That as regards (i), namely, that Memorialist gave false evidence, the Deputy Commissioner quotes, in support of his assumption, a passage from each of the Judgments of the Courts, which, however, do not in any way prove that Memorialist perjured himself. The extracts quoted are these:—(a) Head Assistant Magistrate's Judgment dated 7th April 1893 in the defamation case of Rama Rau v. Furtado, para 17, "I have no doubt, therefore, that the Rs. 135 was paid to accused (Furtado) on March 31st 1891;" (b) Sessions Judge's Judgment dated 12th July 1893 in appeal on the above, paras 8 and 9, "There is direct conflict of evidence as to whether the accused was actually paid Rs. 135 * * * The question whether there was actual payment is one that should, I think, be left for the Civil Courts to decide, because, the evidence is conflicting and the circumstances of the alleged payment are not free from doubt, and there is reason to suspect that all the facts have not yet come to light;" (c) District Munsif's Judgment dated 30th December 1893 in the Civil suit of Furtado v. Kearns and Rama Rau, para 20, "I find that the payment pleaded by Defendants is true and valid against the Plaintiff."

With regard to these findings Your Excellency's Memorialist begs to submit that, if the Head Assistant Magistrate and the District Munsif were inclined to believe that payment was made, this does not prove that Memorialist gave false evidence, for, Memorialist never contended that payment was not made, but only that it was not made in his presence or to his knowledge, and as for the opinion of the Sessions Judge, who in appeal reversed the Judgment of the Head Assistant Magistrate, Your Excellency's Memorialist begs to submit that it would be worthwhile to see what the Judge says in para 8 whence the Deputy Commissioner has extracted only the opening sentence. There he writes:—

"The Magistrate seems to be of opinion, or, at any rate, to surmise that, after payment had been made in the Inspector's presence, the Sub-Inspector took all the money back. This seems to be the Inspector's opinion. The Sub-Inspector admits he took back Rs. 35. There is reason in this case at least to suspect that, whatever may have taken place in the Inspector's presence, the Appellant never actually got any money that day. So far as the Rs. 5 are concerned, it is admitted that the leaving it on the Inspector's table was a mere form. That the rest of the transaction, assuming the Sub-Inspector's account of what happened to be correct, was not a mere form too, is not a point on which I feel at all satisfied."

Further, in para 6 the Judge says:—

"The Inspector deposed that on the afternoon of the 31st March Rs. 135 were paid to accused and that they were produced by complainant. He afterwards said in reply to Court that the Rs. 135 were paid in presence, and said 'when the Rs. 135 were paid to the accused, he signed the vouchers at the same time that payment was made.' In cross-examination he said the money was not counted on his table, but was probably counted on the floor. The Inspector also stated that he thought the Sub-Inspector had borrowed the Rs. 100 from the accused, and that the object of this prosecution having been undertaken at Government expense was to clear up the matter of the supposed loan."

And in para 5:—

“What it was exactly that took place on the 31st March in the Inspector's office depends on the oral evidence of the complainant, of the Inspector, of the Inspector's Head Clerk, and on the statement of the accused. They all speak from memory, and their examination as to what exactly was done was not in very great detail. The complainant was examined as the 1st witness. He deposed that the whole amount of the contract money, Rs. 235, was given to him by the Inspector, to pay to the Appellant as the work proceeded, and that he paid Rs. 100 on the 16th March, and he said ‘on the 31st March 1891 Rs. 135 were paid to accused by the Inspector in his office.’ He added ‘when the Inspector paid the Rs. 135 to accused, I took from him Rs. 5, the value of coir and cadjans, and Rs. 30 to pay to witness Venkataramanaya for timber, which he would not supply except on cash payment or on my security.’ In cross-examination he said he produced Rs. 135 before the Inspector, but that Rs. 5 of it were his own money, and he said he put the Rs. 135 on the Inspector's table, and then he made the accused take and count the rupees, and he deducted Rs. 35 in the Inspector's presence.”

