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GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
SUPREME CONTRABAND PROPERTY DISPOSAL TRIBUNAL
(Appointed by LO, AG, SCAP 386.5 (7 Sept 51)JA,
7 September 1951)

*File
CPC - Government
File*

In the Appeal of
O'DELL, James W.

Case No. 77
7 March 1952

DISTRICT CONTRABAND PROPERTY DISPOSAL TRIBUNAL

Report of Proceedings of the Tribunal

1. The Supreme Contraband Property Disposal Tribunal, appointed by the above cited letter orders, convened according to schedule in the chambers of the Allied Council for Japan at 0900 on 19 February 1952. The petitioner appeared in person with his counsel, Mr. Leon Greenberg of the Tokyo Bar. In addition to the oral testimony of the petitioner and the argument of counsel, the Tribunal has considered the record consisting of:

- a. Report of Investigation by 44th CID, 20 Dec 51, File No. 44-1372-N7/38 and exhibits thereto.
- b. Letter, 13 October 1951, Hqs, Central Command to WOJG James W. O'Dell, subject: "Disciplinary Punishment", and 7 indorsements thereto.
- c. Proceedings of the JLG District Tribunal, 7 December 1951.
- d. Vesting Order No. YOK-138, 7 December 1951.
- e. Verified petition herein.

2. FINDINGS:

The petitioner is a warrant officer in the United States Army on duty with the 610th Ordnance Battalion. He is an expert in the field of optics with 22 years experience. Since the end of the war he has spent about 17 months in Germany where he engaged in research work and has acquired an extensive knowledge of the most modern and up to date methods and processes in the field of optics as well as a considerable reference library. There are only two other experts in the Army, known to the petitioner, whose technical proficiency approaches that of his own. Prior to the petitioner's arrival in Japan there was no one in Japan, so far as the petitioner is aware having the specialized knowledge and reference material he possessed in regard to the latest techniques developed by the German experts in the field of optics.

At the 610th Ordnance Battalion the petitioner was the chief of the anti-aircraft fire control and maintenance section. As an additional duty, however, the petitioner having recently received a course of instruction

Am. J.

in the latest methods of protecting binoculars against moisture and fungus, was required to inspect the packaging of binoculars repaired by the Tokyo Optical Company, a Japanese manufacturer under contract to repair optical instruments for the United States Army. The petitioner had nothing to do with the selection of contractors or awarding repair contracts. The supervision of the repair work and the inspection of the finished product being the responsibility of other officers, the petitioner had nothing to do with the performance of the repair contract. Neither did he have anything to do with the certification of the work prerequisite to payment. He was concerned only with the inspection of packaging. In short, it does not appear that the petitioner was in a position to confer any benefits, favors, or advantages upon the contractor by reason of his official status.

Having thus become acquainted with the representatives of the Tokyo Optical Company, and being by reason of his training and experience interested in the working of optical plants, the petitioner visited the Tokyo Optical Company on several occasions during off-duty hours. During these visits he observed that many of the processes and techniques employed by the Tokyo Optical Company were relatively primitive. Therefore, believing that he could teach the Japanese firms innovations in optical techniques that would result in a material enhancement of their profits, he proposed to give them such advice and loan them some of his technical publications in consideration of a diamond ring and a mink coat. The Tokyo Optical Company readily agreed to the proposal and the petitioner thereafter, from time to time over a period of more than a year, gave such advice and instruction during his off duty hours. The technical assistance rendered by the petitioner having proved to be highly satisfactory to the Tokyo Optical Company, they complied with their part of the bargain by giving the petitioner a mink coat valued at approximately \$1000 and a diamond ring also valued at approximately \$1000. The value of the services rendered by the petitioner was, in fact, worth vastly more than it cost the Tokyo Optical Company.

At the time the foregoing events occurred, there being no other person in Japan having the technical knowledge of the petitioner, it cannot be said that his activities constituted competition with indigenous experts. As a result of his advice, Japanese opticians are now able to manufacture binocular microscopes and apply hard coating to lenses. Thus, as a direct result of the petitioner's extra-curricular activities, the United States Army has been able to procure locally optical equipment which it would otherwise be necessary to procure from other sources; the Japanese concerned have realized handsome profits; and the economy of Japan rather than being hampered has been enriched.

