

Revenue (1898) Department.

MISCELLANEOUS SERIES.

G.O., No. 1982

DATED 6th May.

[Despatch Abstract.]

Declining to interfere on behalf of N. V. Timmalai
Aiyagar, late Sub Inspector, Salt & alkali Dept, appealing
against the order of ~~dismissing~~ dismissing him from the

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
5168/98							

0
18 4,000-19-7-97.

Revenue (1898) Department.

CURRENT No. 2352.

Recd (Current No 2352)

H.P. Lm No 1016 & P
15.3.98

Order No: 19824/6 May 1898

The Govt declines
to interfere

Ulu
6.5.98

5168

John Neth

To the Bd (I.R.) with Encl.

Dep.

9.5.98

From
The Secretary to the Commis-
sioner of Salt, Abkari and Separate
Revenue, Madras.

His. No. 1016.

Dated 18th March 1898.

Received 23

Registered 24

Enclosures 1st 9 enclosure = 19.

Spare copies

SUBJECT.

Submitting to Government with re-
marks petition from N.V. Tirumalai
Aiyangar late Sub-Inspector, Salem
Circle appealing against the Board's
order declining to interfere with
the order of dismissal passed on him
by the Deputy Commissioner, Central
Division.

BACK PAPERS.

G.O.	No.	Department.	Date

FURTHER PAPERS.

G.O.	No.	Department.	Dates

Original.
Enclosures. 9

To

HIS EXCELLENCY THE GOVERNOR IN COUNCIL, MADRAS.

*The humble petition of N. V. TIRUMALAI
AIYANGAR, Late Sub-Inspector in the
Salt, Abkari, and Customs Department.*

MOST RESPECTFULLY SHEWETH,

That your petitioner begs to appeal against the orders of the Board of Revenue No. 4892 dated 5th November 1897, upholding the order of dismissal passed by the Deputy Commissioner in his Proceedings No. 4782 dated 26th August 1897.

2. That your petitioner has not received that treatment from the hands of the superior officers of the Department justly due to all honest and zealous servants of Government, will be clear to your Excellency in Council from a perusal of the following papers:—

(i) Judgment of the Deputy Magistrate, Salem, in C. C. No. 48 of 1896, printed as Appendix B. to Ex. I.

(ii) Deputy Commissioner's Proceedings No. 5538, dated 21st November 1896 (printed as Appendix A to Ex. I.

(iii) Petitioner's appeal petition to the Board dated 11th December 1896. Ex. I.

(iv) Deputy Commissioner's letter thereon dated 14th December 1896. Ex. II.

(v) Board's Proceedings No. 542 dated 9th February 1897. (Ex. III.)

(vi) Charges framed by the Assistant Commissioner, dated 7th May 1897. Ex. IV.

(vii) Petitioner's explanation dated 12th June 1897 to the above charges. Ex. V.

(viii) Assistant Commissioner's letter No. 2344 dated 22nd July 1897. Ex. VI.

(ix) Deputy Commissioner's Proceedings No. 4782 dated 26th August 1897. Ex. VII.

(x) Appeal petition to the Board thereon. Ex. VIII.

(xi) Board's Proceedings No. 4892 dated 5th November 1897. (Ex. IX.)

3. The petitioner will briefly state below the circumstances which have lead to his removal from service and leave it to your Excellency to consider how far the orders of the Deputy Commissioner and the Board were merited by him.

4. The petitioner entered the Department in 1888, and, after nearly 8 years of work admittedly of an onerous kind and discharged with integrity and patience as is evidenced by the records of the Department, he was posted to the Tharamangalam Range of the Salem Circle. The faithful discharge of his duties was not relished by some of the inhabitants of the place, and he had to prosecute to conviction, a number of Shanars including the head man of the caste for assault against the petitioner which made him somewhat unpopular. In June 1893 a fictitious Mahazar was got up against your petitioner by one Venkatachari accusing him of having levied an illegal-tax called

the Knife-box-tax, and eight-months elapsed before an enquiry was held by the Tahsildar who submitted a report in March 1894 based solely on the evidence of his enemies. A departmental enquiry was, under the instructions of the Assistant Commissioner, then made by the Inspector when it was found that there was hardly any case against your petitioner as most of the witnesses who had deposed against him in the previous enquiry made by the Tahsildar broke down in cross-examination. The Deputy Commissioner however, decided to await the result of a prosecution he directed to be made against one Krishnasamy Row, the petitioner's successor in the Tharamangalam Range who was also accused of the same offence, and two others.