That the Head Assistant Magistrate also did not consider the evidence of Mr. Kearns to be quite satisfactory is plain from the following passages from his Judgment:—

Para 7. *“The Inspector goes on to say that when he received the petition D he knew the statement in it that accused had not been paid to be entirely false; he thought however that it was probably true that complainant had borrowed the money from him after paying it to him, and therefore he called on him for explanation. When complainant, on his recommendation, was required to clear his character by prosecuting accused, he knew for certain that the imputations of which he was required to clear himself were entirely false, but thought that by such a prosecution the truth would probably be brought to light as to whether the Sub-Inspector has been borrowing from the contractor or not. As the Inspector says that he was then and is still of the belief that complainant did borrow the money, it seems very much as if the intention in ordering him to prosecute was not to give him an opportunity of clearing his character, but to prove definitely that he was improperly concerned in money dealings. Yet, as the Inspector further says that even if the fact of his borrowing was established complainant would not on that account incur any punishment, it is rather difficult to understand what was the real object of forcing a prosecution at considerable cost to Government;”* Para 13 *“Besides the oral evidence, there is documentary evidence in proof of the payment having been made; but, owing to the rules by which public officers are governed in making payments, these documents are of little or no value except the satisfaction of the account Department. The Inspector admits that the only real evidence of payment having been made in this case is his own memory. Accused admits that he signed the ordinary formal vouchers; but so far from these being sufficient evidence of payment, it is admitted that when these are taken the Inspector has not ordinarily even got the money wherewith to pay them. These vouchers are attached when abstract bill which is sent to the Treasury, and so the Inspector draws the money; then it is paid to the claimant. Even if the Inspector has the money with which to meet a bill the receipted voucher has to be received in his office first, and it may be days or even weeks before the money is actually paid. For every payment made in this way by a Government office, receipted bill must be received first, and there may be indefinite delay in actually making payment. When therefore as in this case the payee represents within a few weeks of having given the voucher that he is still waiting for his money, the holding of the receipted bill is itself no evidence that payment has been made;”* Para 14 *“In the next place there is ‘Paid’ enfacement on the bills by the Inspector. It is admittedly his practice not to sign this unless he is satisfied that payment has been made, but he may be so satisfied by information received from his subordinates. This therefore is not necessarily evidence of payment, but only that the Inspector was satisfied at the time he signed it. Evidence may still be brought and in this case has been brought to show that in the particular case he departed from his usual practice and signed the enfacement without having before him any evidence of payment;”* Para 16. *“The only doubt that can be thrown on the Inspector's evidence is whether he really remembers the facts to which he speaks, or only thinks he does so because they have been suggested to him long afterwards by the complainant.”*

Under these circumstances it is simply unfair that the Deputy Commissioner should have inferred from these Judgments that Memorialist swore false. It is noteworthy that the Sub-Inspector's explanation with several other records important for the determination of the question regarding the alleged payment perished in the mysterious destruction of the Udipi Circle office by fire while the defamation case was going on in

the Court of the Head Assistant Magistrate and after orders had been given by the Head Assistant Magistrate for their production after consultation with the Assistant Commissioner. A full account of this fire incident will be found in Memorialist's appeal petition to the Board of Revenue.

15. That, in further support of the Deputy Commissioner's assumption that Memorialist gave false evidence, he quotes from Memorialist's deposition before the District Munsif the following passage *“If any money had been paid in the office I would have known of it; if 1st Defendant himself had paid the money I should have taken a receipt in the tappal book and 1st Defendant would have made an entry of payment in the cash book,”* and argues that *“if the above remarks mean anything they imply that a statement to the effect that the Inspector had himself on the evening in question paid the money to Furtado is untrue.”* This argument of the Deputy Commissioner is certainly wrong and shows that he has not understood Memorialist's deposition in its true light. The Deputy Commissioner ought to have seen that Memorialist in the witness box was answering the questions put to him by the Vakil. It is not denied that Memorialist was present in the office when the alleged payment was made. And the Sub-Inspector Rama Rau even went so far as to falsely say that it was Memorialist who prepared the vouchers and that it was the Inspector who made the payment. Vide his deposition before the Head Assistant Magistrate, wherein he said *“On 31st March Rs. 135 were paid to accused by the Inspector in his office and receipt taken. . . . The Inspector paid it to accused and the Clerk prepared vouchers which were signed by accused after receiving payment,”* though subsequently before the District Munsif the same Sub-Inspector made contrary statements by asserting *“I prepared 2 bills for Rs. 224 and Rs. 11 respectively. . . . I then placed Rs. 135 on 1st Defendant's table and paid it over to Plaintiff. . . . There was no body present when Rs. 135 were paid, except myself, Plaintiff and 1st Defendant;”* and the Inspector deposed *“I do not think, I am not sure, I cannot say whether my Head Clerk was present or no when the bills were produced and money paid over to Plaintiff.”* Hence as regards Memorialist's presence in the office the Sub-Inspector at one time says that Memorialist was there and prepared the bills, and at another that it was he himself who prepared the bills and does not include Memorialist among those present; the Inspector on the other hand is not sure whether Memorialist was present or not. And as regards payment also the Sub-Inspector at one time alleges that it was the Inspector who paid the Rs. 135 and at another that he himself paid it after placing it on the Inspector's table; while the Inspector maintains that it was paid in his presence; and there are many other important discrepancies in the statements of these two witnesses regarding the details of payment, to which reference has been already made in para 11 supra. While, therefore, the said Sub-Inspector and the Inspector are themselves not settled as regards Memorialist's presence and the payment to Furtado, it would be simply unfair to accuse Memorialist of having given false evidence.

