

1938

38086

CO533/492
KENYA

38086

26

26

PETITIONS

ASIAN PRESS OPERATIVES

Previous

Subsequent

R. 297

22/4/38

309

26/4

Mr Parkin

6/5

Mr Fairclough

7/5

Mr Roberts-Wray

18/5

Mr S. Rowman

18/5

R 299

24/5

297

1. Gov. Kenya

197

6.4.38

States that certain Asian Press operatives have petitioned that their service on the Uganda Railway Press should count for assessing rate of Govt contribution to Asian Prov. Fund - commends them, attaching relevant documents, and asks for S. of S's decision on the matter.

In 1927 the K.U.R. Printing Press was amalgamated with the Government Press. A number of Asian operatives were taken over by Government and given Letters of Permanent Appointment on which the date of their original appointment to the Railway was shown. On the introduction of the Asian Local Civil Service of 1935 these letters were replaced by fresh letters in which their services, including the period with the Railway, were shown as continuous. This was done in order to cover their whole service for gratuities under Section 10 of the Asian Provident Fund Ordinance (flagged in 20033/6/35 below), it having been agreed that the fraction of the gratuity in respect of Railway service would be paid by the Railway (presumably this agreement was an informal understanding between Government and the K.U.R.).

N.B. These gratuities are given in addition to any payment from the Fund to which an officer may be entitled under other sections of the Ordinance.

The operatives concerned have now sent in a petition (no copy of which has been received here) asking that their period of service with the Railway should be taken into account when assessing the rates of Government contributions (paid to the credit of each contributor) which are laid down in the Schedule to the Asian Provident Fund Ordinance (see also Section 6(a)). These operatives have, however, already been paid Provident Fund benefits from the Railway Provident Fund in respect of their Railway service.

The Treasurer does not support the

States that certain Asian Press operatives have petitioned that their service in the Uganda Railway Press should count for assessing rate of their contribution to Asian Provident Fund - comments thereon attaching relevant documents, and asks for S. of S's decision in the matter.

In 1927 the K.U.R. Printing Press was amalgamated with the Government Press. A number of Asian operatives were taken over by Government and given Letters of Permanent Appointment on which the date of their original appointment to the Railway was shown. On the introduction of the Asian Local Civil Service of 1935 these letters were replaced by fresh letters in which their services, including the period with the Railway, were shown as continuous. This was done in order to cover their whole service for gratuities under Section 10 of the Asian Provident Fund Ordinance (flagged in 20033/6/35 below), it having been agreed that the fraction of the gratuity in respect of Railway service would be paid by the Railway (presumably this agreement was an informal understanding between Government and the K.U.R.).

N.B. These gratuities are given in addition to any payment from the Fund to which an officer may be entitled under other sections of the Ordinance.

The operatives concerned have now sent in a petition (no copy of which has been received here) asking that their period of service with the Railway should be taken into account when assessing the rates of Government contributions (paid to the credit of each contributor) which are laid down in the Schedule to the Asian Provident Fund Ordinance (see also Section 6(a)). These operatives have, however, already been paid Provident Fund benefits from the Railway Provident Fund in respect of their Railway service.

The Treasurer does not support the

benefit from the Railway they are not entitled also to benefit from the Government in respect of their Railway service, and also on the ground that it has never been intended to include Railway service as service within the meaning of Section 2 of the Ordinance, Railway service being dealt with by the Railway Provident Fund. The Attorney-General, however, considers that the insertion of the word "continuous" in the Letters of Appointment gives the petitioners a right to claim that the whole of their service should be regarded as continuous service within the meaning of the Schedule. This is a point on which legal advice will no doubt be required. The Schedule to the Ordinance provides for Government contributions increasing by 50% after ten years and by a further 50% (of the basic sum) after the twentieth year; whereas, under the Railway Provident Fund rules, the contribution remains the same however long a period is served. If the petition is granted, the petitioners will therefore receive a larger payment than they would have done had they remained railway servants, in addition to some measure of double payment in respect of their Railway Service (i.e. Government contribution in respect of those years as well as benefit, already received, from the Railway Provident Fund). Leaving aside the legal point mentioned above, it would therefore seem that the petition is not one which should be granted.