The prosecution against Krishnasamy Row and two others ended in their conviction, and, much against the Assistant Commissioner's (Mr. St. John's) wishes who found that there was no case against your petitioner, the Inspector and the Deputy Commissioner decided to institute proceedings against him. Thirteen cases of bribery had previously been reported against your petitioner and one of them which was considered to be the strongest of all was ultimately chosen for placing before the Magistrate. The Deputy Magistrate of Salem before whom the prosecution was conducted discharged your petitioner as he found that the case was entirely false and concocted by the petitioner's enemies. The strongest case having thus collapsed one would have naturally thought there was an end of all your petitioner's troubles; but this was not to be. The Deputy Commissioner went behind the judgment of a Judicial tribunal and dismissed your petitioner without even framing any charges against him and obtaining his explanations thereto; but the Board on appeal considered that the procedure was improper and accordingly retransmitted the case for reconsideration. The petitioner naturally expected that he would be restored to his appointment; but what was his surprise when he was called on to submit an explanation to three other charges originally reported by the Inspector in 1894, which were considered by the Departmental officers all along to be extremely weak and unsupported by evidence and were therefore excluded from the complaint presented to the Magistrate. The procedure then adopted is to say the least of it extremely unusual and one which would not have been resorted to, had your petitioner been in any other Department of Government.

That your petitioner should be called upon to answer the accusations made against him more than 4 years ago is strange enough and stranger still that he should have to submit an explanation in respect of the complaints which were found no sooner they were made to be utterly unsupported by evidence.

However, the petitioner complied with this strange direction, and the Assistant Commissioner in forwarding the petitioner's explanation rightly reported:—"I have again gone carefully through the records relating to the three cases selected in framing the charges against Tirumalai Aiyangar and I find that the discrepancies pointed out are in the main correct. Whatever may be the impression conveyed by the circumstantial evidence against the petitioner I do not think that it is sufficiently strong to warrant the assertion that he is guilty. Legal proof is admittedly absent. In selecting and drafting the 3 charges against the petitioner I was compelled to make them as they are the strongest out of the 13 original charges brought against him and not because they were thought to be capable of proof." It will thus be seen that what was believed to be the strongest case was thrown out by the Deputy Magistrate as a pure concoction and the next three cases, which for no purpose the petitioner is aware of, were then selected by the department were admitted to be capable of no proof. It therefore passes comprehension why the Deputy Commissioner should still uphold his original order of dismissal which the Board had upset in the first instance. The Deputy Commissioner in his anxiety to support his previous order of dismissal has gone out of the way into irrelevant matters and ignored the salient points in the petitioner's case. The petitioner has answered the three charges now framed against him in his explanation to the Assistant Commissioner and it will be seen from the peti-

tioner's comments on the Deputy Commissioner's proceedings that the conclusion arrived at by that officer is hardly supported by the arguments adduced. It is hardly necessary at this stage to go into the details of the case and the petitioner will therefore confine himself to the salient points therein and request a perusal of the records already referred to as to the minor points involved.

5. The Mahazar which has given rise to the petitioner's case was a fictitious one got up by his enemy one Venkatachari. Attention is invited to para 4 of petitioner's explanation (Ex. V.) from which it will be seen that, though the Mahazar purported to have been sent in June 1893, the Shanars were not aware of its existence till eight months later when the Tahsildar came to the village to make an enquiry into the contents of the Mahazar and when they were induced to own it as their own. That the Mahazar was got up by Venkatachari is evident from the fact that though the payments were alleged to have been made in February or March 1893, no complaint of any sort was made to any of the Departmental, Revenue and Police officers until a year or a year and a half after the alleged occurrence (i. e.) until the arrival of the Tahsildar of Salem to Vanavasi. The Deputy Magistrate himself found that the allegation that the case had been concocted by Venkatachari was not without foundation. Moreover, the attestation of the Mahazar invariably by a mark instead of by signature even in cases in which the parties concerned were able to read and write, shows that the Mahazar was a fictitious one. In any other Department of Government a Mahazar of this kind would have been naturally confined to the waste paper basket but in this instance it is surprising to find that it formed the subject of an enquiry.

6. Nearly eight months, after the date of the Mahazar the Tahsildar conducted an enquiry into the contents. The enquiry was as will be seen from para. 6 of the explanation. (Ex. V.), grossly prejudicial to the petitioner in as much as it was conducted in a manner to afford opportunities for collusion and as the petitioner was not allowed to cross-examine the witnesses. This your petitioner humbly begs to submit was irregular and should not have been adopted as the basis for further enquiry. But the department with its numerous resources thought it fit to order a departmental enquiry by the Inspector.

7. Again, the enquiry before the Inspector was illegal and improper as he adopted the depositions before the Tahsildar as the results of examination in-chief and allowed the petitioner to cross-examine the witnesses only in respect of those depositions. However, the witnesses completely broke down in cross-examination and it was then found to the great chagrin and disappointment of the officers of the department that there was no case against your petitioner. But the case was not still to end; for the Deputy Commissioner without altogether throwing out the case decided to prosecute Kristnasawmi Rao, the petitioner's successor in the Taramangalam Range, who was also accused of a similar offence, and two others, and stated that the petitioner's case should be held in abeyance pending the result of the prosecution above referred to.

8. The prosecution of Kristnasawmi Rao, and two others ended in their conviction and the Assistant Commissioner Mr. St. John, who was asked to frame charges against the petitioner, in going through his case in view to taking proceedings against him, considered that there was no direct evidence to justify his prosecution and that it would be unwise to do so on the strength of the evidence of illiterate Shanars and after the lapse of two years. But the Inspector against all principles of official discipline and decorum personally sought an interview with the Deputy Commissioner at Madras misled that officer as to the evidence in the case and secured his approval to prosecute your petitioner.

9. Accordingly two out of the complaints which had originally formed the subject of enquiry were chosen as the strongest to secure a conviction

but at the last moment one of these cases was also felt to be weak and unsupported by evidence and only one was taken before the Magistrate. The result of this case was that the Deputy Magistrate of Salem found that no prima-facie case was made out against your petitioner and discharged him under 253 of C. P. C. without even framing a charge against him. It will be seen from the judgment of the Deputy Magistrate that he was of opinion that the case was entirely a concoction of his enemy—Venkatachari, who, it is submitted, successfully sought and obtained the co-operation of the Departmental Officers in his evil designs against your innocent petitioner. After the result of the prosecution the petitioner naturally expected to be reinstated in his appointment with arrears of pay, but what was his surprise when he received the proceedings of the Deputy Commissioner No. 5538 dated 21st November 1896 in which he dismissed your humble petitioner against all principles of Justice and equity and the Standing Orders of the Board of Revenue and the direction of the Government and the Secretary of State. (Vide G. O. No. 2290, public dated 23rd December 1883. Section 244, para 15 of Board's Standing Order and vide para 6 Exhibit VII.)

10. The Deputy Commissioner's Proceedings were based mainly on three considerations:—

(a) That the decision of the Magistrate in the petitioner's case is at variance with the decision of the Lower Courts and the High Court in Kistnasawmi Rao's case;

(b) That the delay which had elapsed in conducting the Magisterial enquiry was prejudicial to obtaining a conviction; and

(c) That the Magistrate has not correctly appreciated the evidence.

With reference to (a) it has only to be observed that Kristnasawmi Rao's case can have no bearing on the petitioner's case. Kristnasawmi Rao and your petitioner were tried on *independent* evidence and it is therefore incomprehensible how the one case had anything to do with the other. In both cases the offence with which the individuals were charged was *extortion* and not *bribery* and this expedient was adopted with a view to get rid of the law of accomplices. But there is this difference in Kristnasawmi Rao's case the evidence of accomplices was corroborated in material particulars by independent testimony of other reliable witnesses, whereas in the petitioner's case the witnesses cited by the prosecution were one and all accomplices and their evidence was not corroborated in any respect by the testimony of independent witnesses. It cannot for a moment be maintained in the face of the * rulings of the Privy Council and the High Courts of the various Provinces that Magistrates should convict any accused on the uncorroborated testimony of accomplices. On the other hand it has been repeatedly laid down that the uncorroborated testimony of accomplices is worthless as a piece of evidence. It is therefore not understood how the Magistrate can do otherwise than discharge the accused.

(b) The Deputy Commissioner and the Board would appear to take the view that but for the delay a conviction could have been obtained in the petitioner's case. This is at the best an assumption. The petitioner will first point out that he was in no way responsible for the delay in conducting the prosecution and if owing to default of the officers of the department a delay has occurred it is they that should be called on to account for it and not the petitioner. Moreover, the delay instead of having been favourable to him has been quite prejudicial. The Deputy Commissioner himself admits "It is undoubtedly a hardship that this enquiry has been allowed to hang over his head for so many months" and it is therefore not understood how the delay has been favourable to your petitioner. It may also

* I. L. R., XIV. Bombay, 115 and 331, 5 W. R. Criminal Rul. 60, 8 W. R., Criminal 19, 6, W. R. Criminal Rule 17, 9, W. R. Criminal Rule 51, 6. B. L. R., Appendix 108, 10 B. L. 456, S. C. 19, W. R. Rule 16.

be pointed out that the Board has now arrived at the conclusion that the delays have been satisfactorily explained and in these circumstances the Deputy Commissioner's view cannot be maintained. Again the Deputy Commissioner would seem to be of opinion that owing to frequent examinations and cross-examinations the evidence of the witnesses has been impaired and has given room for apparent discrepancies. It is submitted that this argument can apply only to the case tried before the Magistrate and not to the other cases which formed the subject of departmental enquiry. Moreover, that the delay was prejudicial to the petitioner will be seen from the fact that at each subsequent stage of the Proceedings the testimony of the witnesses had grown stronger and stronger against your petitioner owing to the tution they had undergone. A perusal of the mahazar and the records connected with the other cases will clearly show on what insufficient and perjured evidence the petitioner was suspected. Your Excellency in Council will observe the curious way in which the petitioner has been dismissed from public service. The Deputy Commissioner himself admits that he does not "base his conclusions drawn from the evidence of a few poor and illiterate Shanars who were examined and cross-examined by different officers three or four years ago about circumstances that happened so long before." Thus it will be seen that contrary to all principles of just administration your humble petitioner's dismissal is made to stand not upon *evidence* but upon *opinions* of the officers who went into the matter at the time. The question is if those officers on whom the Deputy Commissioner himself relies had considered that there was sufficient material to warrant his removal from the service would they not have adopted that expedient when they found that there was not sufficient materials to go before the Magistracy. Your petitioner humbly begs to submit that if his dismissal cannot be supported by evidence and this is tacitly assented to by the Deputy Commissioner himself, he is entitled to be re-instated in his appointment. At all events, the matter being only a case of suspicion, the Deputy Commissioner's order of dismissal is opposed to the rulings of Government that public servants should, on mere suspicion, not be *dismissed* but only be removed from service.