16. That as regards (ii), namely, that Memorialist gave the said false evidence deliberately and with full intention, the Deputy Commissioner argues that Memorialist, by deposing that if any money had been paid in the office he would have known of it, explicitly and unreservedly denied the payment of money. This is not correct. The Deputy Commissioner ought to have seen that Memorialist never made any such emphatic denial. Memorialist's assertion is that if *(at any time that Memorialist was present in the office with the Inspector and Sub-Inspector)* any money had been paid he would have known of it. When therefore the very fact of Memorialist's presence still remains an open question and has not been definitely settled, it would be premature to accuse Memorialist of having perjured himself. It was not at all necessary that the payment should have been made in Memorialist's presence, and it is quite possible that

the payment might have been made out of Memorialist's sight or at a time when he was not there, but nevertheless Memorialist cannot be held wrong in having said that the payment was not made (to his knowledge) and that if it had been made (in his presence) he would have known of it. In fact what Memorialist said was an axiomatic truth. The Deputy Commissioner further considers Memorialist to have deliberately perjured himself in having said "*If 1st Defendant himself had paid the money I should have taken a receipt from the Plaintiff in the tappal book and 1st Defendant would have made an entry of payment in the cash book.*" If the Deputy Commissioner had only attended to the proviso in Memorialist's statement which is here given in italics, he could not have found fault with Memorialist in having said that for all payments from the office an acknowledgment from the payee in the tappal book and an entry by the Inspector in the cash book are necessary. The Inspector does not assert that he himself paid the money. His allegation is that it was the Sub-Inspector who paid it, but that he was only present during payment. Memorialist's statements therefore do not cross those of the Inspector. Moreover, the Deputy Commissioner ought to have seen that in his deposition Memorialist was speaking of the general procedure regarding payments from the office, and that in this case also, when the whole amount of Rs. 235 was paid to the Sub-Inspector in a lump sum on the 12th March 1891, Memorialist duly took his acknowledgment in the tappal book, and the payment was entered by the Inspector in the cash book, which may be both sent for and perused, and that consequently here there was no necessity for either the Inspector to make the payment *afresh* or for Memorialist to take an acknowledgment *again* or for the Inspector to make an entry of payment *anew*. These facts cannot be denied, and it is useless to accuse Memorialist for having stated but facts.

17. That as regards (iii), namely, that there were reasons for Memorialist to give false evidence, Memorialist begs to submit that the question regarding the validity of these reasons arises only if it be found that Memorialist's evidence was false. But the foregoing grounds will shew that Memorialist stated but facts, and facts that cannot be disproved. Consequently, it would be unnecessary to enter into the question of motive. Since, however, the Deputy Commissioner has raised the point, Your Excellency's Memorialist feels bound to answer it. The reasons urged by the Deputy Commissioner are that Memorialist was a friend of the contractor and was living with him for some time in the same house and that Memorialist was on bad terms with the Sub-Inspector and the Inspector. Memorialist admits he was friendly towards Furtado. Equally so was Memorialist with the Sub-Inspector or the Inspector. The Deputy Commissioner's opinion regarding the relations between Memorialist and the Sub-Inspector and the Inspector are evidently based on the Judgments of the Head Assistant Magistrate and the District Munsif, who again *relied on the only bare oral uncorroborated statements of the Sub-Inspector and the Inspector themselves, both of whom made it convenient to introduce this plea for their own protection.* But Memorialist has submitted enough in his appeal-petition to the Board of Revenue to show by documentary evidence that the relations of both the Inspector and the Sub-Inspector towards him till these cases could not but have been friendly, and it is therefore unnecessary to touch more on this point. Suffice it to say that at the time that Memorialist gave the said evidence he had left Udipi for good and was employed permanently in the Malabar District and that therefore he could have had no object in pleasing the said Contractor at the risk of displeasing gentlemen of his own department, one of them being the Inspector. These reasons of the Deputy Commissioner therefore have no force whatever in them.

18. That as regards (iv), namely, that Memorialist abused the confidence reposed by the Inspector in him as Head Clerk of the circle office by his failure to report to the

Inspector about the non-payment by the Sub-Inspector which had been mentioned to him orally by the contractor on the 3rd April 1891, Memorialist begs to submit that he did not think it prudent or that he was justified in taking the initiative in a matter which did not concern him. The Inspector has stated before the Head Assistant Magistrate that the contractor had complained to *him* verbally once. Yet the Inspector took no steps till the contractor put in a written complaint. And then, *though the Inspector thought that it was probably true that the Sub-Inspector had borrowed the money from the contractor, he asked the Assistant Commissioner to direct the Sub-Inspector to prosecute the contractor for defamation, and sanction to prosecute at Government expenses was obtained.* These facts are sufficient to show what would have been the result of Memorialist's moving in the matter on the verbal complaint of the contractor, and as the contractor knew his own business best, Memorialist thought that he did not stand in need of any interference from Memorialist, and subsequent events have only proved the wisdom of Memorialist in holding himself aloof, for, when Memorialist, for his offence in attending Courts in obedience to summons issued by them and in answering questions put to him in the witness box, now finds himself dismissed from service, he knows not what greater evil would have befallen him if he had taken up the contractor's cause against the Sub-Inspector to the Inspector, who would have been then the sole Judge in the matter.

19. That the above assumption that Memorialist abused the confidence reposed in him by the Inspector pre-supposes that the Inspector had confidence in Memorialist. But this would be incompatible with the Inspector's allegation, the Judicial officers' finding, and the Deputy Commissioner's acceptance of the fact that Memorialist was not friendly with the Inspector. If the relations between Memorialist and the Inspector were not good as elsewhere held by the Deputy Commissioner, this itself would be an answer to the above charge as to why he failed to report to the Inspector about the conduct of the Sub-Inspector.

20. That Your Excellency's Memorialist has next to answer two more points, which the Deputy Commissioner has raised in his Proceedings under appeal, but which however he has expressly left out of consideration as being minor points. These are:— (a) Why Memorialist prepared and submitted for the Inspector's signature on March 31st the progress report due in Assistant Commissioner's office in which he showed the work to have been completed and full payment made, and (b) Why Memorialist failed either to recover the Rs. 135 and credit it before 6 P. M. into the treasury or on April 1st and subsequent days to get separate receipts and vouchers from the Inspector. With regard to (a) Memorialist begs to submit that for purposes of the said progress report it was sufficient for Memorialist to know that the amount sanctioned and drawn had been expended and that the work was completed. As for payment, there was the acknowledgment in the tappal book by the Sub-Inspector, and receipted bills signed by the contractor, and there was the completion report of the Inspector. As to whether the amount received by the Sub-Inspector was actually paid to the contractor, the contractor having delivered receipted bills signed by him, the presumption was that the contractor received the money, though in this case the Sub-Inspector was subsequently found to have made his own private arrangements with the contractor, paying him Rs. 100 in advance on the 16th March, deducting Rs. 5 for materials supplied by himself, paying on behalf of the Contractor Rs. 30 to the latter's creditor Venkatarama-naya in 2 instalments of Rs. 13 and 17 on the 8th and 9th April respectively, and yet declaring that he paid Rs. 135 to the Contractor on 31st March in the presence of the Inspector. With regard to (b), Memorialist begs to submit that he fails to understand what necessity there was for him to recover the Rs. 135 and credit it before 6 P. M. on

the 31st into the Treasury or to get separate receipts and vouchers from the Inspector. There being, as already stated, acknowledgment of receipt of Rs. 235 by the Sub-Inspector in the tappal book, receipted bills signed by the contractor, and the completion report from the Inspector, it is impossible to conceive how it could have struck Memorialist that the Sub-Inspector had paid the Contractor only Rs. 100 and not the remaining Rs. 135 to enable Memorialist to recover it and remit to the Treasury. It has to be seen that it is only in cases where the money drawn is not expended that the amounts have to be remitted back into the Treasury on the last day of the official year. But in this case the money had been drawn in full, had been paid over to the Sub-Inspector, the contractor delivered receipted bills, and the Inspector gave in his completion report, and thus all these formalities showed that the money drawn had been expended in full, though it was afterwards detected that as between the Sub-Inspector and the contractor only a part payment had been made and not the whole, with which however Memorialist was not in any way concerned, even if it were possible for him to know the real state of things.

