

1937

38086

CO 533/480

38086

21

KENYA

21

PETITION

GIRDHARI LAL THAPAR

Previous

M: D. 2/12/37
M: Flood. 21
R 297

Subsequent

R. 297 30/1/37
R. 309 1-10
M: ~~...~~ 9/10
M: Laskin SAC 7/10
M: D. 24/10/37
M: Flood 21/10
21-10
Sir G. Tomlinson 27/1/37
Sir C. Bellamy 22/10
Lord Sufferin 27/10
E. A. Dyer 28/10
M: D. 24/1/37
M: Laskin 24/1/37
M: 297 14/12
R. 309 4/12
M: Laskin 24

C.I.

PETITIONS.
Nominal (G & T)

1. GOV'S DEPUTY, KENYA.....562.....22.9.37.
Trs., with comments, petition submitted by Mr. S. R. Gautam
for and on behalf of Girdhari Lal Thapar appealing
against his dismissal from the Police Force.

This is a case of a former Assistant Sub-Inspector, called Thapar, who strung up two suspects in the noon-day sun in an attempt to force a confession.

Mr. Thapar had secured a transfer to the Local Civil Service by means of the letter which forms the second enclosure to 1; in that he acknowledged himself subject to the regulations governing the Asian Local Civil Service.

He was convicted by the Court for the above offence, and fined. The Governor thereupon applied No. 29(2) of the Local Service Regulations (given in paragraph 5 of 1 - see also flagged on 38048/3/35) and dismissed him. Whether or not the correct method of dismissal was employed, I do not think there is any doubt at all that Mr. Thapar deserved dismissal.

It is now claimed on his behalf that, being a Police Officer appointed under the Police Ordinance, he could only be dealt with under the provisions of that Ordinance, which contains no power of dismissal unless the officer has been convicted and imprisoned. It is alleged that his dismissal was therefore ultra vires. The memorandum of appeal quotes various sections of the Police Ordinance in support of this view (to which I think Section 16(1) as amended by Section 6 of the 1934 Amending Ordinance might have been added).

dy 24/11.

Whatever the merits of the case presented in the petition, it is certain that there is power to dismiss Mr. Thapar under Section 24(2)(1) of the Police Ordinance if his conduct led the Commissioner to think him no longer an efficient officer. The Commissioner

Commissioner, in fact, formed this opinion (see paragraph 4 of the despatch); and it may be that the Government would have been wiser to proceed under this Section of the Ordinance. ^{But} ~~However,~~ ^{was to} even if legal opinion ^{is} uphold the contention in the petition, it ~~is~~ still open to the Government to confirm the dismissal on grounds of inefficiency ^{under the Police Ordinance.}

It might not therefore be ^{thought} worth while examining the case in the appeal so far as this officer is concerned; but as other Police officers who may be members of the Local Civil Service may also be affected in the future on the point raised in the petition, perhaps Mr. ^{Duncan} ~~White~~ will advise whether the Governor proceeded ^{rightly} ~~wisely~~ in applying to Mr. Thapar the regulations of the Local Civil Service. Subject to his observations, I suggest replying that the Secretary of State is not prepared to intervene.

Ormskirk
1.10.1937

*It seems clear under 29(2) of the
Reg. that in cases of the description the
is provided in the order. That
the powers of 71 - apart from its nature
of reference to the order which is not needed then
the officer's past conduct, see below p. 9. -
and the fact that the punishment was paid by a
Court was a fine & not imprisonment is no
reason for a lesser service penalty than
dismissal of, as in this case, the circumstances
justify the officer's removal from service. J. J. 1937*

There are, of course, no merits in this case; and, as there is power under the Police Ordinance to dismiss this man, I agree that we can reply that the Secretary of State is not prepared to intervene.

Mr. Thapar, however, should have been dealt with under the Police Ordinance and not under the regulations in question. I think, therefore, that in our despatch we should say that the Secretary of State is concerned about the procedure adopted in this case, and continue to the following effect:

"In paragraph 5 you draw attention to the terms of Mr. Thapar's appointment and say that his case falls within the provisions of paragraph 29 of the Secretariat circular No. 15 of 1935.

Am I to understand that you are advised by your Law Officers that, notwithstanding ~~that~~ the Police Ordinance ~~which~~ contains a complete code for appointment, discipline, and dismissal, these statutory provisions can be varied by a Letter of Appointment such as that of the 20th of September, 1935, a copy of which was enclosed in your despatch? If so, perhaps you would be good enough to furnish me with a copy of their opinion.

I also desire to point out that, in any case in which a point of local law is involved, a report from the Law Officers should accompany the despatch".

Please let me see the draft despatch in due course.

20/10/37.

H. Duncan.

*St. Lambert
7/10*

P.P.

Commissioner, in fact, formed this opinion (see paragraph 4 of the despatch); and it may be that the Government would have been wiser to proceed under this Section of the Ordinance. ^{But} ~~However,~~ even if legal opinion ^{was to} uphold the contention in the petition, it ~~was~~ ^{is} still open to the Government to confirm the dismissal on grounds of inefficiency ^{under his Police Ordinance.}

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Ormond
1.10.1937

It seems clear that under 29(2) of the Act...
...dismissed was in order. That
... 71 - apart from its omission
of reference to his salary, which is not needed when
the officer's pay is included in his salary.
and the fact that the punishment was paid by a
Court was a fine & not imprisonment is no
reason for a lesser or no punishment than
dismissal of, as in these two cases, the circumstances
justify the officer's removal from service. *J. G. G.*

There are, of course, no merits in this case; and, as there is power under the Police Ordinance to dismiss this man, I agree that we can reply that the Secretary of State is not prepared to intervene.

Mr. Thapar, however, should have been dealt with under the Police Ordinance and not under the regulations in question. I think, therefore, that in our despatch we should say that the Secretary of State is concerned about the procedure adopted in this case, and continue to the following effect:

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20/10/37.

H. Duncan.

Phil Campbell
7/10

P.T.O.

PETITIONS.
Nominal (G & T)

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Mr. Thapar had secured a transfer to the Local Civil Service by means of the letter which forms the second enclosure to 1; in that he acknowledged himself subject to the regulations governing the Asian Local Civil Service.

He was convicted by the Court for the above offence, and fined. The Governor thereupon applied No.29(2) of the Local Service Regulations (given in paragraph 5 of 1 - see also flagged on 38048/3/35) and dismissed him. Whether or not the correct method of dismissal was employed, I do not think there is any doubt at all that Mr. Thapar deserved dismissal.

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Whatever the merits of the case presented in the petition, it is certain that there is power to dismiss Mr. Thapar under Section 24(2)(1) of the Police Ordinance if his conduct led the Commissioner to think him no longer an efficient officer. The

Commissioner

dpy att'd.

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It might not therefore be ^{thought} worth while examining the case in the appeal so far as this officer is concerned; but as other Police officers who may be members of the Local Civil Service may also be affected in the future on the point raised in the petition, perhaps Mr. ^{Duncan} ~~Beck~~ will advise whether the Governor, proceeded ^{rightly} ~~so~~ in applying to Mr. Thapar the regulations of the Local Civil Service. Subject to his observations, I suggest replying that the Secretary of State is not prepared to intervene.

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1.10.1937

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Reg. passed in para 5 of his despatch this
was dismissed in an order. That
he follows cl 71 - apart from its omission
of reference to his 4d. which is not needed since
the officer's previous employment, see below p. 9. -
and the fact that the punishment was imposed by a
Court was a fine & not imprisonment is no
reason for a lesser service penalty than
dismissal if, as is here the case, the circumstances
justify the officer's removal from service. J. G. 1937*

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"In paragraph 5 you draw attention to the terms of Mr. Thapar's appointment and say that his case falls within the provisions of paragraph 29 of the Secretariat circular No. 15 of 1935.

Am I to understand that you are advised by your Law Officers that, notwithstanding that the Police Ordinance ~~which~~ contains a complete code for appointment, discipline, and dismissal, these statutory provisions can be varied by a Letter of Appointment such as that of the 20th of September, 1935, a copy of which was enclosed in your despatch? If so, perhaps you would be good enough to furnish me with a copy of their opinion.

