

**63. Violation of good order and discipline.** — Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

#### NOTES

1. *As a rule a charge should not be preferred under this section where special provision for the offence is made elsewhere in AA. In a proper case, however, an alternative charge may be added under this section.*

2. *A charge under this section must recite its actual words, i.e., there must be charged an "act" or "omission" "prejudicial to good order and military discipline". But, of course, an act or omission is not brought within the scope of the section by merely applying to it the statutory language; and a court is not warranted in convicting unless of the opinion that the act, etc., proved was prejudicial both to good order and to military discipline, having regard to its nature and to the circumstances in which it took place.*

3. (a) *"An omission" to be punishable under this section must amount to neglect which is wilful or culpable. If wilful, i.e., deliberate it is clearly blameworthy. If it is not wilful, it may or may not be blameworthy, and the court must consider the whole circumstances of the case and, in particular, the responsibility of the accused. A high degree of care can rightly be demanded of a person who is in charge of a motor vehicle or public money or property, or who is handling firearms or explosives, where a slight degree of negligence may involve loss or danger to life; in such circumstances a small degree of negligence may be blameworthy. On the other hand, neglect which results from mere forgetfulness, error of judgment or inadvertence, in relation to a matter which does not rightly demand a very high degree of care, would not be judged blameworthy so as to justify conviction and punishment. The essential thing for the court to consider is whether in the whole circumstances of the case as they existed at the time of the offence the degree of neglect proved is such as, having regard to their military knowledge of the amount of care which ought to have been exercised, renders the neglect substantially blameworthy and deserving of punishment.*

(b) *Negligently.*—Negligence has been defined by judicial pronouncements as "the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do and as "doing some act which a person of ordinary care and skill would not do under the circumstances"

4. *The following are a few instances of offences not uncommonly charged under this section: Negligent performance of duties connected with money or stores resulting in a deficiency and loss. Being in improper possession of public property or of property belonging to a comrade (where there is no evidence of actual theft) Improperly using Government transport and petrol for private purposes.*

*Borrowing money from persons under his command, gambling, and other cases of disobedience of regulations, which are not published as regimental orders (see [note to AA.s.42\(e\)](#)). Negligently wounding or injuring self or others. Improperly using or obtaining railway warrants. Sending an anonymous letter to his commanding officer. Neglect of duty when a sentry, on guard, etc. Causing a disturbance in the lines. Stating a falsehood to a superior officer. Using criminal force to a comrade,*

5. *AA recognises no such offence as "making a frivolous complaint"; but the repetition of baseless complaints may amount to an offence under this section; so too may a complaint so framed as to be offensive or indicative of insubordination, etc.*