21. That Your Excellency's Memorialist most humbly and respectfully begs to solicit therefore that, on a kind and favourable consideration of the above circumstances, and Memorialist reinstated in his post with arrears of pay, and Your Excellency's Memorialist shall, as in duty bound, ever pray.

S. S. S. S. S.

L. C. S. S. S. S. S.

L. C. S. S. S. S. S.

L. C. S. S. S. S. S.

L. C. S. S. S. S. S.



From

G. C. Fernandez
Late Sub Inspector of
Salt & Alkali Revenue
Ponani Circle

To

His Excellency
the Governor in Council
Madras.

Dated 1st March 1897

Enclosures 16

Subject

Appealing against the orders
of Board of Revenue (Separate
Revenue) declining to interfere
with the orders of the Deputy
Commissioner Salt & Alkali
Revenue Southern Division
dismissing memorialist from
service and praying for
reasons stated within, that
he may be reinstated
in his post with arrears
of pay.—

Malpe 20th March 1897

From

G. C. Fernandez
Late Sub Inspector Salt &
Alkali Revenue, Ponani
Circle

To

The Chief Secretary to
Government of
Madras.—

Sir,

I beg to submit herewith my
Memorial to His Excellency the Governor
in Council, appealing against the
Proceedings of the Board of Revenue, Madras,
declining to interfere with the order of the
Deputy Commissioner of Salt & Alkali Revenue,
Southern Division, dismissing me from my
permanent post of Sub Inspector in the
said Department, and humbly request that
you may be pleased to place the same
before His Excellency at an early date.

2 Four spare copies of the memorial
are herein enclosed.—

3 I beg to state that the Memorial

has been submitted direct to save time.
A copy has, however, been sent to the
Deputy Commissioner for transmission
through the Board of Revenue.

4. The following papers are submitted
as enclosures to the Memorial

- (i) Proceedings of the Board of Revenue
No 3500. mis dated 19th August 1896
- (ii) Copy of my appeal petition to the Board
of Revenue dated 1st June 1895 wherein
the above Proceedings were passed. —
- (iii) Deputy Commissioner's order No 1341
dated 28th March 1895, dismissing me
from service. —
- (iv) Copy of the judgment of the District
Munsiff of Mangalore in O. S. No. 221 of 1892
- (v) Copy of my deposition before the said
District Munsiff. —
- (vi) Copy of the Inspector Mr. Kearns' deposition
before the said District Munsiff. —
- (vii) Copy of Sub Inspector Ramadani's
deposition before the said District
Munsiff. —
- (viii) Copy of the judgment of the Head
Assistant Magistrate in Calender
case No 30 of 1892
- ix Copy of my deposition before the said
Head Assistant Magistrate
- x Copy of the Inspector Mr. Kearns' deposition
before the said Head Assistant Magistrate

XI Copy of Sub Inspector Ramadani's
deposition before the said Head
Assistant Magistrate

XII Copy of the Judgment of the
Sessions Judge in Criminal Appeal
No 9 of 1893 on the above judgment
of the Head Assistant Magistrate.

5 I am prepared to submit any
further papers that may be required of
me. —

I beg to remain
Sir,
your most obedient servant.

S. C. Fernandez
21.3.1897.

Pray address.

S. C. Fernandez }
Kalmadi }
Edipi - }



From

S. C. Fernandez
Late Sub Inspector
Salt & Akari Revenue

To

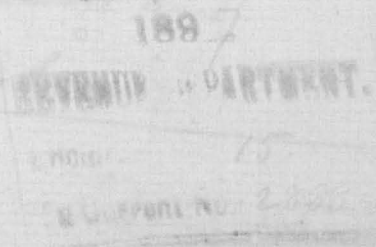
The Chief Secretary to
the Government
of Madras.

Dated 20th March 1897

Enclosures 16

Subject.

Submitting his Memorial
to His Excellency the Governor
in Council & requesting him
to place the same before
His Excellency at an early
date —



When given for copying _____
When copied _____ } 189
When examined _____
When signed _____

READ AGAIN G.O., No.
189 ,

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT

STATEMENT WITH DITTO

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—

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