The petitioner did not carry out this activity surreptitiously. His commanding officer, as well as his associates, was aware of the arrangement he had with the Tokyo Optical Company, and being unaware of any criticism or censure of his activities he was conscious of no wrong doing. However, on or about 20 April 1951, a civilian technician employed by the Ordnance Section, on the day before his departure from Japan, reported the petitioner's acquisition of the fur coat and ring to the CID, who commenced an investigation. The CID Agents requested the petitioner to produce the ring and coat for purpose of identification, and the petitioner voluntarily complied. The coat and ring were subsequently determined to be contraband and were vested on 7 December 1951 by Vesting Order No. YOK-138, 7 December 1951.

By letter, dated 13 October 1951, the Commanding General, 229th Ordnance Base Depot, accused the petitioner of receiving from the Tokyo Optical Company during August 1950 "a platinum-mounted ring valued at about \$850.00 in payment for certain technical knowledge and services furnished to that Company. Such furnishing of services and the acceptance of such a substantial item in payment for such service was in violation of GHQ, SCAP Circular No. 7, dated 15 March 1948, and GHQ, SCAP Circular No. 23, dated 13 September 1949". The Commanding General, 229th Ordnance Base Depot then proposed to impose punishment pursuant to Article 15 of the Uniform Code of Military Justice. The petitioner having elected by 3rd Indorsement to accept punishment under Article 15 in lieu of trial by court-martial and having declined to submit any matter in mitigation, extenuation, or defense, a reprimand and forfeiture of \$95.00 were imposed by the Commanding General, Central Command by 5th Indorsement.

3. OPINION:

It is the opinion of the Tribunal that there was nothing per se wrongful in the conduct of the petitioner, and that had the events occurred in the Zone of the Interior there could have been no question as to the legitimacy of the transaction. However, personnel in this theatre, because of exigencies peculiar to the occupation, are subject to many restrictions which would be unnecessary and even unreasonable elsewhere. Recognition of this unhappy necessity is found in the first sentence of paragraph 33, of Circular 20, GHQ, SCAP, wherein it is stated: "There are many limitations upon the activities of occupying forces in occupied countries which are necessary to the furtherance of the objectives of such occupation." SCAP being determined to conduct the occupation of Japan in such a manner that his stewardship of the nation would be above reproach, he sought to preclude all activities which might give rise even to a suggestion of "carpet bagging" or other scandalous activity. Thus it was that he determined it necessary to preclude not only activities which in fact constituted interference with official integrity but even activities which might "give rise to a reasonable suspicion that such activities would have that effect". As an example of the activities he intended to preclude, SCAP specifically prohibited in paragraph 33a of Circular 20 (SCAPIN) "acceptance by a member of the occupation forces from Japanese nationals * * * of contributions, gifts, or emoluments, other than those of small value".

The petitioner contends inter alia that whereas the acceptance of a gift of substantial value might reasonably give rise to a suspicion of misconduct and was therefore clearly precluded by paragraph 33a, the ring and coat he received were not gifts but were received in payment for his services in pursuance of an open and above board agreement. The fallacy of this argument, however, lies in the fact that in addition to contributions and gifts, the acceptance of "emoluments" was likewise prohibited.

In Black's Law Dictionary, Third Edition, at page 656, and Bouvier's Dictionary, at page 1035, the word "Emolument" is defined as follows:

"The profit arising from an office or employment; that which is received as compensation for services, or which is annexed to the possession of an office as salary, fee, and perquisite; advantages; gain, public or private; Webster. Any perquisite advantage, or profit, or gain arising from the possession of an office."

While it might be argued that the term "emolument" contemplates only payments, or benefits, or compensation, received by an officer from a Japanese as extra compensation to the officer for the performance of his official duties, it is the opinion of the Tribunal that such benefits would constitute perquisites whereas the term "emolument" is broader than and is inclusive of perquisites. In other words, a perquisite is an emolument but an emolument is not necessarily a perquisite. Any payment or benefit received in compensation for the performance of services, whether the services be performed by an official in his official capacity or by an official in his private and unofficial capacity, is an emolument. It follows then, in the opinion of the Tribunal, that SCAP prohibited members of the occupation from accepting extra-curricular employment and from accepting pay from Japanese for services performed even though such services have no relation whatsoever to the occupationnaire's official status or duties. Accordingly, the subject coat and ring having been received in compensation for the performance of services albeit performed in a private and unofficial capacity, were emoluments, and as such, their acceptance was prohibited by paragraph 33a of Circular 20 (supra).