? The file should circulate to Mr. *Robert White*

In view of the definitions of "service" and "common service" in Section 2 of Ordinance LXIV of 1954, I agree with the Attorney-General

J.P. Pauling
7/5/58

The insertion of the word "continuous" in the Letter of Appointment does not seem to me to affect the legal position which apparently turns upon the question whether Railway Service is "service as defined in Section 2 of Ordinance 64 of 1954". I gather that Railway Service has not been gazetted under the definition and the only remaining question is whether it comes within the definition of "common service". True the railway is common to Kenya and Uganda, but is part of the cost reimbursed to the Colony by the Protectorate. Surely the answer is in the negative, because Kenya does not defray the expense of the Railway and receive a contribution from Uganda but like Uganda pays its own share to the Railway Administration.

It is to be noted that the question whether Railway Service counts under Section 10 also depends upon these definitions and if the form of the letter has the effect that Railway Service can be taken into account under that Section, it follows that the petitioner's claim must succeed.

J.P. Pauling

18.5.58

W.P. Pauling

Robert White

This is not a petition, but
a reference to us on a point raised in
a petition addressed presumably to the
Governor. ? We may reply as in draft
herewith based on Mr. Roberts-Wray's minute.

S. Robinson

19th May, 1938.

2. No. Kenya 389 - 1. Approved

24 MAY 1938

C. O.

Mr. S. Robinson. 19/5

Mr. Roberts 19/5.

Mr. Patten 20/5/38.

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.

Downing Street,

24 May, 1938.

Sir,

I have etc., to

acknowledge the receipt of your

(No. 1.) despatch No. 197 of the 6th of

April, regarding the rates of

Government contributions payable

under the Asian Civil Service

Provident Fund Ordinance 1934, in

respect of certain operatives

taken over by Government from the

Kenya and Uganda Railway Press.

2. I agree that on

the merits, it would be unduly

generous to take into account

Railway service in determining

DRAFT.

despatch.

KENYA.NO. 289GOVERNOR.**FURTHER ACTION.**

the rate of Government contribution. As regards the legal aspect of the matter, the opinion of my Legal Advisers is that the insertion of the statement as to continuous service in the letter of permanent appointment issued to these operatives on the promulgation of the Asian Local Civil Service terms ~~does~~ *is immaterial if, as seems to be the case, not affect the position, which seems to turn* upon the question whether Railway service is "service" as defined in Section 4 of the Ordinance; and since the word "service" has not been defined under that section, it is a question whether the word "service" in that section. While Railway service is service common to Kenya and Uganda, it cannot be said that part of the cost of the service is reimbursed to Kenya by Uganda, and the conclusion drawn is that Railway service is not "service" for the purpose of the Asian Civil Service Provident Fund Ordinance.

C. O.

- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Party, U.S. of S.
- Secretary of State.

DRAFT.

or in the completion of any month production

3. It follows that Railway service could not be taken into account in determining to qualify these operatives for the payment of gratuities under Section 10 of the Ordinance.

I have, etc.,

(Sgd.) MALCOLM...

FURTHER ACTION.



6 April, 1938.

Sir,

Class "C" Letter.

I have the honour to inform you that on the amalgamation of the Kenya and Uganda Railway Press and the Government Press with effect from the 1st May, 1927, a number of Asian operatives employed in the former Press were taken over by Government. On being taken over these operatives were furnished with Class "C" Letters of Permanent Appointment provided for in Secretariat Circular No. 50 of the 7th June, 1927, in which - as will be seen from the specimen enclosed - the date of the original appointment to the Uganda Railway Printing Press is shown.

Letter of Permanent Appointment

2. On the promulgation of the Asian Local Civil Service terms these operatives were provided with Letters of Permanent Appointment on the lines of Appendix (I) of Secretariat Circular No. 15 of the 18th May, 1935, in which - as will be observed from the enclosed copy of the Letter of Permanent Appointment issued to one of these operatives - their services (including the service in the Railway Press) were shown as "continuous". In the Letters of Appointment the word "continuous" was inserted only in order to cover their whole service for gratuities under sub-section (1) or (2) of Section 10 of the Asian Provident Fund Ordinance, 1934. This was done as it had been agreed that on their ultimate retirement from the Colony's service, the Railway Administration would pay

proportionate gratuities in respect of the periods during which they were employed in the Railway Press, gratuities, if any, payable in respect of their subsequent services in the Government Press being calculated in accordance with Government regulations.

statement.