I also desire to point out that, in any case in which a point of local law is involved, a report from the Law Officers should accompany the despatch".

Please let me see the draft despatch in due course.

20/10/37.

J. Duncan.

P.P.O.

I should prefer to reply
officially that the S.O.S.
is not prepared to
intervene, and put Mr
Duncan's points to Mr
Pilling in a s-o letter.

C. J. Zeffrin
21.10.37

I agree. As regards Thapan the point is that
"substantial justice has been done" though Kenya moved in
a queer way to do it.

The facts are in the first instance.

S.O.S. Hand 24.10

S. J. Zeffrin
22.10.37

Lord Zeffrin

I agree

22.10.37

Refuse to intervene, but put
Mr Duncan's points politely in a
s-o letter as Mr Zeffrin's suggests.

S. J. Zeffrin

27.10.37

H. Duncan

I agree with the terms of the attached
draft letter to Mr Pilling as now
amended by me.

9/10/37

H. Duncan.

2. To H. Pilling. S.O. 15.11.37.

3. To Kenya 994 - 1. Duncan. 15 NOV 1937

4. H. G. Pilling (S/O) 30.11.37
(2. Prod.) To. further information is required.

This would appear to be a wholly satisfactory
answer. There is no dispute on the law; and
the amended procedure followed in this particular
case is recognised by Kenya to have been
irregular.

? Mr Duncan to see a copy by

Clothing labels

J. J. P. P. P.
10/12

Seen.

21/12/37

H. Duncan

Good

S.O. Hand

21

Hand

4

RECEIVED
13 DEC 1937
G.O. REGY

No.S/Est.19/1/1275/59.

The Secretariat,
Nairobi, Kenya.

30th November, 1937.

Dear Flood,

I was not surprised to receive your letter No.38086/21/37 of the 15th November regarding the dismissal of Girdhari Lal Thapar as we felt that though justice had been done by his dismissal the method by which this was effected left much to be desired. Perhaps it would be better if I elaborated this.

2

2. In January last the Acting Commissioner of Police asked for this man's dismissal under the terms of Section 29 of Secretariat Circular No.15 of 1935 because the fact that he had been sentenced to a fine did not permit of dismissal under Section 48 of the Police Ordinance. As is customary in such matters we sought the Attorney General's advice and the reply we received said "I would advise the Governor be recommended to dismiss First Grade Assistant Sub Inspector G.L.Thapar from the Force." This was submitted to the Acting Governor who minuted as follows:-

"We spoke and I have since seen the Acting Commissioner of Police.
I explained to the latter that I was rather reluctant to take advantage of a Secretariat Circular dealing with conditions of the Local Civil Service in taking disciplinary action against a member of the Police Force, when there is a Police Ordinance which purports to provide for all disciplinary action. Section 48 of that Ordinance does not contemplate dismissal as a result of an offence which the Criminal Court considers to be not sufficiently serious to warrant a sentence of imprisonment.

However

J.E.W.Flood, Esqr., C.M.G.,
Colonial Office,
Downing Street, London S.W.

However quite apart from this the Commissioner of Police has explained that the man's character is unsatisfactory and had there been no Local Civil Service conditions applicable he could have taken action under Section 24(2)(1) of the Police Ordinance as he considers that the offender 'has ceased to be an efficient police officer'. The Commissioner of Police feels very strongly that he should no longer remain in the Force and in view of all the circumstances I agree to the dismissal of Girdhari Lal Thapar from the Asian Local Civil Service. "

The gist of this you will observe was reported in paragraph 4 of our official despatch.

3. Subsequently, Advocate Gautama, in his letter of the 15th April, asked on what grounds the man had been dismissed and on the advice of the Attorney General he was told that the dismissal was by virtue of the powers conferred on the Governor by the regulations which govern the Kenya Asian Local Service.

