

APPT. MISCS.

1894.

ASSAM SECRETARIAT.

MILITARY - A.

Progs., February 1894, Nos. 1-3

Correspondence on the subject of the appointment of
ex-officio Cantonment Magistrates.

REFERENCE TO FORMER CASES.

Deptt., date and Nos., or File No. and year.	Brief title of File.
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Mily., A, Sept., 1893, Nos. 8-15.	Appointment of certain military officers to be ex-officio Cantonment Magistrates with 3rd class powers.
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1894

ASSAM SECRETARIAT.

MILITARY.- A.

FEBRUARY.

Nos. 1-3.

Correspondence on the subject of the appointment of ex-officio Cantonment Magistrates.

LIST OF PAPERS.

No. 1.- From the Government of India, Military Department, No. 69C., dated the 9th January 1894.

No. 2.- Enclosure.

No. 3.- To the Commissioner, Assam Valley Districts, and Deputy Commissioners, Lakhimpur, Cachar, and Khasi and Jaintia Hills, Nos. 187P.S.- 1577-80G., dated the 16th February 1894.

KEEP - WITHS PRINTED.

Notes and orders.

KEEP - WITHS NOT PRINTED.

NIL.

...

Typed by. <i>S. J. Gordon</i>	Typed
Compared. <i>Monica</i>	Assistants
Checked by. <i>U. B. D. D. D.</i>	Asstt. Supdt.
Record Cell, Meghalaya Sectt.	

K. W.

Military, A, February 1894.

Nos. 1-3.

Correspondence on the subject of the appointment of
ex-officio Cantonment Magistrates.

FROM THE ASSISTANT SECRETARY TO THE GOVERNMENT OF INDIA,
MILITARY DEPARTMENT, No. 69C., DATED THE 9TH
JANUARY 1894.

Forwards copy of a correspondence with the Government of
Bombay on the subject of the appointment of certain
officers to be ex-officio Cantonment Magistrates.

Assistant Secretary,

A copy of the Cantonment Act and of the Criminal
Procedure Code put up.
*Page 7 of Mily., A, | Please see our Notification
S-ep-tember 1893, Nos. 8-15. | No. 8657G.,* dated the 31st
| August 1893, which issued
under India's orders. For orders. Linked case (Diary No.
207-P.S.) also for orders.

S. Bhattacharya.- 6th February 1894.

A.S.G.- 7th February 1894.

Secretary,

We might send copies to Deputy Commissioners of
districts in which there are cantonments for information.
Copy also to Commissioner. Nothing further needed.

7th February 1894.
8th February 1894.

H.C.
F.C.D.

Assistant Secretary,

Draft put up for approval.

S. Bhattacharya.- 9th February 1894.

A.S.G.- 9th February 1894.

15th February 1894.

H.C.

Typed by.	<i>Shyama</i>	Typist
Compared.	<i>15/11/76</i>	Assistant
Checked by.	<i>W. B. ...</i>	Asst. Supdt.
Record Cell, Meghalaya Sectt.		

Contd...2/P.

To the Commissioner, Assam Valley Districts
and Deputy Commissioners, Cachar, Lakhimpur, and
Khasi and Jaintia Hills, Nos. 187P.S.- 1577-80G.,
dated the 16th February 1894.

Recorded by - R.K. Sen - 21st Feb., 1894.

R.M. De - 24th Feb. 1894.

Exd. by - A.G.B.

Typed by - *Angdon* 15/11/76
Typist
Compared. *Chow* 15/11/76
Assistants
Checked by. *W. R.* 17/11/76
Asstt. Supdt.
Record Cell, Meghalaya Sectl.

Judicial

No. 69
C

It is requested that the above heading, with number and date of this communication, may be quoted in any subsequent correspondence on the subject.

GOVERNMENT OF INDIA.

MILITARY DEPARTMENT.

Fort William, the 9th January
1894.

To

THE SECRETARY TO THE GOVERNMENT OF BOMBAY,
MILITARY DEPARTMENT.

Sir,

I am directed to acknowledge the receipt of your letter No. 1568-G, dated the 6th October 1893, regarding the procedure to be observed in the appointment of officers commanding stations as ex-officio Cantonment Magistrates.

2. It was stated in this office letter No. 2516-C, dated the 29th December 1892, that there is nothing to prevent the officer commanding a station being appointed ex-officio Cantonment Magistrate, and that the appointment would be valid under the combined operation of Section 7 of the Cantonments Act (XIII of 1889), and Sections 12 and 39 of the Code of Criminal Procedure, 1882.

3. It is now suggested that, in addition to proceeding under Sections 12 and 39 of the Code of Criminal Procedure, 1882, it would be necessary to issue a notification under Section 7 of the Cantonments Act appointing the Commanding Officer personally to be a Cantonment Magistrate.

4. In reply, I am to observe that a notification making an appointment ex-officio to the office of Cantonment Magistrate would run in this, or similar, form :-

"In exercise of the powers conferred by Sections 12 and 39 of the Code of Criminal Procedure, 1882, the Governor of Bombay in Council is pleased to appoint the Commanding Officer for the time being of the _____ Cantonment to be Magistrate of the _____ class within the limits of that Cantonment."

Typed by. *M. Prasad* Typist
Compared. *15/11/76* Assistants
Checked by. *M. Prasad* 17/11/76
Asstt. Supdt.
Record Cell, Mughalaya Sectt.