3. It should be borne in mind that the Provident Fund benefits earned by the operatives concerned in respect of their services in the Railway Press were paid by the Railway Administration up to the 30th April, 1927. A statement showing the names of the operatives concerned together with particulars of their Railway service and the amount each received from the Railway Provident Fund is enclosed.

4. A petition has now been received from the operatives concerned in which they ask that their service in the Uganda Railway Press, and in respect of which they have already been paid provident fund benefits by the Railway Administration, should be taken into account for the purposes of assessing the rates of Government contributions as laid down in the Schedule to the Asian Provident Fund Ordinance, 1934.

5. The Treasurer does not support the petition on the grounds:-

- (a) that it has never been the intention to gazette Railway service as "service" under Section 2 of the Ordinance for the simple reason that service in the Railway is already provided for under the Railway Provident Fund Rules;
- (b) that the operatives having received full benefit from the Railway Provident Fund are not entitled to any benefit in respect

of the Railway service from the Government Provident Fund.

6. The Attorney General, who has been consulted in the matter, states that in his opinion the insertion of the word "continuous" in these Letters of Appointment gives the petitioners a right to claim that the whole of their service from the date of their first appointment should be regarded as "service" for the purposes of Section 2 of the Ordinance and is in fact "continuous" service within the meaning of the schedule.

7. If the Railway Provident Fund allowed for an increase by 50% of the Administration's contribution after ten years' service, it might be argued that in equity the petitioners would have a good claim for their service to be treated as continuous for the purpose.

In fact, however, if they were still employed by the Railway Administration, the Administration's contribution would still be at the rate of only 100%.

The granting of the petitioners' request would therefore confer unduly generous benefits but in view of the Attorney General's advice referred to above I am submitting the question to you for a decision.

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

R B Brooke - Pollock

AIR CHIEF MARSHAL,

G O V E R N O R.

LETTER OF APPOINTMENT
(ASIATICS OTHER THAN CLERKS)
CLASS "C" - PERMANENT STAFF.

Department GOVERNMENT PRESS,

Station Nairobi.

Date 19th. October 1928

To

Mr. Mehraj Din

Government Press, Nairobi.

Subject to your being medically passed as fit for service in the Colony and Protectorate of Kenya, you are hereby appointed as a Bookbinder in the Government Press Department with effect from 1st January 1928

2. The salary attached to your post is at the rate of Sh. 260/- per month in the scale of Sh. 210/- per month rising to Sh. 270/- per month by annual increments of Sh. 10/- per month.

3. Your appointment can be terminated by one week's notice on either side, or payment of equivalent salary in lieu of notice.

4. You will be liable to instant dismissal in the event of incompetence, misconduct or insubordination.

5. You are liable to be transferred at any time to another branch of the Colony and Protectorate Service at the discretion of the Government.

6. This Letter of Appointment is subject to the conditions set forth in the Schedule hereto annexed, and the Schedule shall be read and construed as a part of the Letter of Appointment.

7. In the event of dispute on any of the provisions of this Letter of Appointment, the decision of the Government shall be final and binding.

8. Your attention is drawn to Secretariat Circular No. 50 of 1927 with reference to the general Conditions of Service for Asiatics other than Clerks.

Your first appointment dates from 23-4-1912.

Sd. F. W. Knightly

Government Printer

Head of Department.

I agree to accept the conditions specified above, and in the Schedule annexed thereto

Sd. Mehraj Din

Signature of Employee.

Date 19th. October, 1928

SCHEDULE OF GENERAL CONDITIONS OF SERVICE FOR
ASIATICS OTHER THAN CLERKS.

CLASS "C"—PERMANENT STAFF.

LEAVE.

1. Subject to the necessities of the Service, the employee may be granted one month's leave per annum on full pay or five months on full pay after forty-three months' continuous residential service, plus the periods of the voyages to and from India. If especially detained by the Government in the Colony on public grounds after forty-three months' continuous service he may be granted three days' extra leave on full pay for each completed calendar month for which he has been detained. The date of arrival at the port in India will be regarded as the first day of leave, and the day preceding embarkation from India the last day of leave.

SICK LEAVE.

2. When the employee is absent from duty owing to illness not caused by his own neglect or misconduct, he may be granted full pay up to a maximum period of three months' absence in any one period of twelve months; half salary may be granted thereafter up to a maximum period of three months. The period during which the employee is actually under treatment will be covered by a certificate from a Government Medical Officer, but local sick leave necessary for the purpose of recuperation after illness will require a recommendation from a Medical Officer, confirmed by the Director of Medical and Sanitary Services. All absence from duty whether owing to illness or convalescence will be classed as local sick leave. Should illness be caused through the employee's own impropriety of conduct his full salary may be forfeited for the whole period.