On receipt of his memorandum enclosed in our official despatch, we asked the Attorney General to draft our despatch, which he did, and again on receipt of your letter under reply we sought his comments. He has replied:-

"When Mr. Gautama's letter of the 15th April was received it was realised in this office that the provisions of the Police Ordinance should have been invoked but as the officer had already been dismissed under the Regulations there was no option but to inform Mr. Gautama accordingly.

When the petition of the 26th August was referred to this office I nearly advised that the case should be considered de novo and that it should be dealt with by the Commissioner of Police under the Police Ordinance but as it was a particularly bad case, and as the Commissioner of Police could in fact have dismissed him under section 24(2) I came to the conclusion that although the Secretary of State might refer to the technical irregularity he would be unlikely to allow the appeal.

Realising the difficulties I specifically refrained from commenting on the legal aspect in the draft despatch sent to you under cover of memo of the 20th September preferring to rely on the merits."

4. I trust that the foregoing will satisfy your Legal Advisers that our Law Officers do not contend that statutory provisions regarding appointment, discipline and the like can be varied by a letter of appointment.

I have issued office instructions that a report from the Legal Department is to be sent in any case in which a point of local law is involved.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "A. H. Williams", with a horizontal line underneath.

C. O.

Mr. Costley White. 28/10

Mr. Paskin 2/21.

Mr. Duncan 9/4/37

m: Flood
Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

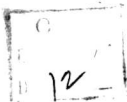
Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

15. November 1937.



Sir,

DRAFT.

KENYA.

NO. 994.

GOVERNOR

I have the honour to acknowledge the receipt of your despatch No. 562 of the 22nd of September transmitting a petition on behalf of Giridhari Lal Thapar, and to request that the petitioner may be informed that, after careful consideration of the case, I am not prepared to intervene on his behalf.

I have, etc.

(Signed) V. ORMSBY GORE.

FURTHER ACTION.

9 45

G. O.

Mr. Costley White. 28/10

For Mr. Flood's signature.

Mr. Paskin 4/11

Mr. Duncan *Please see my minute. 11.10.*

Mr Flood 9.11.37
Sir H. Moore.

Sir G. Tomlinson.

Sir C. Battersby.

Sir J. Shackburgh.

Parnt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

G. O.
R 9-NOV
D 12

15 November 1937.

Dear Pilling,

DRAFT.

H. G. PILLING, Esq C.M.G.

NAIROBI.

An official reply is being sent by this mail to Kenya despatch No. 562 of the 22nd of September, which

enclosed a petition on behalf of *saying that the Secretary of State is not prepared to entertain* Girdhari Lal Thapar, *But while the he* ~~Secretary of State~~ is satisfied that

there are merits in this case and that

substantial justice has been done, *he is*

Some what Concerned about the procedure
 ~~doubts have been expressed whether it~~
which was adopted. The petition could
 ~~was appropriate to proceed under~~
 have been dismissed under the Police
 ~~paragraph 29 of the Indian Local Service~~
 Ordinances, and the Local Officers
 ~~regulations instead of under the Police~~
 here consider that he should have been
 ~~Ordinance, seeing that this man could~~
 have not under the Indian Local Service
 ~~dealt with under that Ordinance. The~~
 have been dismissed under Section 2(1)
 ~~Ordinances a complete Code for~~
(1) of that Ordinance. The question
 appointment, discipline, and dismissal;
 and as in paragraph 5 of your despatch
 of the 22nd of September. You draw attention to

FURTHER ACTION.

C. O.

Mr. Costley White. 28/10

Mr. Paskin. 2/21.

Mr. Duncan 9/4/37

M. Flood
Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

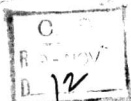
Sir J. Shuckburgh.

Perm. U.S. of S.

Parly. U.S. of S.

Secretary of State.

15. November 1937.



Sir,

DRAFT.

KENYA.

NO. 997.

GOVERNOR

I have the honour to
acknowledge the receipt of your
despatch No. 568 of the 22nd of
September transmitting a petition on
behalf of Girdhari Lal Thapar, and to
request that the petitioner may be
informed that, after careful
consideration of the case, I am not
prepared to intervene on his behalf.

I have, etc.

(Signed) V. ORMSBY GORE.