(c) After what has been said in the previous paragraph the Deputy Commissioner's contention that the Magistrate has not correctly appreciated the evidence needs no refutation. If this contention were correct he should have taken the case before a regularly constituted Court of appeal or revision and not himself sit in judgment on the Deputy Magistrate's finding. The Deputy Commissioner himself admits that further proceedings would be unwise and it is therefore not understood how the Magistrate's judgment could be impugned.

11. The petitioner accordingly urged before the Board the inadequate consideration in his case had received from the Deputy Commissioner who in forwarding the petitioner's memorial to the Board admitted that his comments on the Deputy Commissioner's proceedings were fair enough, and requested orders only on one point, viz: whether the department having decided on a prosecution is bound to accept the result of it or in other words whether he could go behind the judgment of a judicial tribunal. The Board having presumably decided in favour of the petitioner retransmitted the case for reconsideration. But what was his surprise when instead of being reinstated in his appointment he received from the Assistant Commissioner a proceedings directing him to submit an explanation to three other charges he had selected from the cases which had originally formed the subject of enquiry. That the petitioner should be called upon to explain to charges which had been enquired into more than four years ago and that charges, which at the time, when the prosecution against the petitioner was decided upon, were considered to be utterly weak, should now be raked up to form the subject of further enquiry, needs hardly any comment. However, the petitioner complied with this direction and as pointed out in para 4 above, his explanation was accepted by the Assistant Commissioner as satisfactory, who

considered that there was hardly any evidence to prove the charges against the petitioner. But what was the result. After all the Deputy Commissioner in his anxiety to confirm his original order misappreciated the evidence and by one sided arguments and misrepresentations has arrived at the conclusion that his original order was correct. The Deputy Commissioner's arguments have been answered in Ex. VII. and the petitioner will not now unnecessarily go into the details thereof. In fact neither evidence nor arguments are there to be rebutted or explained; but what there is, is merely a string of inferences from imaginary data which no unbiased tribunal will in the least attach any value upon.

12. Accordingly in his appeal petition to the Board the petitioner pointed out that his case had not received adequate consideration at the hands of the Deputy Commissioner and pointed out,—

(i) That the Deputy Commissioner's original order of dismissal was against all principles of Justice and opposed to the Standing Orders of the Board and repeated rulings of the Secretary of State;

(ii) That in his anxiety to support his original order the Deputy Commissioner has failed to appreciate the evidence in a just and proper manner; and

(iii) That the strongest case having collapsed before the Deputy Magistrate and the three others selected by the Assistant Commissioner having admittedly been satisfactorily explained the petitioner was entitled to be reinstated in his appointment with arrears of pay.

The Board however while admitting that the delay in prosecuting the petitioner—a point on which the Deputy Commissioner virtually based the petitioner's dismissal from service—was satisfactorily explained, has confirmed the Deputy Commissioner's order. The appeal petition to the Board was submitted to the Deputy Commissioner for transmission on the 12th October and was forwarded by him on the 24th *idem*. The Board's Proceedings thereon is dated the 5th November and the petitioner ventures respectfully to submit that owing to his sudden transfer to the Vizayanagram Zemindari the Commissioner was not able to give due consideration to the petitioner's case.

13. In conclusion your humble petitioner begs to submit that till the receipt by the department of the now famous Mahazar which was as pointed out above a fictitious one, got up by his enemies, his honesty and integrity were never questioned during the period of 8 years he served in the department and faithfully discharged his duties. The enquiry by the Tahsildar and by the Departmental officers has been grossly prejudicial to the petitioner and his subsequent prosecution on what was believed to be the strongest case against him, was conducted with a zeal characteristic of the officers of the Department. That in spite of this, the petitioner was able to get out of it untarnished, clearly shows on what flimsy and perjured evidence the case was taken before the Magistracy. The petitioner begs to submit that the Deputy Commissioner was wrong in dismissing your petitioner from the service in the face of the Deputy Magistrate's finding and without framing any charges nor obtaining any explanation from the petitioner.

The petitioner urged before the Board of Revenue that the department having decided on a prosecution should not have gone beyond the judgment of a regularly constituted tribunal, that his dismissal from service in the face of the Deputy Magistrate's finding was against all principles of equity and justice, and that he should not have been dismissed without formal charges framed against him and an explanation from him obtained thereto. The Deputy Commissioner, it will be remembered, submitted the case for the orders of the Board solely for decision on the above points and the Board having found on these points in his favour the Deputy Commissioner was not justified in adopting the course he took. The case taken before the Magistracy was considered by the Departmental officers to be the strongest

and capable of being substantiated by evidence; but that case having collapsed, the Magistrate having found that it was a pure concoction by the petitioner's enemies, your petitioner need hardly point out that the other allegations against him should not have formed the subject for further proceedings. Be this as it may, the petitioner's explanation to the other charges selected against him was considered by the Assistant Commissioner to be satisfactory and the Deputy Commissioner was therefore wrong in upholding the original order of dismissal mainly on the unwarranted assumption that the delay in instituting proceedings against the petitioner was of his own making. The Board now having arrived at the conclusion that the delay has now been satisfactorily explained, should have restored him to his appointment. The petitioner therefore prays that your Excellency in Council will be pleased in the circumstances above stated to restore him to his appointment with arrears of pay and grant him such further redress as may be deemed feasible in view of the hardship anxiety and expense he has been put to during a period of more than two years his case has been prolonged. For this act of charity and benevolence, the petitioner shall as in duty bound ever pray.

Your Excellency's most obedient and humble servant.

M. Perumalai Aiyar

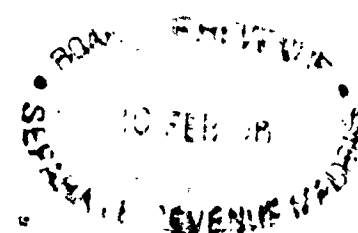
MADRAS,
10th February, 1898.

Copy Submitted to the Government.

SALT

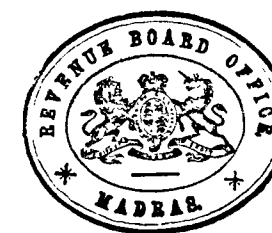
236

Draft to Govt as briefly as possible, but
see that all the salient points are fully
set out. See that this is all in order
first



En

1,000
18-4-86



Proceedings of the Board of Revenue

(Separate Revenue),

Dated 11th March 1898.

His. No. 1016.

-----:000:-----

Read petition from M.V. Tirumalai Aiyangar, late Sub-
Inspector in the Salt, Abkari and Customs Department, dated
10th February 1898.

RESOLUTION-

Submitted to Government.

2. The offence for which the petitioner was dismissed was
committed as long ago as the year 1895. In that year a mahazar
was received by the Revenue authorities charging him and his
successor in the Tirumangalam range, one Krishnaswami Row, with
having, with the aid of a third party Ponnuswami Aiyangar, re-
vied an illegal tax called the knife box tax from the Shanars
in the range. Enquiries were made, the charges were substanti-
ated and Krishnaswami Row and Ponnuswami Aiyangar were pro-
secuted and convicted receiving a sentence of one year's ---
rigorous imprisonment and Rs. 100 fine each a sentence which
was upheld both in the sessions and High Courts.

3. Whether owing to connivance or otherwise, the petitioner

Subject

Appealing to for everment against
the order of the Board upholding
the order of the Deputy Commissioner,
Central Division des moine
huni from the Service.

12.21

2352

petitioner escaped prosecution at the time and the case against him did not actually come into Court till July 1896. AS might have ^{may} been expected the evidence against him was not coherent after such a lapse of time, and, for this and other reasons, some of them by no means satisfactory ones, the Magistrate discharged the accused.

4. The petitioner then claimed reinstatement, but Deputy Commissioner, on a review of the whole case, took the somewhat unusual course of going behind the Magistrate's judgment and recorded an order of dismissal. On appeal this order was returned for revision as some of the necessary formalities had not been complied with and a revised order to the same effect was ^{passed} ~~passed~~. This again being appealed against, the Board passed the order now in question dismissing the appeal with the remark that it greatly regretted "that delays which have never been satisfactorily explained postponed the petitioner's trial to a date which rendered his conviction and the imposition of the punishment which he so richly deserved impossible." The attention of Government is specially invited to the word underlined in the above as it appears to have been written "now" in the copy supplied to the petitioner and this has afforded him much food for argument.

5. The petitioner challenges the findings of the Deputy Commissioner and the Board chiefly on the grounds that the case against him was the result of ^{cunning} ~~cunning~~ that there is no connection between his case and Krishnaswami Row's, that he is not responsible for the delays that took place and ^{that} the Assistant Commissioner who framed the

charges on which the revised order of dismissal was passed held that legal proof of his guilt was wanting. These points are all fully discussed in the petitions and Proceedings ---- which form the enclosures to his appeal. It is sufficient to say here that there is no foundation in the record for the allegation that the original mahazar was the production of the petitioner's enemy Venkatasachari that the petitioner's case and Krishnaswami Row's are inseparably connected, that the Board is not at all satisfied that the delay in bringing the petitioner to trial was not due to connivance and that the Deputy Commissioner and the Board had before them the same evidence as the Assistant Commissioner and ^{came} ~~came~~ to the conclusion upon ^{it} ~~which~~ that there was no moral doubt of the petitioner's guilt.

6. The allegation ^{that} ~~with~~ the petitioner's second appeal was not duly considered owing to the late Commissioner's transfer is of course [§] ~~of course~~ absurd.

(True extract)

R. S. M. S. M. S.

Acting Assistant Secretary

To the Secretary to Government, Revenue Department with
petition and enclosures.

21/8/98

Revenue (1898) Department.

CURRENT No.

