

1928

Kenya

No. *15118*

SUBJECT

CO 533/377

*Forfeiture of Pension by
reason of Judicial conviction
Case of Mr. A. J. Kumar*

Previous

*Sec X 10056/24
(Nos. 63 57)*

Subsequent

On 2 March 1927 (No. 68 - X10056/19)
the Board has reported an adjustment of
the pension which was afforded at the
increased rate of \$859.75. Still the
fact of imprisonment is a repudiation.

Then on 31 Oct 1927 (No. 68 - X10056/19)
the Gov. gives ^{for the first time} what terms at the inadequate
opinion as to the imprisonment and raises
the question whether pension is payable. The
Gov. states in that despatch that Farran
has drawn no alimentary allowance pending
adjustment of the case. Presumably this
means that no part of pension - due
as from 1 Jan 1923 - has ever been paid,
except for the amount represented by the
gratuity originally awarded (about 9
months pension).

It would be hard to treat this as
a meddling of a comparatively small affair.

The advice was given by the
Treasury is necessarily inconclusive in the
absence of complete information. Apparently,
if we are to follow Treasury practice, we
should call for the information which T.L.
indicates as necessary, and the Secy should

then examine the facts and decide whether to pay from
approving the award of pension at 15 annuities,
subject to a penal deduction (how much is not
indicated)

I have, however, suggested, in No. 68 -
X10056/19 that the best course would seem to
be for the Gov. to decide in the merits of the case
at the time of settling the war pensions order.

The alternatives are therefore - I think

(i) to ? No. 68 - 10056/19 and suggest
as at A

(ii) or ? No. 68, enclosure copy of Treasury
letter and ask for full information on the
points raised in order that a decision
may be taken.

In either case I think we should
make some comment on the fact that
although pension was due to be awarded
as from 1 Jan 1923 it was not in fact
awarded till ^{March 1926} the end of 1924, no mention
of the fact of imprisonment had been made
till now, and nothing has happened
and also ask if about cases from war

copy of an affidavit to Attorney
and we think the paper should be acted
at some stage by the S.D.

W. Jewell
5. 3. 28

P.D.
State in any other
S.M. Allen

6/3/28

As Mr. Farrar left the service before
the Pensions Order was passed, I think
we are bound to deal with the case on
the analogy of the Engl. Civil Acts which
for this purpose, include the Fishing Act
1870.

Proceed as in (ii) in Mr Jewell's
minutes
S.M. Allen
March 7, 1928

I have proposed to send copy of
No 72 of 10026 to the S.D. I think it
this decision to take a decision on
the merits of the case on the analogy
of sec 16 of the Model Pensions Order,
which is proposed to embody in the
model Non-European Order with the
substitution in the former of the words
"but the parties who such are entitled to
the S.D. instead of the S.D. (this would
be more appropriate seeing that Mr Farrar
is not a European."

S.M. Allen
24/3/28

~~State in any other~~

has returned
as in
on 10/1/28

* Drafts under this
at as being cancelled
the best to have
can be referred to
S.M. Allen

Criminal breach of trust is not a felony,
and for that and other reasons, the Forfeiture Act
does not apply to this case. The matter is within
the discretion of the Governor. As the offence
was committed as Steward of a Club, we may assume
that it was committed after his retirement. That
is a relevant consideration, as also is the fact
that the grant of the pension has been most unduly
delayed and that the sentence has been served.
My own view of a reasonable thing to do in the
circumstances, would be to grant him a pension
with a penal deduction of the amount due to date.

H.B. v. B.

You & I have discussed. I have
also discussed the legal position with
Mr Bushel.

We think the deduction should
be limited to the period during which
he was imprisoned, and that that
deduction should only be made at the
discretion of the Governor, provided that
if a pension has not hitherto been
awarded to Mr Farrar. If it has been
awarded already, no deduction should
be made without further reference to
the S.D., who would have to consider
the legal position in the light of that
fact. We should explain the position generally.