FURTHER ACTION.

C. O.

Mr. Costley White. 28/10

Mr. Paskin 21/11.

Mr. Duncan 9/11/37

m: Flood
Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

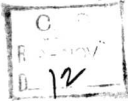
Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

SH

15. November 1937.



Sir,

DRAFT.

KENYA.

NO. 99.

GOVERNOR

I have the honour to acknowledge the receipt of your despatch No. 562 of the 22nd of September transmitting a petition on behalf of Girdhari Lal Thapar, and to request that the petitioner may be informed that, after careful consideration of the case, I am not prepared to intervene on his behalf.

I have, etc.

(Signed) W. ORMSBY GORE.

FURTHER ACTION.

9 409

G. O.

Mr. Costley White. 28/10

For Mr. Flood's signature.

Mr. Paskin 4/11

Mr. Duncan Please see my minute. 11.10

Mr. Fise 9.11/10
Sir H. Moore

Sir G. Tomlinson

Sir C. ...

Sir J. Shackleton

Paras. U.S. of S.

Party. U.S. of S.

Secretary of State.

G O
R 9 - NOV
D 12

15 November 1937.

Dear Pilling,

An official reply is being

sent by this mail to Kenya despatch

No. 562 of the 22nd of September, which

enclosed a petition on behalf of
Saying that the Secretary of State is not prepared to allow
Girdhari Lal Thapar, *But while the he*

Secretary of State is satisfied that

there are ^{no} merits in this case and that

substantial justice has been done, *he is*

Somewhat Concerned about the procedure
 ~~doubts have been expressed whether it~~

which was adopted. The petition could

was appropriate to proceed under

has been dismissed under the Police

paragraph 20 of the Indian Local Service

Ordinances, and the Local Omissions

Regulations instead of under the Police

here consider that he should have been

Ordinance, seeing that this was would

lead not only to the danger of being dismissed

death with honor that Ordinances. The

have been dismissed under Ordinance 20 (a)

which contains a complete code for

appointments, discipline, and dismissal;

and as in paragraph 5 of your despatch
of the 22nd of September in view of attention to

DRAFT.

H. G. PILLING, ESQ. C.M.G.

NAIROBI.

FURTHER ACTION.

9 40

C. O.

Mr. Costley White. 28/10

Small (4)

For Mr. Flood's signature.

Mr. Paskin 4/11

Mr. Duncan *Please see my minute. 11.10.*

Mr. Flood 9.11 *js*

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

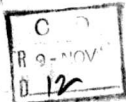
Sir J. Shackburgh.

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Sg



15 November 1937.

Dear Pilling,

DRAFT.

H. G. PILLING, Esq. C.M.G.

NAIROBI.

An official reply is being sent by this mail to Kenya despatch No. 562 of the 22nd of September, which

enclosed a petition on behalf of *saying that the Secretary of State is not prepared to interfere* Girdhari Lal Thapar, *But while the he* Secretary of State is satisfied that

there are *no* merits in this case and that

substantial justice has been done, *he is*

Somewhat concerned about the procedure doubts have been expressed whether it which was adopted. The petition could *was appropriate to proceed under* have been dismissed under the Police *paragraph 20 of the Asian Local Service* Ordinances, and the Local *Advisory* Regulations instead of under the Police *here consider that he should have been* Ordinance, *noting that this man could* *and not under the Asian Local Service Ordinance* dealt with under that Ordinance. *The* have been dismissed under Section 20 (2) *of the*

contains a complete code for (1) of that Ordinance. The question *appointment, discipline, and dismissal;* and as in paragraph 5 of your despatch *of the 22nd of September I drew attention to*

FURTHER ACTION.

The terms of Mr. Thapar's appointment such as that
his case falls within the provisions of paragraph 29 of the
Secretarial Circular No. 15 of 1935, we should be glad to know
whether
~~You have been advised by your Law Officers that these~~
~~has been raised to whether, notwithstanding~~

~~paragraph 4 of the Mysore despatch that the Police~~

~~Ordinance contains a complete code for appointment,~~

~~discipline and dismissal, these statutory provisions~~ *regarding appointment, discipline,*
and dismissal

can be varied by a letter of appointment such as that

of the 20th of September 1935, by which ~~this man~~ *the petitioner*

appointed to the Asian Local Civil Service. If you

were so advised, ~~by your Law Officers~~ perhaps you will be

~~good enough to send us~~ *Let us have* a copy of their opinion. *Yes*

would be convenient if a report from the Law Officers

could be sent home in any case in which a point of

local law is involved.

Yours sincerely

WILLIAM E. W. FLOOD

KENYA.

No. 562



RECEIVED
28 SEP 1937
C. O. REGY

GOVERNMENT HOUSE,
NAIROBI,
KENYA.

22 September, 1937.

Appeal D/
20.8.37.

Sir,

I have the honour to enclose a petition in the form of a Memorandum of Appeal submitted by Mr. S. R. Gautama, a local Advocate, for and on behalf of Girdhari Lal Thapar formerly an Assistant Sub Inspector in the Police Force in this Colony.

2. Mr. Thapar joined the Police Force on the 13th March, 1929, as a Probationary Assistant Sub Inspector, he was confirmed in his appointment as a Second Grade Assistant Sub Inspector on the 13th March, 1930, and was promoted to the rank of First Grade Assistant Sub Inspector on the 1st July, 1935. On the 10th July, 1935, Mr. Thapar requested in writing that he be transferred to the Local Civil Service with effect from the 1st May, 1935. This was approved.

3. The facts which led to the dismissal of Mr. Thapar from the Service are as follows:-

It was reported to the Commissioner of Police that during the course of an investigation into a case of stock theft, Mr. Thapar had, with the object of extorting information, ill-treated two natives. Mr. Thapar was accordingly prosecuted and charged with assaulting these two natives; he pleaded guilty, and on the 11th

Enclosed (3)

January

THE RIGHT HONOURABLE
W. ORMSBY-GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, W.

January, 1937, was convicted and fined Sns.300/- on each charge and ordered to pay each complainant Sns.30/- compensation.

I set out in extenso the complaints sworn before the Magistrate which show the nature of the assault

"Complaint by Kimeto Arap Kapkirai Marakwet, MKT.421065,

'I work for Mr.Long. One Monday about 3 weeks ago I was sent for to Cherangani Police Station together with Kandagor arap Bartagot. We were sent for by the A.S.P.i/c Cherangani by a messenger named Arap Tot. When we got there the Indian Sub Inspector examined us about a stock theft. I knew nothing about it and told him so. Then the Indian struck me with his fist. He questioned me further but I denied all knowledge. He then ordered us outside and fastened my arms to a stick across my shoulder. He did this to arap Bartagot. This started at about midday and we were not released until 2 p.m. We were placed in the sun and arap Tot was put in charge of us.'

"Complaint by Kindagor arap Bartagot, LGO.429141-

'I have heard Kimeto's statement, it is correct. I also was fastened like this from 12 noon until 2 p.m. in the sun. We were then released.'

4. It was not possible for the Commissioner of Police to dismiss this officer under the provisions of Section 48 of the Police Ordinance, as a sentence of imprisonment had not been imposed, but in a personal interview with Sir Armigel Wade, the then Acting Governor, the Acting Commissioner of Police pointed out that he was empowered to dismiss him under Section 24(2)(1) as in his opinion Mr.Thapar had by reason of his reprehensible behaviour ceased to be an efficient police officer.

5. It will be observed from a perusal of the Letter of Permanent Appointment issued to Mr.Thapar

January, 1937, was convicted and fined Sns. 300/- on each charge and ordered to pay each complainant Sns. 30/- compensation.