PASSAGES.

3. If the employee is drawing salary of Sh. 280 per month and over, second class sea passage to and from India may be granted on completion of residential service specified in paragraph 1 of the Schedule. Should the salary of the employee be less than Sh. 280 per month, he may be granted a deck sea passage to and from India subject to the provisions of paragraph 1 of the Schedule.

LOCAL TRAVELLING.

4. Salaries of Sh. 280 per month or over entitle the employee to second class on the Railway; salaries of less than Sh. 280 per month to third class on the Railway on local travelling.

TRAVELLING ALLOWANCE.

5. The employee while travelling on duty, transfer or leave may be granted travelling allowance at the rate of fifty cents of a shilling for every Sh. 50 or part of Sh. 50 of monthly salary, but not exceeding Sh. 6 per night.

QUARTERS.

6. Quarters free of rent (but not of rates or other similar outgoings) will be provided for the employee when available. When such quarters are not available, a tent or other temporary shelter will be provided, or in certain circumstances, an allowance in lieu of quarters at the rate of 15 per cent. of the initial salary of the scale with the minimum of Sh. 40 per month, will be granted at the discretion of the Government.

GENERAL.

7. Except in matters otherwise provided for in this Letter and Schedule, the provisions of the Kenya Code of Regulations, in so far as they affect the employee, will apply, but the employee is not entitled to any privileges other than those set out in this Letter and Schedule.

THE COLONY AND PROTECTORATE OF KENYA

THE KENYA ASIAN LOCAL CIVIL SERVICE

LETTER OF PERMANENT APPOINTMENT

GOVERNMENT PRESS DEPARTMENT

Nairobi, STATION

No. _____

DATE 22nd, July, 1935 1935

To,

MR. Mehraj Din

Subject to your acceptance of the terms of this Letter you are hereby appointed as a
Operative Grade I

in the permanent staff of the Asian Local Civil Service of this Colony with effect from the 1st July 1935. Your continuous service dates from the 23rd April 1912.

2. The salary attached to your post is at the rate of £177 per annum up to and including the 31st December 1935 and thereafter at the rate of £194 per annum in the scale of £146 by £12 to £218

and the incremental date is the 1st January

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.

This cancels the Letter of Appointment issued to you on the 15th October 1928.

Sd. F. W. Lightly
Government Printer
Head of Department.

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

Sd. Mehraj Din
Employee.

Date 22nd, July, 1935

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

Asian Operatives transferred from the Kenya
and Uganda Railway Press to the Government
Press on amalgamation of the two Presses
on the 1st May 1927

Name	Service in the Railway Press	Provident Fund paid by the Rail-way Administration	Remarks
Mehraj Din	23-4-1912 to 30-4-1927	Sh.3,684/96	
Fazal Din	3-10-1912 to 30-4-1927	Sh.5,500/51	
Haider Shah	17-2-1918 to 30-4-1927	Sh.4,322/70	
Khuda Bux	23-11-1918 to 30-4-1927	Sh.3,211/12	
Jalal Din	25-12-1918 to 30-4-1927	Sh.3,276/72	
Mohan Lall	1-1-1919 to 30-4-1927	Sh.3,523/12	
M. R. Mudaliar	2-1-1919 to 30-4-1927	Sh.2,135/76	
Ghulam Mohamed	28-8-1919 to 30-4-1927	Sh.4,661/25	
Barkat Ali	11-2-1920 to 30-4-1927	Sh. 225/-	
Ghulam Ali	15-12-1920 to 30-4-1927	Sh.3,099/35	
S. Chittyar	14-1-1921 to 30-4-1927	Sh.2,926/22	
Mohamed Sadiq	1-3-1924 to 30-4-1927	Sh.1,218/70	
A. V. Raju	24-7-1925 to 30-4-1927	Sh. 673/55	
T.K.R.Pillai	28-8-1925 to 30-4-1927	Sh. 630/43	
Hafiq Ahmed	16-1-1926 to 30-4-1927	Sh. 369/72	
Munawar Hussein	1-1-1927 to 30-4-1927	-	Was not eligible to contribute as the rate of his salary was below the minimum figure required for the purpose.