& the Governor ~~may~~ that send
a copy of the Treasury letter, saying
that the Sec'y of S. thought it desirable to
consult that Dept as to the practice.
(Note: The analogy of the Russian
Pensions Act ~~is~~ cannot be applied
because that provides statutory for
deductions during ^{or} imprisonment,
a situation which in the Treasury
letter does not exist under the
supersession Act)

R. W. S. 29/3/28

I agree. Let me see if.

O.S. 28.3.28
S/10

To Gov. 247 - w/copy 1972 on 10056/27
Answers 68 on 10056/27 - 25 APR 1928

~~DESTROYED UNDER STATUTE~~ 16 April 28
I shall be glad to receive reply to my despatch
of 31st October - Farrer.

Our despatch should arrive during the
first week in May

repl. Sec. Navisti

John Thompson 16 April Farrer
despatch sent
Sec. Navisti 5 April 247
20/4/28 answer. Sec. Navisti 19/4/28

~~DESTROYED UNDER STATUTE~~

20 April 1928

No reply yet received to No. 2. We
expect to hear of the outcome. ? remain

Adford
11. 10. 28

You I think it will be as
well to ask ~~the~~ what
has happened - as a matter of
interest. C. G. S. 11/10

Mr. Drake

The despatch does not necessarily
call for reply but perhaps it would be as
well to invite attention to it and what
action has been taken in the matter

J. W. Allen

17/10/28

H. B. 18/10

J. W. Allen

19/10/28

~~DESTROYED UNDER STATUTE~~

Cons - 25 OCT 1928

Gives details of Mr. Ferrer's pension.

Under G.D.
Pensions
with
1914

Send report on the 10

part

Sum

of

1711

1712

at

fra

KENYA

No. 696



6
GOVERNMENT HOUSE,
NAIROBI,
KENYA

December, 1928.

Sir,

No. 5
With reference to your despatch No. 777 of the 26th of October, I have the honour to inform you that Mr. A. J. Farrer, late 3rd Grade Clerk, Land Department, was granted a pension at the rate of Shs. 907/50 per annum with effect from the date of his retirement from the Service viz. 1st April 1923.

He has been paid this pension for the periods from the 1st April 1923 to the 16th September 1923 and from the 21st August 1924 onwards, less the amount of the gratuity previously drawn by him.

During the period 17th September 1923 to 21st August 1924 Mr. Farrer served a term of imprisonment.

No. 2
2. On receipt of your despatch No. 247 of the 26th April it was decided that a penal deduction should be made in accordance with the suggestion in paragraph 3 of that despatch and I regret that through an oversight this was not reported to you at the time.

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


ACTING GOVERNOR.

THE RIGHT HONOURABLE
LIEUTENANT COLONEL L. C. M. S. AMERY, P. C., M. P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON S. W.

X 15.118/28 Kenya

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Mr. Jewell 30/3/28

Mr. Jeffrey 30/3

Mr. Wiseman 31/3

Mr. Boulton 31/3

Mr. J. Harding

Mr. J. Shuckburgh

Sir G. Grindle

Sir D. Davis

Sir S. Wilson

Mr. Ormsby-Gore

Lord Lovat

Mr. Amery



5 APR 1928

March 1928

DRAFT

Kenya
No 267
Sec. Glegg

(No 68 in
X 10056/28)

Sir

I have the honour to acknowledge

recd. of your despatch No 701 of the

31st of October last, regarding the
question of the eligibility of the

A. J. Farrow late 3rd Grade

Clerk, Land Dept., for the

payment of pension.

I thought it desirable

to consult the L.S. of the Treasury

as to the practice which would

To Treasury 28 Jan 1928 (No 72 in X 10056/28)

From Treasury 24 Feb 1928 (1)

PUS

CO 535 / 377

100M

be followed in a similar case within
country, and I enclose for your
information a copy of the correspondence which
has taken place with that Dept.

