**COURT OF INQUIRY**

1. A Court of Inquiry (C of I) is an assembly of Officers or of JCOs or of Offrs and JCOs, WOs, and NCOs, directed to collect and record evidence, and if so required to  **report (by opinion, recommendations and declaration etc)** with regard to any matter which may be referred to them.

2. A C of I is a formal fact finding body. When the circumstances of any act or omission are unknown or shrouded in mystery or a doubt exists about the culpability or innocence of a person subject to the AA or the Act and instructions make it mandatory and obligatory, a C of I may be assembled to investigate or ascertain the lapses, if any. A list of the cases which are necessarily required to be investigated by a C of I is attached at **Appendix ‘B’**. C of I is investigation but does not by itself determine the penal consequences of any act/omission or neglect as disclosed in the evidence/statement adduced before the C of I. It is not a Court in strict sense, as it is not empowered to record a finding of ‘Guilty’ or ‘Not Guilty’ or award any sentence in consequence thereof. The detail guidelines for holding the C of I are given in Army HQ letter No A/46440/AG/DV-1(P) dt 03 May 01.

**Assembly – Who can order and its Composition**

3. (a) It may be convened by order of the  **Officer in Command of any body of troops** (AR 177(3) refers). **NOT** by any staff offrs. However, staff offr can sign convening order  **‘for’** the CO/Cdr on his behalf. A specimen of Convening Order of C of I is attached as  **Appendix C** . An officer assembling the C of I is empowered to order its re-assembly as often as he wishes for the purpose of examining additional witnesses, or further examining any witness, or recording further info (AR 179(5) refers).

(b) It may consist of any number of members but minimum two are mandatory. They can be officers or JCOs or one officer and one JCO or one officer or JCO and one WO or one officer or JCO and one NCO.  **Presiding Officer can be either an officer or a JCO depending upon the requirement of a case**.  **A person not subject to AA (civilian) can NOT be member of the C of I**.

(c) **Person in attendance** - In technical inquiries, where presence of an expert would facilitate the task of investigation, persons with special knowledge in that field can be co-opted as person in attendance. For example – a person from accounts dept can be co-opted to assist the C of I assembled in connection with financial irregularities so that he may properly guide the investigation of the court. In the event of the officer of Defence Accounts Department finding himself unable to agree with the conclusions of the Court, it will be open to him to record a note of dissent. (RA 519 refers). Persons from the field of Medical, Engineering or Law etc, if necessary, can also be co-opted to assist the C of I but they do not constitute the C of I as such. In a joint C of I involving civil authorities, representative of police/civil adm may be co-opted as person in attendance.

(d) In the normal practice, three members are detailed as members of C of I (Note 3 to AR 177). The Presiding Officer should be appointed by name and in default, the senior member will preside. All concerned are to be informed of the sittings of the Court.  **A C of I is not a ‘must’ in all cases for initiating disciplinary action**. It should be convened only when a prolonged examination of witnesses, documents of accounts or any local investigation is required which cannot be conveniently done by a CO. In cases where the facts are straight and clear, and there is no ambiguity as to the circumstances of the case, a C of I is not necessary unless it is obligatory to do so. In such cases, hearing of charge and a S of E may be recorded without first having recourse to investigation by a C of I. Where a C of I has been convened, the decision with regard to taking disciplinary action will normally be taken by the convening authority if competent to take the direct action or by superior authority who is competent to do so.

**Various Types of Inquiries**

4.(a) **Unit Court of Inquiry** : - Court of Inquiry assembled on orders of Commanding Officer of a unit is called as Unit Court of Inquiry.

(b) **Departmental Inquiry** : An inquiry assembled on orders of Head of any Arm, Service or Department to bring out the shortcomings or irregularities in quantitative and qualitative terms only is called the Departmental Inquiry.

(c) **Staff Court of Inquiry** : A Staff Court of Inquiry may be assembled by a Formation Commander to inquire into matters concerning discipline. He may order a Staff C of I in addition to a Departmental Inquiry should he consider that disciplinary proceedings, may be a likely outcome of a departmental inquiry.

**Proceedings**

5. (a) Except in the cases of prisoner of war, who is still absent, any  **officer or soldier whose character or military reputation is affected by the inquiry shall be given following opportunities under the provisions of AR 180** :-

(i) Being present **throughout** the inquiry,

(ii) Making any statement,

(iii) Giving any evidence he may wish,

(iv) Cross-examining witnesses, and

(v) Calling witnesses in defence.

The Presiding Officer of the Court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights under this Rule. **Non compliance of AR 180 may prove to be FATAL.** A bare perusal of the said Rule should make it manifest that it incorporates a salutary principle of ‘natural justice’ namely the rule ‘Audi Alterum Partem’ which means, ‘no one be condemned unheard’.

(b) Evidence is not taken on oath except when it is assembled on returned prisoners of war; to inquire into illegal absence under AA Sec 106; and when so directed by the convening authority (AR 181 refers).

(c) Members are not sworn but in the case of a C of I on returned prisoners of war, a declaration is made as provided by Army Rule 178.

(d) The evidence will be taken down in writing and it is the duty of the Court to test the truth or accuracy of the evidence given (AR 179(4) refers).

(e) The proceedings of a Court of Inquiry are not admissible in evidence against a person subject to Army Act in any trial unless the charge be under AA Sec 60 in relation to evidence he gave at the C of I or the use of the C of I by the prosecution or defence for the purpose of cross examining any witness (AR 182).

**C of I in Specific Cases**

6. The following procedural safeguards need to be adopted in **MT accident** **cases**:-

(a). The Testimony of following witnesses should be recorded.

(i) Eye witnesses, including civilians, to the incident.

(ii) Co-driver/person(s) sitting on co-driver’s seat and the driver of the vehicle.

(iii) Persons sitting in the body of the vehicle.

(iv) Persons who inspected the vehicle for roadworthiness before commencement of the journey.

(v) Persons who inspected the vehicle after the incident.

(vi) Medical Officers who attended the victim, declared the person(s) dead and carried out postmortem exam.

(vii) Persons who identified the dead body to the various Medical Officers.

(viii) Persons who took over the body after postmortem exam and performed last rites.

(ix) Persons who can produce evidence regarding cost of damage caused to the vehicle as a result of the incident.

(b). Other details to be recorded regarding MT accident cases: -

(i) Mission of the vehicle (whether on bonafide duty).

(ii) Whether it was road-worthy before commencement of the journey.

(iii) Whether the driver was physically fit to undertake the journey and drive the vehicle or had he complained of any illness before proceeding on duty. Experience of driver of driving vehicle in such terrain.

(iv) Road/route on which the vehicle was driven immediately prior to the incident, nature or traffic on the road, road surface, weather conditions, width of the road and width of the road berms, topography of the place of incident and so on.

(v) Circumstances leading to the incident, if any as sudden failure of brakes,

appearance of cattle or the victim in front of the vehicle.

(vi) How exactly did the incident occur? This should be brought out in details in a clear and cogent manner without vagueness. The record should give a clear picture so that it may be possible to deduce whether the driver could not have avoided the collision/incident or not?

(vii) The exact place where the collision/incident took place.

(viii) Events after the incident such as evacuation of the victim/other injured persons to hospital, reporting the incident to various people, post-mortem, cremation/burial of the deceased etc.

(c). The following documents should be produced through a competent

witnesses :-

(i) Traffic accident report (IAF – 2002).

(ii) Technical Inspection Report (EO-3).

(iii) Extract of car diary.

(iv) Civil police ‘Panchanama’ with English Translation.

(v) Provost unit report.

(vi) No claim cert if applicable.

(vii) Cost of damage as assessed by EME wksp and also audit authorities,

if available.

(viii) Particulars of the insurance company with which the civil vehicle is insured.

(ix) No action cert from the police (if applicable).

(d).Following **Medical Evidence** should be recorded in the C of I proceedings pertaining to MT accidents:-

(i) The Medical Officer who first attended to the victim after the incident, should state:-

(aa) Gen condition of the victim.

(ab) Injuries observed by him on the person of the victim.

(ac) Treatment given.

(ad) If brought dead or died while he was being examined.

(ae) Whether he declared the victim dead.

(af) Probable cause of death of the victim, if possible.

(ii) If the victim was treated by some other MO and died later, the said MO should state:-

(aa) Nature of injuries.

(ab) Probable cause of injuries.

(ac) How long the victim was treated.

(ad) Date of discharge; or

(ae) Cause, date and time of death

(iii) The **doctor who conducted the post-mortem** examination of the victim should state:-

(aa) Gen Condition.

(ab) External injuries.

(ac) