O/9 · 5,000—17-12-98.

Revenue (1899) Department.

Routine

~~MISCELLANEOUS~~ SERIES.

G.O., No. 406

DATED 16th March 1899

Printed with
Ltr. 505 dt 3/2/99

[Despatch Abstract.]

Informing the R. Rg a Subbaraatna Sastri
late Dfr: Jahsildar & Sub-Magistrate of Avi-
nashi in the Coimbatore dt that the Govt see
no reason to reconsider its order withholding
his Memorial to the Govt of India in the
matter of his dismissal from the service.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
~~G.O.~~ 3197/97 ~~G.O.~~ 678 dt 18-5-99 G.O. 4204/00. dt 18th Nov 1900							

Revenue (1899) Department.

CURRENT No. 1619

Dp 16/3/99

Order R. No. 406 dt 16th March '99

From

The Board of Revenue, Land Revenue, Madras.

The petitioners will be informed that the Govt. sees no reason to reconsider G.O. No. 505 Revenue dt 3rd Feb. '99.

15-3-99

No. 811 Misc.

Dated 4th March 1899

Received 6th March

Registered 7th "

Enclosures

Spare copies

MADRAS GOVT. REVENUE DEPT.

To the petr, with encls. (all except petn) } Secy 18-3-99

" " Bd of Rev: Lr. ~~with encls.~~

Note.

Attention is solicited to the notes under G.O. No. 505 dt 3.2.99. It is submitted that the petr. does not now address any grounds for a reconsideration of that order.

Dp 7.3.99.

Secy 11/3/99

SUBJECT.

Forwarding to Govt. the memorial of M.R.Ry. A. Subbaratna Sastri, late Dy. Tahsildar & Sub-Magistrate of Avanashi, Coimbatore District, praying that his memorial to the Government of India, the transmission of which was withheld, may be forwarded to its destination.

C/3/3/99
Rec'd 14/3/99

BACK PAPERS.

G.O.	No.	Department.	Date.
G.O.	505	Rev	3-2-99
G.O.	5784	Rev	11-11-97

FURTHER PAPERS.

G.O.	No.	Department.	Date.

1,000
10-12-98.

REVENUE BOARD OFFICE. MADRAS.

Proceedings of the Board of Revenue

(Land Revenue).

No.811 Misc.Dated 4th March 1899.

Read letter from C.H.Mounsey Esq.,Ag.Collector of Coimbatore to the Secretary to the Commissioners of Land Revenue, Madras,R.on Path.No.45-Rev.Appl of 1898,dated 24th February 1899.

Resolution

The Board submits to Government the memorial of -- M.R.Ry.A.Subbaratna Sastri,late Deputy Tahsildar and Sub-Magis---- trate,Avanashi,Coimbatore District,praying that his memorial to -- His Excellency the Viceroy in Council,the transmission of which -- was withheld in G.O.No.505 Mis.Rev.,dated 3rd February 1899,may be forwarded to its destination.The attention of Government is invi-- ted to the language in which the present memorial is couched.

/True Extract/

Lionel Davidson
Ag.Secretary.

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

Q.B.

189 .

Board of Revenue

(Land Revenue),

MADRAS.

To

Subject.

PETITION

0153

21 FEB. 1899

REVENUE DEPT

To

HIS EXCELLENCY THE RIGHT HON'BLE,

SIR ARTHUR ELIBANK HAVELOCK, G.C.M.G., G.C.I.E.,

GOVERNOR IN COUNCIL OF MADRAS.

The humble Memorial of A. SUBBARATHNA SHASTRI, *late Sub-Magistrate and Deputy Tahsildar of Avanashi, Coimbatore District, Madras Presidency.*

MOST RESPECTFULLY SHEWETH

In obedience to the enclosed order of the Madras Government, dated 3rd February 1899, No. 505, Mis. withholding his Memorial to the Government of India forwarded on 13th October 1898, on the ground that the appeal was made more than six months after the communication of the dismissal order without satisfactory explanation of the delay, Your Excellency's humble Petitioner most respectfully begs permission to point out that the Memorial withheld was not the appeal but only a supplement to the appeal (Enclosure II) which was submitted within six months after the communication of the dismissal order and which the Government was already pleased to forward to the Government of India (Vide Enclosure III). If however the appeal submitted within the prescribed time should receive no consideration on the ground of the delay in submitting the supplement, he respectfully begs leave to give hereunder, as briefly as possible, the most horrible and extraordinary circumstances which led to his dismissal, and show that it was entirely owing to those circumstances and what followed as a necessary consequence thereof, that it was utterly impossible to submit the supplement earlier.

2. An accused person against whom a complaint of house-trespass and assault was lodged before Petitioner, was maliciously induced by Petitioner's enemy the Police Inspector of his division to prefer a false complaint that the case was instigated by Petitioner, and to allege falsely that it was instigated because he had previously refused to do some help on account of a woman who was again falsely alleged to have been Petitioner's mistress and who had died.

3. This complaint against Your Excellency's Petitioner was enquired into by the District Magistrate Mr. H. Bradley as a File case without notice to Petitioner and found to have been utterly false and concocted.

4. Thereupon, the Police Inspector who was all the time working systematically against Petitioner, won over a certain disreputable person completely, and prepared him to say that the woman had been in Petitioner's keeping.

5. The Head Assistant Magistrate, a young native who was for reasons best known to himself acting on the Inspector's tales against Petitioner, and who had previously spoken to the District Magistrate personally in the matter, forwarded the concocted witness in the custody of the same Inspector, knowing that the Inspector was Petitioner's enemy and having sufficient reasons to believe that the witness was got up by the Inspector; and by means of further false representations, induced the District Magistrate to accept the witness implicitly.

6. The District Magistrate accepting the witness recorded a sworn statement, that the woman had been in Petitioner's keeping, without the least knowledge of Petitioner, and in the presence of no other than the above Police Inspector, knowing that the same must have been fabricated by the said enemy of Petitioner.

7. Thus, the District Magistrate allowed the fabrication of the false evidence in the matter of an alleged concubinage of which it is imperatively laid down in Section 198 of the Code of Criminal Procedure, that no court should take cognizance except upon the complaint of the person aggrieved by the defamation.

8. Moreover, the District Magistrate just on the day preceding the actual examination of the above witness, questioned Petitioner also upon oath whether it was not true that the deceased woman had been his mistress, recorded his sworn denial and unnecessarily disgraced him, which, it is humbly submitted, was against all civil and criminal laws respecting the sacredness of a man's private character.

9. In accordance with this view, on the Collector's recommending that Petitioner might be retired on pension as he told falsehoods in denying the alleged concubinage, the Board of Revenue was pleased to call upon the Collector to explain his unauthorized examination of Petitioner upon oath about his private character. But the Collector could not explain it, as it must be always inexplicable.

10. So, it became all the more necessary for him to make the Board believe that the aforesaid false evidence which he had also used against Petitioner by submitting it to the Board, which was again, without letting Petitioner know anything about it, was not false and fabricated but that Petitioner's denial was false.

11. Accordingly, the Collector wrote to the Board that he had since seen a photo of Petitioner said to have been in the possession of the deceased woman; but the photo was never shown to Petitioner, and was as it must necessarily be another fabrication of false evidence. He also made several other statements which Petitioner has shown in the Memorial to be misleading, incorrect and untrue; and consistently with such representations, changed his original recommendation into one for dismissal. Admittedly, the Collector had also had a previous personal conversation with one of the Commissioners of Land Revenue, in connection with the matter.

12. At last, the Collector was supported thus: "The Board after carefully perusing the records" left untouched altogether the point originally noticed by itself *viz.* that the District Magistrate's examination of Petitioner upon oath about his private character was illegal, for which reason alone the Collector's report ought to have been upset then and there; misstated the above illegal act of the District Magistrate as his putting Petitioner upon his defence which really never took place; and made no mention of the aforesaid false evidence actually placed before it, or of the photo most prominently mentioned by the Collector, a slight examination of the merits of which would have unavoidably led the Government to notice several unpleasant and painful truths; and accordingly agreed with the Collector in considering that Petitioner falsely denied that the deceased woman was his mistress. Agreeably to this, the Board considered that Petitioner's other statements which went to support that denial were so many other falsehoods, and consistently, recommended that Petitioner having told falsehoods on such a scale should not be retained in service. Accordingly, the Government dismissed him.