While it may be considered, as the petitioner contends, that as matters turned out, his activities proved to be highly beneficial rather than deleterious to the Japanese economy, consideration of the wisdom or the pragmatic efficiency of SCAP directives is beyond the pale of this Tribunal's mission. It is clear to the Tribunal that SCAP made a policy decision to prohibit members of the occupation from accepting pay from Japanese nationals as compensation for the performance of services of any kind, because he believed that in general such activities would prove undesirable, and he did not provide an exception which would take a case out of the rule by a showing that the services performed were actually beneficial to the Japanese economy.

While the Tribunal is of the opinion that the foregoing discussion disposes of the petitioner's appeal, it observed in passing, that the petitioner having been found guilty in a criminal action of a violation of orders, which gave rise to the seizure, his appeal is precluded by that portion of paragraph 5b of Circular 23, GHQ, SCAP, 7 July 1948, which provides: "No person found guilty in a criminal action of violating orders described in paragraph 1 giving rise to the seizure * * * shall have any action for the recovery of contraband property * * *". Acceptance of punishment pursuant to Article 15 of the Uniform Code of Military Justice, constitutes, in the opinion of the Tribunal a finding of "guilty in a criminal action".

4. In conformity with the foregoing opinion the Order of the Tribunal has been entered and communicated to the Deputy Contraband Property Administrator, the District Contraband Property Tribunal, and to the petitioner.