Order

From *The Secretary to the Commission
of Salt, alkali and Separate
Revenue*

Routine No. 1040

2/1/98
Dated 19th April 1898

Received

Registered

Enclosures

Spare copies

*Slide
and original*

SUBJECT.

*Form according to the Registrar
Revenue Secretariat Copy
of Central Division Deputy
Commissioner's letter No.
5-872 dated 24th October
1897.*

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Copy of letter from the Deputy Commis-
sioner Central Division No 5872 dated 24th
October 1897.

x Copy
Inhibit
allotted
with the Pet.
In Continuation of this office No 4782, dated
26th August 1897, forwarding copy of a
revised order in the case of Sub Inspector
W. Thirumalai aiyangar. I have the honor
to submit a fresh appeal against the
same.

2. The appeal is very lengthy and I believe
there is little to be gained by my commenting
upon it in detail. I have therefore limited
my comments to a few remarks in the mar-
gin. I will only add, with reference to the
charges of bias, unfairness and prejudice
disputed throughout, that, as the Board
is aware, the circumstances that are
in question occurred years before I joined
the Department, and that I have no
knowledge good or bad of the petitioner
except such as has been gathered from
these papers.

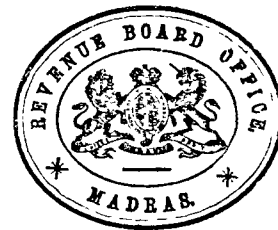
3. The able lawyer who has drafted the
appeal has made the most of every point
in the petitioner's favour, and it is very
possible that, even if the case had not
gone

gone before a magistrate who flatly
contradicted the finding of the Sessions judge
on points of fact and law, most essential
to the case, he might have been able to show
that the evidence as it now stands did
not amount to legal proof of guilt. That
there is no moral doubt, however of the
petitioner's complicity in the reactions
charged against him I am convinced
and I believe the Board, on a perusal
of the records, will be the same.

R. W. Hurley

Ag. Assistant Secretary

27/4/98



Proceedings of the Board of Revenue

(Separate Revenue.)

Dated 19th April 1898.

Routine No. 1040

Read memorandum from Govern-
ment Revenue Department, for C
No 2352 of 1898 dated 16th April 1898

Resolution

Ordered accordingly.

(True Extract)

R. W. Hurley

Ag. Assistant Secretary

To

The Registrar, Revenue Secretariat.

20/4/98

Read Proceedings of the
Board of Rev., Sep. Rev.,
No: 1016 M. d 15-3-98.
C. No: 2352/98.

Note.

With the current
read above the Board
of Revenue submits to
Govt. a second appeal from
N.V. Dinanalai Iyengar,
late Sub Inspector of
the Salt and Abkari Dept.,
Salem Circle, against the
orders of the Deputy Commis-
sioner, Central Division,
dismissing him from the
service on the charge of
having levied an illegal
tax under the name of the
"Knife-box" tax on some
Shanars living in certain
villages in the Dinananga-
lam Range, Salem Circle.
2. The facts of the
case appear to be these.
In June 1893, three months
after the petitioner's transfer
from

Deputy Commr's Procs.
*Flag A d. 21-11-96 No: 55382
*Flag B. d. 26-8-97 No: 4782.

c4/5/98.

from the Dimangalam range,
a mahazar purporting
to come from certain Shanars
of two villages in the Dim-
mangalam range, was
received by the Treasury
Deputy Collector, Salem,
in which it was alleged
that the petitioner and
his successor in the Dim-
mangalam Range, one
Krishnaswami Row, had
levied from them an illegal
and unauthorised tax under
the name of the "knife-box"
tax. The mahazar was in
due course transferred to the
Dahsildar of Salem for report.
Eight months after the re-
ceipt of the mahazar in
question (i.e. in March 1894)
the Dahsildar held an
open enquiry in the Shanar
villages in the Dimmangalam
range regarding the alleged
levying of the unauthorised
tax, and submitted a
report, which was in due
course

course forwarded to the
petitioner's departmental
Superior. A departmental
enquiry was then made (April),
with the result, it would
seem, that the charges
against the petitioner
and his successor in the
Dimmangalam range,
Krishnaswami Row, were
fully substantiated.
The Assistant Commissioner,
Grade Sub-division, then
recommended (May 1894) that
Krishnaswami Row should
be prosecuted at first,
but that as the petitioner
unlike Krishnaswami Row
acted with great caution
and kept himself in the
background content to
work through his accomp-
lices, his prosecution should
lie over pending the result
of the case against Krish-
naswami Row. This recom-
mendation was accepted
by the Deputy Commissioner,
Southern

of Southern Division (August 1894)
whereupon Krishnaswami Rao
and his accomplices were
prosecuted for extortion. The
charges against these were
proved, and the accused
(Feb 1895) received a heavy sentence
(1 year's rigorous imprison-
ment and 100 Rs. fine each)
— a sentence which
was upheld on appeal
by both the Sessions and
High Courts (June 1895).
3. In July 1895, the Dy.
Commissioner, Southern
Division, suspended the
petitioner and at the
same time ordered
the Assistant Commissioner,
Erode sub-division, to frame
charges with a view to
petitioner's prosecution.
Owing to one reason or
another, the prosecution
of the petitioner was
delayed in a most extra-
ordinary way till July 1896,
the Salem district having
in

Vide his judgment
dated 4th.