I have given careful consideration
to the letter from the Treasury, and I am
advised that, as the offence for which
Mr. Farrar was convicted

is a felony, and for other reasons,
the forfeiture Act, to which reference
is made by the Treasury, could not

be applied, by analogy, to the present

case. No specific statutory provision
is therefore applicable, the matter can only be
dealt with on the footing of a general power
relating to the grant of withholding pensions.

3. As Mr. Farrar's offence was
committed in his capacity as a
Steward at the Mombasa Sports
Club, I assume that it was
committed after his retirement

From this point
I view it with
therefore be relevant
whether or not a
pension has already
been awarded to
Mr. Farrar. If this
has not been done you
should take all the
circumstances into account
as stated in the Treasury letter
before deciding whether or not
to award it.

Mr.
Mr.
Mr.
Mr. B. J. Harding.
Gen. J. Blackburne.
Sir H. Grenville.
Sir O. Davis.
Sir S. Wilson.
Mr. Ormsby-Gore.
Lord Lovat.
Mr. Amery.

DRAFT.

from the Public Service. This is
a relevant consideration, as also

are the facts that the grant of
pension has been most unduly
delayed, and that the sentence
has been served. It therefore

you decide that a partial
deduction should be made.

I would suggest that such
deduction should only be
made provided that a

pension has not hitherto
been awarded to Mr. Farrar,

and further, that the deduction
should be limited to the
period during which the

was informed ^{M.P.} [] of a person
has already been awarded to the same
I desire that no habitation
should be made without further
reference to me, as I should then
wish to consider the legal
position in the light of that
fact, and if necessary in
further consultation
with the Treasury.

Signed

Any reply to this letter should be addressed to—

THE ASSISTANT SECRETARY,
SUPERANNUATION DIVISION,
OF TREASURY,
WHITEHALL, LONDON, S.W. 1.

and the following number quoted.



TREASURY CHAMBERS

24th February, 1928

P 66356.

REC
25 FEB 1928
COL. OFF.

Sir,

I have laid before the Lords Commissioners of His Majesty's Treasury Mr. Wiseman's letter of the 28th ultimo (10056/27) with enclosure, relative to the issue of pension to Mr. A.J. Farrar, late 3rd Grade Clerk, Land Department, Kenya, who was sentenced to imprisonment for criminal breach of trust subsequent to his retirement from the service in 1923.

In reply I am to request you to inform Mr. Secretary Amery that the statutory authority for the forfeiture of the pension of a retired British Civil Servant by reason of a judicial conviction is Section 2 of the Forfeiture Act 1870, 33 and 34 Vict. c. 23. Under that Act a pensioner who is convicted of treason or felony, for which he is sentenced to death or penal servitude or any term of imprisonment with hard labour or exceeding twelve months, forthwith forfeits his pension.

878 APR 1928

Copy to Gen - 2447

The Under Secretary of State,
Colonial Office.

Exceptionally

Exceptionally, when a pensioner has committed an offence of a gross character but not within the scope of the Forfeiture Act My Lords have taken steps to terminate payment of his pension by causing provision for the pensioner to be omitted from the appropriate Estimate when presented to Parliament.

Upon present information it is not clear whether in the case under consideration the pension has finally been awarded and particulars of the award communicated to Farrar. If this has not yet been done different considerations would arise and if Farrar were a British Civil Servant, My Lords would examine the facts of his case and would decide whether the circumstances were such as to justify them either in refraining from awarding pension or in awarding pension subject to a penal deduction.

In this connection it would be necessary for Their Lordships to know the precise nature of the offence

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offences or offences and whether these occurred prior to his retirement although, apparently they did not come to light until after retirement. My Lords assume that, if Farrar had been a serving officer when he committed the offences, he would have been dismissed summarily if they had come to light before his retirement.

I am,

Sir,

Your obedient Servant,

R. R. Scott

8. 12. 1921