

43. Fraudulent enrolment.—
the following offences, that is to say, —

Any person subject to this Act who commits any of

(a) without having obtained a regular discharge from the corps or department to which he belongs, or otherwise fulfilled the conditions enabling him to enroll or enter, enrolls himself in, or enters the same or any other corps or department or any part of the naval or air forces of India or the Territorial Army; or

(b) is concerned in the enrolment in any part of the Forces of any person when he knows or has reason to believe such person to be so circumstanced that by enrolling he commits an offence against this Act; shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

NOTES

1. An offence under this section should not be dealt with summarily under [AA.s.80, 83 or 84](#).
2. Fraudulent enrolment like desertion is an offence, trial in respect of which is not barred by [AA.s.122](#) except in the case of a person, other than an officer who has subsequently to the commission of the offence served continuously in an exemplary manner for not less than three years with any portion of the regular Army; for exemplary manner, see [Regs Army para 465](#).
3. Clause (a). —For definition of 'corps' see [AR187\(1\)](#).
4. Department; see [AA.s.3\(ix\)](#).
5. (a) A person who leaves one corps or department and enrolls himself in another does not *prima facie* commit the offence of deserting the service, though he irregularly and improperly exchanges one branch of that service for another. If however at the time of leaving his first corps or department, he had no intention of re-enrolling himself, and only did so as an afterthought, or if he absented himself to avoid a particular military service, e.g., service abroad, his offence is desertion, though a convict on a charge framed under this section would also be legal. In deciding under which section a charge should be framed, the time which elapsed between the two acts will be an important element for consideration. In doubtful case the charge should be framed under this clause.
(b) If the offender is charged with desertion, he should be tried in his original corps or department. If he is charged with the offence specified in this clause he may be tried either in his original corps or department or in that into which he has fraudulently

enrolled himself, and if not dismissed by the court which tries him may be held to serve in either corps or department. As a rule he should be tried in that corps or department in which it is intended to retain him.

(c) It will be noticed that the offence under this clause can be committed by a person who belongs to a corps or department and enrolls himself again in the same corps or department. This clause is meant to meet the case of the larger corps and departments (e.g. the Army Service Corps) where a man might otherwise leave one portion of the corps or department and enroll himself in another with impunity.

6. The clause does not deal with the case of a sailor or airman who enrolls into any corps or department of the regular Army but merely gives the converse case of a person subject to AA enrolling in the Air Force or T.A. or entering the Navy. Sailors or airmen who enroll in any corps or department of the regular Army should be dealt with under [AA.s.44](#). Similarly a member of the Territorial Army who enrolls himself into any corps or department of the regular Army when such member is not subject to AA under [AA.s.2\(l\)\(e\)](#) cannot be charged under this clause although he may be charged under [AA.s.44](#) for making a false answer if such be the case.

7. As to forfeiture of service towards pension or gratuity on conviction for this offence, see P and A Regs, and Pension Regs, where the conditions under which service so forfeited may be restored are also laid down.

8. Proof of fraudulent enrolment may be given either. —(a) orally by a witness who was present when the accused was enrolled on the second enrolment, or

(b) by production by a witness, who can identify on oath the accused as the person named therein, of the original enrolment paper or a copy of his enrolment paper purporting to be certified to be a true copy by the officer, having the custody of the enrolment paper; [AA.s.141\(2\)](#). Evidence must also be given that at the time the accused enrolled himself; he was then serving. This can be proved by a witness orally or by production of the earlier enrolment paper as above.

9. Clause (b). —'the Forces'; see [AA.s.3\(xi\)](#).

10. 'So circumstanced'. —The term implies that where he is subject to AA, so that he is guilty of fraudulent enrolment under [AA.s.43\(a\)](#) or where, having previously served, he again enrolls without declaring the circumstances of his previous service, so that he commits an offence under [AA.s.44](#).