Contd...2/P.

No further notification under Section 7 of the Cantonments Act would be required. The effect of that section is that when a person (or the holder of an office) has been appointed under Section 12 (or Sections 12 and 39) of the Code of Criminal Procedure to be a Magistrate within a Cantonment, he becomes ipse facto the Cantonment Magistrate of that Cantonment.

5. With reference to the argument at the end of paragraph 3 of your letter, I am to observe that Section 5 of the Cantonments Act provides that there shall be only one Cantonment Magistrate in a cantonment, and that when an officer is specially appointed to be a Magistrate within a particular cantonment, he and not the District Magistrate or any other Magistrate who may exercise jurisdiction over a larger area within which the cantonment is comprised, would naturally be the "Cantonment Magistrate" under Section 7.

I am, &c.,

(Signed) E.H.H. COLLEN,

Secretary to the Government of India.

Copy, with a copy of that to which it is a reply, forwarded, in continuation of Military Department No. 2516-C, dated the 29th December 1892, to -

The Home Department.
The Foreign Department.
The Legislative Department.
The Secretary to the Government of Madras,
Military Department, for the information of
the Governor in Council.
The Chief Secretary to the Government of Bengal.
The Chief Secretary to the Government of the
North-Western Provinces and Oudh.
The Chief Secretary to the Government of the Punjab.
The Chief Commissioner, Burma.
The Chief Commissioner of the Central Provinces.
The Chief Commissioner, Assam.
The Chief Commissioner, Coorg.
The Quartermaster-General in India, for the information of the Commander-in-Chief.

By order,

Asstt. Secy. to the Govt. of India.

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Typed by.	<i>Singh</i>	Typist
Compared.	<i>G. Mondal</i>	Assistant
Checked by.	<i>W. B. Dutt</i>	Asstt. Supdt.
Record Cell, Meghalaya Sectt.		

No. 1568-G, dated Bombay Castle, 6th October 1893.

From - Brigr.- Genl. C.A. CUNINGHAM, Secy. to the Govt.
of Bombay, Mily. Dept.

To - The Secretary to the Government of India,
Military Department, Simla.

REFERRING to your memorandum No. 2516-C, dated 29th December 1892, (Judicial), conveying the decision of the Government of India that there is at present nothing to prevent the officer commanding a station being appointed ex-officio Cantonment Magistrate, as the appointment would be valid under the combined operation of Section 7 of the Cantonments Act, 1889, and Section 12 and 39 of the Code of Criminal Procedure, 1882, I am directed to request that this Government may be favored with more explicit instructions on the subject, with reference to the apparent requirements of Section 7 of the Cantonments Act, 1889, as it seems that that section does not authorize the appointment of Cantonment Magistrates in virtue of any offices they may hold, even though they may be qualified for the appointment of Cantonment Magistrates by reason of an order under Sections 12 and 39 of the Code of Criminal Procedure investing them with the powers of a Magistrate thereunder.

2. I am to observe that under Section 39 of the Code this Government can apparently confer magisterial powers upon persons in virtue of their office, or on classes of officials generally, by their official titles. Government could, therefore, appoint the officers commanding certain stations to be always Magistrates of the 1st, 2nd, or 3rd class, as might be necessary, ex-officiis. Government could also, under Section 12 of the Code, define the local areas within which such officers should exercise the powers with which they might be invested. It is not, however, clear (as the Government of India seem to hold) that an officer commanding a station, when appointed under Sections 12 and 39 of the Code a magistrate for the area comprised within the limits of the cantonment under his command, would thereby become at once a duly appointed Cantonment Magistrate. I am to remark that if that were the effect of his being invested with powers within the Cantonment, the same effect would apparently follow in the case of the District Magistrate and every other Magistrate exercising jurisdiction in the district in which the Cantonment is situated, for every such Magistrate would have jurisdiction within the cantonment limits, and it could not have been intended that all these Magistrates should be Cantonment Magistrates.

3. It appears, therefore, to His Excellency the Governor in Council that though an ex-officio investiture with powers under the Code can be ordered in the manner desired by the Government of India, a further appointment under the Cantonments Act, 1889, of officers commanding stations to be Cantonment Magistrates is also necessary before they can exercise

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the functions of a Cantonment Magistrate; and that such an appointment cannot be made under Section 39 of the Code of Criminal Procedure read in conjunction with Section 7 of the Cantonments Act, as Section 39 relates only to powers under the Code, but must be made by name expressly under the Cantonments Act, inasmuch as that Act contains no provision except that contained in Section 30 (which applies only to Cantonments in Presidency towns) for appointments ex-officiis.

M. 3 Appointment of ex-officio Cantonment Magistrates.

No. 3.

Nos. 187P.S.- 1577-80G., dated Shillong, the 16th February 1894.

Memo. by - The Secretary to the Chief Commissioner of Assam.

Copy of Chief Commissioner's Notification No. 8657G., dated the 31st August 1893, and Military Department letter No. 69C., dated the 9th January 1894, and enclosure, forwarded to the Commissioner of the Assam Valley Districts and Deputy Commissioners of Cachar, Lakhimpur, and the Khasi and Jaintia Hills district for information.

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Typed by.	<i>H. J. G. J.</i>	Typist
Compared.	<i>W. B. D.</i>	Assistant
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