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13. The dismissal order was communicated to him on 30th October 1895, *i.e.* 37 days after it was passed.

14. Now, Petitioner humbly begs permission to submit that the sole question at issue in this case is whether the entering into Petitioner's alleged intimacy with the deceased woman was not illegal and improper. There was never any complaint either from the deceased woman or any person interested in her behalf that Petitioner spoiled her chastity or that he had any manner of intimacy with her; nor was there any complaint of defamation from Petitioner against the man who defamed him by alleging that he had kept the woman; nor was any civil, criminal or Revenue Court or Officer invested under the Code of Criminal Procedure either with the duty or the power of enquiring into the alleged concubinage, for any other cause. So, there was a clear legal prohibition to enter into the matter judicially, which the Collector admittedly did. Nor could the Collector enter into the matter departmentally. For, the Government could not punish Petitioner for keeping a woman, as will be manifest from the fact that the Government did not punish him for keeping the deceased woman as believed by it. If the Government had really punished him for it, the dismissal order would have plainly stated so. He is not aware of a single instance in which a Government servant high or low has ever been punished for such an act. If such vices in private life were to be taken notice of, very few Government servants could be safe. And if the private character of Government servants were to be enquired into, the best and most of them must become guilty of falsehoods as it is simply virtuous and honorable not to reveal such private secrets. Accordingly, the rules relating to the conduct of public servants neither prohibit the act of keeping a woman nor authorize an enquiry into the matter. So, there was absolutely no necessity to enter into the alleged concubinage departmentally. Indeed, there was a complaint against Petitioner that he had instigated a false charge against a certain party in connection with the alleged concubinage, but the District Magistrate was so thoroughly convinced of the falsity of the complaint that he never questioned Petitioner a word about it nor did he think it worth while to make any mention of it in his report to the Board. Nor has the Collector reported that Petitioner committed any official irregularity as a consequence of the alleged concubinage. Even if the complaint had been proved, Petitioner could have been placed on his criminal trial directly without enquiring into the alleged concubinage. In the same way, if he was guilty of any official irregularity, he could have been departmentally punished without going into the private matter. But the Government had not had the remotest suspicion that he committed the above offence or any irregularity; else, he would have been justly and properly dismissed on that ground. There was thus no necessity to enquire into the matter on any account. If the Collector had wished for a moment that Petitioner should clear his private character, he could have ordered Petitioner to do so; but the Collector strongly admits in his report that "the private character of an official is of no importance to Government." Thus, Your Excellency in Council will be graciously pleased to see that the enquiry into the alleged concubinage was quite illegal and improper in every way.

15. Then, it is scarcely necessary for Petitioner to submit that the charge of falsehoods which arose out of such an enquiry was worse than illegal and that the punishment inflicted on him on such a charge was equally so.

16. As however the Government itself so punished him even though he had previously drawn the attention of the Collector, the Board and the Government to the character of the enquiry, he concluded that it was simply his misfortune; but hoped that the best remedy was to show that the charge was not proved, which, in the consciousness of his innocence he was perfectly confident that he could do at once, as the allegation that he had kept the woman which gave rise to the charge was purely a malicious falsehood.

17. Agreeably to his confidence, he found the Collector himself to state in his report copy of which was granted 5 months after the communication of the dismissal order, "Were it proved that the woman had been in his keeping I should have recommended his prosecution," and thus clearly admit that there was no evidence to prove it; while the Board and Government did not specify any evidence to prove the same. Thereupon, he submitted his appeal stating that the charge against him was unfounded and not supported by the evidence, on 27th April 1896.

18. However, the Collector, as submitted hereinbefore, had made several extraneous, *misleading*, *incorrect* and *untrue* statements in the report, by which the Government had been apparently led to think that he had kept the woman. Therefore, he felt it necessary to show in a supplement that the above statements should not be accepted as proving the charge; but the Collector refused (Vide Enclosure IV) to grant all those records which would enable him so to show, though the Collector had expressly referred to those records in support of his statements; and after some correspondence, the Government also finally confirmed the Collector's refusal, informing Petitioner that those records "would not assist him in his defence," Vide Enclosures V and VI.

19. This Government order was received by him on 30th September 1896, *i.e.* eleven months after the communication of the dismissal order and five months after his submitting the formal appeal. He could not help feeling that he was prevented from obtaining the necessary redress. The meaning of the expression that the records refused would not assist him in his defence, was also not quite clear to him. The expression might mean that the records were rejected by the Government itself as worthy of no consideration and were consequently immaterial to him; or that the records were so strong against him that he could gain nothing by getting them, though he alone, in the consciousness of his innocence and in the interests of his defence, could know what he could gain by seeing them. Still, without brooding over his persistent misfortune and giving up his cause, and without losing any further time, he prepared such supplement as he could prepare without the requisite materials, and submitted it printed, on 9th December 1896, but with very little hope of convincing the Government of India of the real truth of the matter, as the supplement was necessarily imperfect. He tried by special petitions to obtain an interview with his Excellency the Governor in order to disclose the secrets of the misfortune referred to, in person; but he did not succeed. While so painfully situated, he happened to be irresistibly led to the conclusion that the abovementioned language of the Government could only mean that the records refused were not relied upon by the Government and that the Collector's statements based on them could not therefore prove that he had kept the woman. Accordingly, he hoped that the order of dismissal would, of necessity, be revised by the Government if he put in a Review

Petition. So, ascertaining from the then Under-Secretary Mr. Davidson that his supplement had not yet left the Madras Government, he presented a petition requesting that the same might be treated as a Review addressed to itself. But Petitioner was entirely disappointed by getting the order of the Government declining to modify its former order.

20. This Government order (Enclosure VII) was received by him on 17th November 1897, *i.e.* eleven months and eight days after the submission of the supplement. Seeing that the Collector himself admitted that it was not proved that the woman had been in his keeping because the Collector must have been aware of the falsity of the evidence on the point fabricated by the Police Inspector; that the Board and Government did not, as they could not, specify any evidence proving the same; that they were however led into believing it by the Collector's own statements, but yet they were not pleased to grant the required records and enable him to meet those statements; that the Government was only pleased to inform him that the records refused would not assist him in his defence, but not let him know what records would assist him in the matter; and that still the Government was not pleased to modify its original order: Petitioner thought that the best and only thing he could do was to get an opportunity of cross-examining the witness suborned by his enemy the Police Inspector, who had stated *in cognito* that the woman had been in his keeping, and the person from whom it was said that the Collector saw Petitioner's photo, and thereby demonstrating publicly, once for all and beyond all doubt that there could not be a grosser falsehood than the allegation that the woman had been his mistress, in which case the whole fabric against him must quietly fall down. But he had only to trouble again the Government for an order for such an opportunity, and in case of its refusal, to address a special petition to the Government of India, which must be again through the Collector, the Board and the local Government. Petitioner was afraid that this course could not come to a termination before many months were over. He had already had to spend two best years of his life not only in vain but in constant anxiety and trouble for no fault of his. Therefore, without losing time, early in December 1897, he lodged a complaint of defamation against his original maligner, most reasonably expecting to get the desired opportunity as a matter of course, and that, within a week or so. But it so happened that Mr. A. C. Dutt the Assistant Magistrate of Coimbatore before whom the complaint had to be lodged according to the law of local jurisdiction, had been just recently degraded from Sub Collector to that post on the report of the same Collector. He did not make a legal enquiry into the complaint lest he should record a finding contrary to the report of Mr. Bradley. He suggested at once to the then District Magistrate Mr. Butterworth that the complaint might be summarily dismissed under Section 203 C. P. C., but the District Magistrate did not approve of the suggestion, Vide Enclosures VIII and IX. Mr. Dutt then obtained the records of the Collector Mr. Bradley's enquiry including his reports to the Board, (Vide Enclosures X & XI); and abused his own powers. He ordered, quite contrary to the plain law on the subject, that Petitioner should prove that he had not kept the woman, instead of directing the defendant to prove either the truth of the defamation or the circumstances justifying it if it were justified under any circumstance; and insisted on Petitioner doing so by ordering that he should not be allowed afterwards to produce any evidence to rebut the evidence let in by the defendant, as will