I set out in extenso the complaints sworn before the Magistrate which show the nature of the assault

"Complaint by Kimeto Arap Kapkirai Marakwet, MKT. 421065,

'I work for Mr. Long. One Monday about 3 weeks ago I was sent for to Cherangani Police Station together with Kandagor arap Bartagot. We were sent for by the A. S. P. i/c Cherangani by a messenger named Arap Tot. When we got there the Indian Sub Inspector examined us about a stock theft. I knew nothing about it and told him so. Then the Indian struck me with his fist. He questioned me further but I denied all knowledge. He then ordered us outside and fastened my arms to a stick across my shoulder. He did this to arap Bartagot. This started at about midday and we were not released until 2 p.m. We were placed in the sun and arap Tot was put in charge of us.' "

"Complaint by Kindagor arap Bartagot, IGO. 429141-

'I have heard Kimeto's statement, it is correct. I also was fastened like this from 12 noon until 2 p.m. in the sun. We were then released.' "

4. It was not possible for the Commissioner of Police to dismiss this officer under the provisions of Section 48 of the Police Ordinance, as a sentence of imprisonment had not been imposed, but in a personal interview with Sir Armigel Wade, the then Acting Governor, the Acting Commissioner of Police pointed out that he was empowered to dismiss him under Section 24(2)(1) as in his opinion Mr. Thapar had by reason of his reprehensible behaviour ceased to be an efficient police officer.

5. It will be observed from a perusal of the Letter of Permanent Appointment issued to Mr. Thapar

Letter
D/ 20.9.35.

on the 20th September, 1935, a copy of which is attached hereto, that Mr. Thapar on the 24th September, 1935, agreed to accept his appointment subject to the terms of this letter, paragraph 3 of which reads as follows:-

"3. You will be subject to all Regulations governing the local service, which are now in force or which may be promulgated from time to time by the Governor."

Mr. Thapar's case thus fell within the provisions of paragraph 29 of the Secretariat Circular No. 15 of 1935 which is as follows:-

(4) on 38048/3/35

"29.(1) If criminal proceedings are instituted against an officer in the local service, proceedings for his dismissal upon any grounds involved in the criminal charge shall not be taken pending the criminal proceedings.

(2) If an officer is convicted on a criminal charge, the Governor may consider the proceedings of the criminal court on such charge, and if he is of opinion that the officer should be dismissed or subjected to some lesser penalty on account of the offence for which he has been convicted the officer may thereupon be dismissed from the local service or otherwise punished in such manner as the Governor may think fit.


(3) An officer convicted on a criminal charge shall not receive any emoluments from the date of conviction, pending consideration of his case by the Governor.

(4) An officer acquitted of a criminal charge shall not be dismissed on any charge upon which he has been acquitted, out nothing in this sub-paragraph shall prevent his being dismissed from the local service or otherwise punished on any other charges arising out of his conduct in the matter, provided that they do not raise substantially the same issues as those on which he has been acquitted."

Sir Armigel Wade, after consideration of the proceedings of the criminal case which led to the conviction of Mr. Thapar, decided that the gravity of the offence could not be met by any lesser punishment than dismissal and accordingly Mr. Thapar was dismissed in accordance with the provisions of that regulation.

6. It will not, I think, be disputed that in view of the nature of the offence committed by this officer it was essential both in the interests of the Kenya Police Force and in the public interest that he should cease to hold office and in my opinion the appeal has no merits.

I have the honour to be,
Sir,
Your most obedient, humble servant,


GOVERNOR'S DEPUTY.

Hon'ble the Colonial Secretary, Kenya Colony, Nairobi

In the matter of Girdhari Lal Thapar late Assistant Sub-Inspector
of Police, Kenya Colony, Appellant

MEMORANDUM OF APPEAL

The appellant above named appeals from the order of his dismissal from the Kenya Police Force on his conviction on a criminal charge passed by H.E. the Governor by virtue of powers conferred upon him by the regulations which govern the terms of service of the Kenya Asian Local Civil Service contained in Circular No.15 of 1935, which said order was communicated to the appellant's advocate by Hon'ble the Colonial Secretary's letter No.S/Est.19/1/1275/43 and dated the 28th day of April 1937, and submits the following grounds of objection to the Order appealed from :-