C. E. ROTGERS

C. E. ROTGERS
Colonel Arty
President

John W. Ganney

J. W. GANNAY, LS, GHQ, SCAP, Member

Allan R. Morrison

ALLAN R. MORRISON, JA, GHQ, FEC, Member

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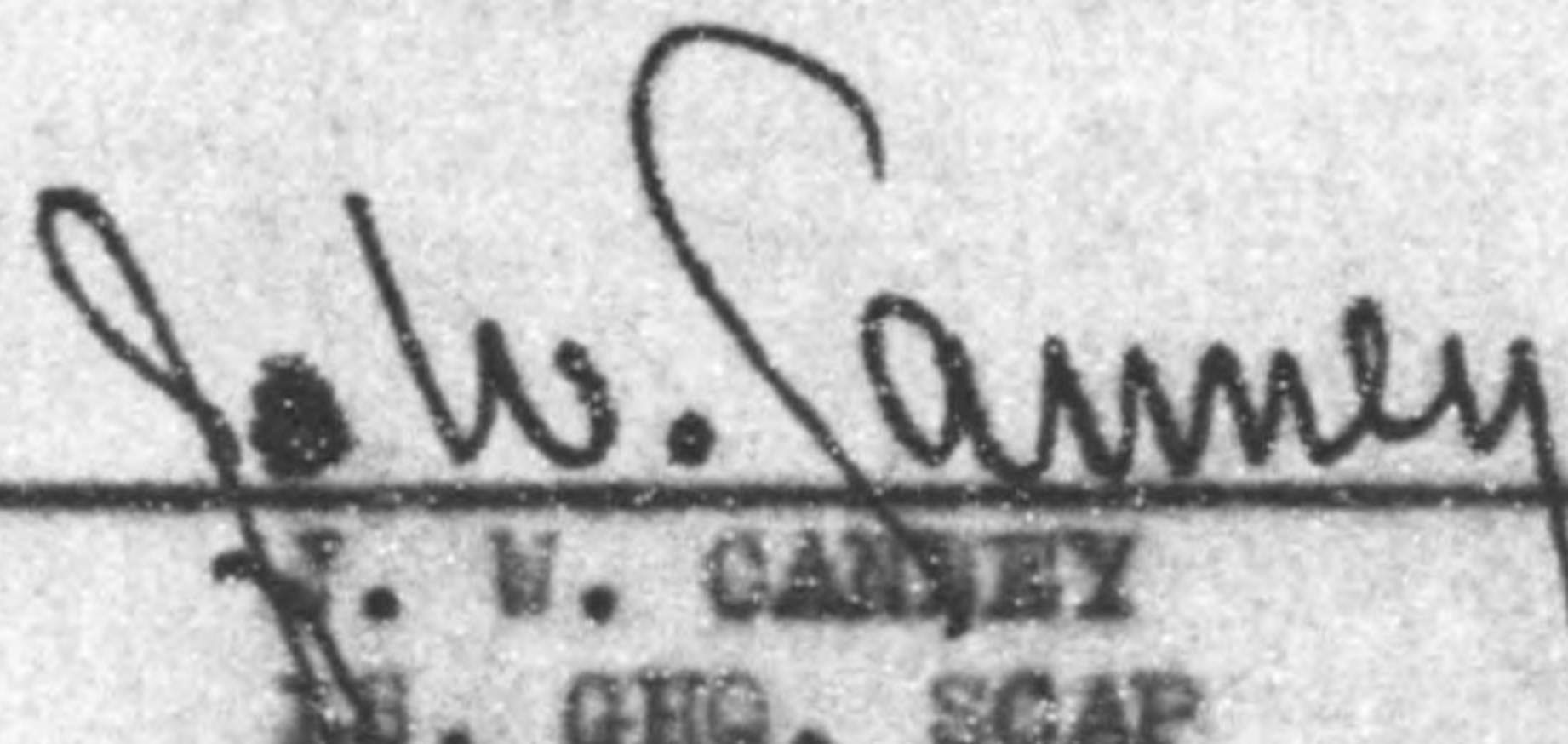
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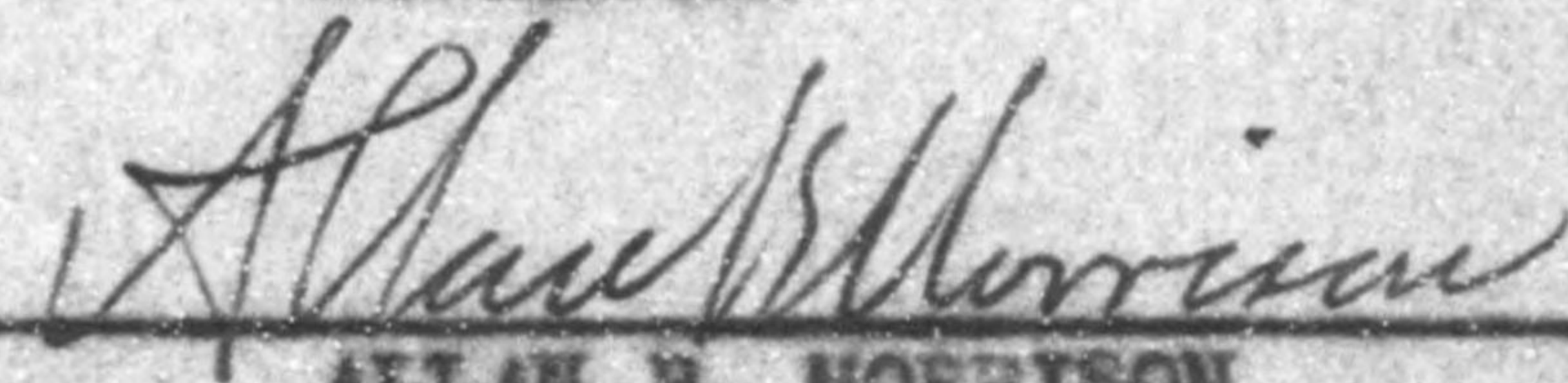
Case No. 77
Order No. 1
7 March 1952

Order on Appeal from Vesting Order No. YOK-138, 7 December 1951

Upon petition filed on 28 December 1951 from Vesting Order No. YOK-138, 7 December 1951, issued by the District Contraband Property Disposal Tribunal, appointed by Letter Order No. 10-519, Headquarters, Japan Logistical Command, 16 October 1950, under authority delegated by SCAP Circular 23, General Headquarters, Supreme Commander for the Allied Powers, 7 July 1948, and after full hearing and consideration of the record as indicated in the Report of Proceedings herein, and it appearing therefrom that the claim of the petitioner, James W. O'Dell to recover possession of the diamond ring and mink coat confiscated under the provisions of the said Vesting Order, is not sustained by the evidence, it is ORDERED as follows:

By virtue of paragraph 5c, Circular 23, General Headquarters, Supreme Commander for the Allied Powers, 7 July 1948, the appeal of the petitioner, James W. O'Dell, from Vesting Order No. YOK-138, 7 December 1951, is not sustained, title to the said diamond ring and mink coat will remain vested in the Contraband Property Disposal Administrator, who will forthwith proceed to dispose of said property in accordance with the provisions of Circular 23, General Headquarters, Supreme Commander for the Allied Powers, 7 July 1948.


F. W. GARVEY
IS, GHQ, SCAP
Member


C. E. ROTHGER
Colonel Arty
President

ALLAN R. MORRISON
JA, GHQ, FPO
Member

DISTRICT CONTRABAND PROPERTY DISPOSAL TRIBUNAL