5
in the meanwhile (October
1895) been transferred from
the Southern Division to the
Central Division. In July 1896
more than three years after
the date of the original
arrest and more than two
years after the departmental
inquiry, the petitioner was
prosecuted along with two
others before the Head-
quarter Deputy Magistrate,
Salem, on a specific charge
of extortion. As might have
been expected the evidence
against the petitioner was
not very coherent after
such a lapse of time, and
the magistrate was of opi-
nion that no case had been
made out against the accused
and discharged them (Sept.
4). The petitioner then applied
to the Dy. Commissioner, Cen-
tral Division, for reinstate-
ment on the ground that
the department having de-
cided on a prosecution was
bound to accept the result
of

of it. The Deputy Commissioner, however, took what the Board characterises as the somewhat unusual course of going behind the magistrate's judgment, and after a review of the records bearing on the petitioner's case, held that the evidence against the petitioner had been rendered weak by lapse of time, that the reasons urged by the magistrate for the discharge of the petitioner and the other accused were insufficient and that there was no doubt that the petitioner had been found guilty departmentally of the gravest offence. The Dy. Commissioner accordingly directed the petitioner's dismissal from the service with effect from the date of his suspension. (Vide the Deputy Commissioner's Proceedings No 5538 d 21-11-96). On appeal the Board returned the Deputy Commissioner's order for revision as some of

para 4 of the current

Flag A.

Flag D.

Vide his letter No: 2344 d.
22-7-97. Flag C.

of the formalities required by the rules relating to the dismissal of public servants had not been complied with. (B.P. 542 d. 9th Feb. 1897). Thereupon three specific charges of extortion were selected from among those recorded against the petitioner, and he was called upon to submit an explanation with reference to them. In forwarding the petitioner's explanation to the Deputy Commissioner, the Assistant Commissioner, Arcot Sub-division wrote as follows:-
"I have again gone carefully through the records relating to the 3 cases selected in framing the charges against Tirumalai Aiyangar and I find that the discrepancies pointed out [by him] are in the main correct. What ever may be the impression conveyed by the circumstantial evidence against the

"the petitioner, I do not
"think that it is sufficiently
"strong to warrant the
"assertion that he is guilty,
"legal proof is admitted
"by absent". The Deputy
Commissioner, however, after
again going through the whole
record, held that, though
the petitioner was able to
point out certain discre-
pancies in the evidence ad-
duced in support of the three
charges framed against him,
there was no reason to consider
that the charges were mere
concoctions. The Deputy
Commissioner thought that
he would not be justified
in restoring the petitioner
to his appointment in
the face of the opinion recorded
by the officers who conducted
the original enquiry that
there was no doubt as to the
petitioner's guilt. (Vide
the Deputy Commissioner's
Proceedings No. 4782 d 26-8-92). The

Flag B.

The

Flag E

Flag B.

The petitioner appealed
to the Board against the
Deputy Commissioner's Proceed-
ings, but the Board
declined to interfere and
dismissed the appeal with
the remark "that it greatly
"regrets that delays which
"have never been satisfac-
"torily explained postponed
"his [the petitioner's] trial
"to a date which rendered
"his conviction and the im-
"position of the punishment
"which he so richly de-
"served impossible". (B. P.
No. 4892 d. 5-11-92). The
petitioner now appeals to
Govt. against the Board's
order.

5. Attention is solicited
to the Deputy Commissioner's
Proceedings No. 4782 dated
26-8-92 in which the case
against the petitioner is
succinctly reviewed. The
reasons which led the
Deputy Commissioner to
record

record the order of dismissal
appear from the following
extract from the Proceedings
referred to: "The officers
who looked into the matter
at the time [1893-4] and
who were in a far better
position to decide on the
evidence than we can be
at this distance of time
when the evidence has been
confused by repeated exami-
nations and overlaid with
quibbles, till it is unrecog-
nizable, are unanimous in
considering him [the peti-
tioner] guilty. The Daksildar,
whose enquiry was of course
ex parte, was convinced
that he was so, and his
Divisional officer and
Collector forwarded his
report to that effect. An
experienced Inspector,
who conducted the sub-
sequent inquiry and heard
the other side, also was
certain of his guilt and
urged

urged his prosecution
long afterwards in spite
of the Assistant Commis-
sioner's suggestion that the
evidence ^{had been} ~~was~~ ruined
by the delay. The Assistant
Commissioner recorded it
as his opinion in May 1894
that "there was did not
seem to be any doubt
that a system of levying
blackmail was success-
fully instituted by Sub-
Inspector Shirmalai and
Aiyangar while in charge
of the Sirumangalam
Range. x x x x". The Magis-
trate who tried Krishna-
swami Row expressed his
opinion that Shirmalai
Aiyangar was also guilty
in the most unmistakable
terms, and the latter
petitioned urgently for a
transfer from his file. The
Sessions Judge, who con-
firmed his decision, also
mentions Shirmalai
Aiyangar's

"Aingaz's complicity, and
 "it is difficult to see
 "how the latter's innocence
 "can be consistent with the
 "proved guilt of Krishna-
 "Swami Row - a question
 "wisely ignored by the peti-
 "tioner. It may be added
 "that the Govt. Pleader
 "gave it as his opinion that
 "the two cases were of the
 "same nature and rested
 "on the same evidence".

6. The petitioner challenges
 the Deputy Commissioner's
 order on the following grounds:

(i) That the original mahala-
 zar was ~~written by~~
~~the petitioner~~ a ficti-
 tious one concocted by
 the petitioner's enemy
 Venkata Chari and that
 the Shanar owed him
 a grudge as he often
 prosecuted them for ab-
 surd offences;

(ii) That the enquiry held
 by the Tahildar was not
 conducted

7. Petitioner's appeal to the Board d. 11-12-96
 8. -do. appeal to Govt. d. 10-2-98.

conducted in a manner cal-
 culated to secure justice
 as the witnesses were collected
 in an open chavadi and each
 heard what the others deposed
 to;

(iii) That at the subsequent
 departmental inquiry also
 was not properly conducted,
 as the depositions made before
 the Tahildar were adopted
 and the witnesses were allowed
 to be cross-examined only in
 respect of those depositions;

(iv) That the Assistant
 Commissioner who framed
 the charges on which the revised
 order of dismissal was passed
 held that proof of the petitioner's
 guilt was wanting;

(v) That there is no connection
 between ~~his case~~ his case
 and that of Krishneswami
 Row; and

(vi) That there are many discre-
 pancies in the evidence on which
 the three specific charges
 framed against him rest
 and

And that one of the charges
was that ~~for~~ which he was
unsuccessfully prosecuted.
7. In forwarding the appeal
to Govt., the Board of Rev.
remarks that there is no
~~foundation~~ ^{foundation} in the record
for the allegation that
the original mahazar was
the production of the petitioner's
enemy Venkata Chari, that
the petitioner's case and
that of Krishnaswami Rao
are inseparably connected
and that the Deputy
Commissioner cited the Board
had before them the same
evidence as the Assistant
Commissioner and came
to the conclusion upon it
that there was no moral
doubt of the petitioner's
guilt.

8. It is respectfully
submitted that there seems
to be no reason to question
the Board's view that there
is no moral doubt as to of
the

Para 5 of the current.

xVide Dy. Comm's letter d. 24-10-97
No. 5872. (Copy obtained from the
Board). Flag K.

the petitioner's guilt. Orders
are requested.

Secy

I submit that there
is no reason why Govt. should
interfere. The case has
been thoroughly thrashed
out by numerous subordinate
authorities & one & all
appear quite satisfied
as to petitioner's guilt in
spite of his discharge
(as honorable acquittal)
by a criminal court.

This discharge is
the only fact in his
favor; but having
consideration to the
manner in which it
was brought about
I submit no weight need
be attached to it. The
case was systematically
delayed till conviction,
especially before a Dy.
Magistrate, was hopeless.
Please see para 6 of
the Dy. Comm's Prop. L.
26-8-97 flag B pp 11 to 12

There seems to be no doubt
that petitioner had
influential friends
in the Asst Commr &
Dy Commr & apparently
in the Board of P.W.
also. Vide the curious
mistake in the
copy of B.P. No 4852
D 5 Nov 97 Fly E sent
to petitioner ("now" for
"never").

WLL
29-4-98

It is

There is the central fact that
these illegal exactions were
perpetrated. This was distinctly
found in the case of Krishnaswami
Rao & Ponnusami Nengar; the
Magistrate's conviction being upheld
by the Sess Ct. & the High Ct.

The question is whether
the Petitioner was concerned or
implicated.

That he was acquitted
by the criminal Court which
tried him three years afterwards
is no bar to his dismissal if

* Vide para 4 of the
B.P. under disposal.

the departmental inquiry was
held & had conclusively
that the man is unfit to
be retained in the public
service.

The three cases
against him, investigated
at the departmental inquiry, were
found at pp 15-23 of
the Dpt. Govt's records of
26 Sept 97 (clip B). These should
be read with his original
Prop. of 21 Nov 96, which
forms Appⁿ A (clip A) to the
petitioner's memorial.

At that inquiry the
Dpt. Govt. was convinced
of his guilt, considering it
amply established by the
witnesses examined.

The Board of Res. are
equally satisfied & only
regret that the delay in
taking crim. prog. against
him enabled him to escape
the crim. punishment
"which he so richly deserves".

I cannot find any
sufficient ground for criticising
these findings, & submit that
the Govt. decline to interfere

JS.
3/5/78 *BS*
575798

See
Please see draft
on docket
W
6.5.78
me 575798

Given for copying _____
Copied _____
Examined _____
Signed _____ } 189 .

AGAIN G.O., No. _____ DATED
189 ,

RENT No. _____

ENCLOSURES TO G. No. _____

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILLED UP, BEING WANT FOR DESPATCH
IN ORIGINAL.

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