1. The appellant was either appointed by the Commissioner of Police or promoted in rank to Assistant Sub-Inspector of Police Grade II by his letter No.P.381/99A. and dated the 20th day of September 1935 with effect from the first day of May 1935. Such appointment as subordinate officer could only be made under Sec.15(2) of the Kenya Police Ordinance of 1930, which must be subject to the provisions of this Ordinance and of such regulations as may be made thereunder. Alternatively as a result of this promotion in 1935, the appellant shall be deemed to be subject to the provisions of this Ordinance under Sec.14 Proviso. Moreover regulations not inconsistent with this Ordinance may be made by the Governor-in-Council under Sec.13 of this Ordinance. Sec.48 of this Ordinance authorises the Commissioner to dismiss from the Police Force any subordinate officer who has been sentenced to imprisonment by any court in respect of any offence, whether under this Ordinance or otherwise. No other section of this Ordinance deals with dismissal of a Police officer. The appellant not having been sentenced to imprisonment but only to a fine, could not be dismissed under the provisions of this Ordinance on the ground of conviction on a criminal offence. The order passed by H.E. the Governor is therefore ultra vires.
2. Kenya Asian Local Civil Service Regulations were not made by the Governor-in-Council under Sec.13 of this Ordinance, and the only other provisions of this Ordinance that make applicable to the Asiatic Police Officers, the regulations for the time being in force for the Asiatic staff or officials, are Sections 19(2) relating to leave conditions and § 55(2) relating to pensions or gratuities. The Kenya Asian Local Civil Service Regulations so far ~~as~~ at least as they relate to dismissal, are inconsistent with this Ordinance and hence are not binding upon the appellant. H.E. the Governor was wrong in applying the said regulations to the appellant in spite of the appellant agreeing to the terms of the said letter dated the 20th day of September 1935 issued under the heading 'Kenya Asian Local Civil Service', as the appointment could only be made under this Ordinance, or if it be taken to be a promotion, the appellant had thereafter to be governed by this Ordinance. This Ordinance having at its back the sanction of Legislative Council, must override the said regulations, the appellant can not obviously, be governed by both. The case would have been different if Sec.48, instead of providing as it does for dismissal on the ground of imprisonment, had simply made applicable the said or any other regulations, to the dismissal of a Police Officer.
3. The appellant has otherwise had a good record of service. Further the offence of common assault contra Sec.228 of The Penal Code, with which the appellant was charged, is a petty offence, not cognisable by

the Police, and an offence in which under the provisions of Sec. 170A of the Penal Code, the courts ~~should~~ may promote reconciliation between the parties.

4. In any case the order of dismissal passed by H.E. the Governor is out of all proportion to the facts of the case.

Wherefore the appellant prays that the appeal be allowed and he be reinstated as Assistant Sub-Inspector in the Kenya Police.

Dated at Eldoret the 26th day of August, 1937.

S. G. G. G.
Advocate for the Appellant

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THE COLONY AND PROTECTORATE OF KENYA
THE KENYA ASIAN LOCAL CIVIL SERVICE

LETTER OF PERMANENT APPOINTMENT

Kenya Police DEPARTMENT

Nairobi. STATION

No. P.381/99A.

DATE 20th September. 1935.

To,

Mr. Girdhari Lal Thaper.

Subject to your acceptance of the terms of this Letter you are hereby appointed as a
Asst. Sub-Inspector of Police, Grade II

in the permanent staff of the Asian Local Civil Service of this Colony with effect from
the 1st May, 1935. Your continuous service dates from 13.3.1929

2. The salary attached to your post is at the rate of £150 ~~in the scale of~~ per
annum.

and the incremental date is _____

3. You will be subject to all Regulations governing the local service, which are now
in force or which may be promulgated from time to time by the Governor.

4. You are liable to be transferred at any time to another branch of the Colony and
Protectorate service at the discretion of the Governor.

5. This cancels the Letters of Appointment issued to you on
the 21st May, 1930, and on the 16th August, 1935.

Sd/ G.Pritchard Brown.

Head of Department.

for COMMISSIONER OF POLICE.

I hereby accept the appointment subject to the terms of this Letter.

Sd. G.L.Thaper

Employee.

ASP.

Date 24-9.35 1935.

COPIES TO—Employee, Department concerned, Hon. Colonial Secretary, Hon. Treasurer
and Auditor.