be seen from the affidavits filed by his Pleaders, Enclosures XII and XIII. However, considering the enormous loss of time to which he had already been subjected, he obeyed the order and produced the best evidence that could ever be produced to prove the negative, and proved that he had not kept the woman. Thereupon, Mr. Dutt misstated certain material facts appearing in the recorded evidence, so as to show that the defendant was justified in thinking that Petitioner had kept the woman, and threw out the case on that ground. No appeal lies against an order of discharge; and Petitioner wished to try what little remedy was left. He accordingly put in Revision petitions before the Sessions Judge and the High Court; but in the exercise of their discretionary powers in the matter, both the courts dismissed the petitions on the ground of privilege, without calling for the records, naturally believing that Mr. Dutt would not have made any misstatements in his judgment.

21. The High Court order (En. XIV) was passed on the 10th August 1898, and he got copy thereof on 2nd September 1898, Petitioner was thus disappointed even in the judicial course. So, it only remained for him either to lodge a complaint against Mr. A. C. Dutt for knowingly disobeying a direction of the law, (Sec. 166 I. P. C.), or in accordance with the suggestion of the Acting Chief Justice of the High Court verbally made, to apply for sanction to prosecute the above maligner for perjury, in which case, he could not escape on the ground of privilege. But either step would occupy a considerable length of time in addition to other hardships. He therefore postponed both the steps; and trusting to Justice itself, he prepared a fresh supplement with such reliable materials as he had been able to gather, and submitted it printed, on 13th October 1898, requesting that the same might be forwarded to the Government of India in continuation of his formal appeal.

22. Thus, Your Excellency in Council will be graciously pleased to see that the delay noticed in the submission of the supplement was quite unavoidable.

23. Petitioner most humbly begs permission to ask whether in accordance with the world-famed principles of the British justice, and the most benevolent orders of the Governor-General and Viceroy about the dismissal of public servants, it was not absolutely necessary to consider:

(1) whether it is just that Petitioner should be dismissed on a bare charge of falsehoods which arose only in consequence of an unjustifiable enquiry, and deprived even of the pension which he had rightfully earned for his 27 years' service;

(2) whether, even in that case, it is not necessary that the charge should be supported by the evidence;

(3) whether it is not essential that he should have been informed of the evidence, if any, in support of the charge and enabled to furnish his defence before he was dismissed;

(4) whether it is not necessary that he should be informed of the same at least after dismissal and enabled to make a proper appeal;

(5) whether in the face of the Collector's own admission that it was not proved that the woman had been in his keeping, it was proper that the Board or Government should conclude without any evidence that Petitioner falsely denied the keeping;

(6) whether, if this conclusion is not legitimate, it was reasonable to suppose that Petitioner's statements consistent with the above denial were false;

(7) whether, in such circumstances, it was not fair that Petitioner should beg to know the evidence and records upon which he was found guilty of falsehoods;

(8) whether, on the Government refusing to let him know the same, it was not an unavoidable necessity for him to try to establish his innocence in the judicial course which was open to him, in which he expected to be able to do so within a few weeks at most and in which he would have surely effected his object but for Mr. Dutt's deviation from the plain law in the matter;

(9) and whether it is kind and merciful that the delay which was so indispensable and which Petitioner had no power to prevent, should be taken as a ground for withholding the Memorial.

24. Your Excellency in Council may be graciously pleased now to wonder why the Collector who had recourse to so many other ways of leading the Board and Government to think that Petitioner had kept the woman, failed to examine in Petitioner's presence the aforesaid witness of his enemy and get it proved directly that he had kept her; and how, in the face of the repeated orders of the Viceroy on the subject, it was possible for the Board and Government not to notice the failure. Petitioner most humbly and respectfully begs permission to submit that the fact of the matter was this. The Collector was himself convinced of the falsity and fabrication of the witness's statement which would not have come into existence but for his recording it in Petitioner's absence; for there was otherwise no reason why the Collector should state that there was no evidence to prove the alleged concubinage. But if he did not let the Board see that statement, it would be impossible with all his personal assertions to lead the Board to think that Petitioner's denial was false. So, he necessarily sent the statement to the Board; and avoided the necessity of explaining his omission to examine the witness in Petitioner's presence, by stating that he did not do so because Petitioner stated that he was unable to make his defence. But, unfortunately for Petitioner, the Collector was also never questioned as to what necessity he had to ask Petitioner for his defence before examining the witness in his presence, though it is a well known fact that Petitioner could never prove that he had not kept the woman except by cross-examining and falsifying the witness proving the affirmative. Indeed, Petitioner made such a statement, but he could make no other statement, if asked to make his defence without being given the above opportunity; and he made it again quite against his will owing to the Collector's pressure. The very preposterous nature of the statement would convince that it must have been wrongly obtained; and Petitioner has proved in all his previous petitions the circumstances of pressure in which the statement was exacted from him. He most

respectfully and humbly begs permission to submit that he is under the most painful necessity of adding here very regretfully that the local Government had, just 5 years before, passed the following remark about Mr. Bradley as Secretary to the Commissioner of Salt and Abkari, as will be seen from G. O. No. 182 dated 4th February 1890 which is quoted in Appendix IV of the appeal of one K. Krishna Row to the said Government :—"When Subbasami Row was examined as to the part he took in certain pecuniary transactions he himself was in respect of these matters in the position of an accused person and must if he admitted the borrowings on behalf of K. Krishna Row have incriminated himself. He was under no legal obligation to give any information and what he gave was apparently against his will." The pressure and disgrace were such that Petitioner would rather retire and do worse. But all this was due to the joint conduct of the Police Inspector and the Head Assistant Magistrate who was shortly after prosecuted by a certain whore before the District Magistrate of Salem, the now Honourable Mr. LeFanu.

25. In conclusion, the appeal was made within the prescribed time. It was made on the only two grounds on which it properly rests, *viz.*, (1) that the charge was unfounded, and (2) that the charge was not supported by the evidence. That the charge is unfounded was manifest because it had arisen from a non-observance of the fundamental law which it has always been unnecessary for poor Petitioner to point out to the Government the framer of all laws and rules. That the charge is not supported by the evidence was equally manifest from the fact that the Collector himself had officially reported that there was no evidence to prove that Petitioner had kept the woman, which fact the Government could not help noticing in forwarding as it did forward his appeal to the Government of India, because the Government order had been entirely based on the Collector's report. Thus, the appeal has always been capable of being decided without any further materials.

(*a*) The necessity for a supplement arose however thus:—Neither the Board nor the Government specified any evidence proving that Petitioner had kept the woman. They did not specify the falsehoods themselves which were included in the charge. So, he was obliged to believe that the charge was entirely based on the Collector's own statements of the unreliability of which Petitioner could never convince unless the records refused were granted, or the two entirely concocted witnesses—the Inspector's witness and the photo witness were examined in his presence. Hence the delay in the submission of the supplement in question.

(*b*) But all this supposed evidence and want of evidence are quite immaterial, regard being had for the above described character of the enquiry into the matter.

(*c*) Petitioner has not been very willing to undergo such long and continuous hardship or give the Government so much trouble; but his impressions of the British justice are so strong and indelible that his innocence compels him still to seek and obtain the necessary redress.

In these circumstances, Petitioner most humbly begs to pray that Your Excellency in Council will be graciously pleased to order the transmission of the Memorial withheld, for such orders as he may deserve on the merits of the case at the hands of the Government of India. It will be seen that his dismissal was ~~unjustified~~ unjustified.

19th February 1899.

Rabbarathnay
Telugu Brahmin Street,
Coimbatore.

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

READ 4/JAIN G.O., No. , DATED 189 .

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT	A	A	A	A	A	A	A
LETTER OF GOVERNMENT							
STATEMENT WITH DITTO.							
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.							

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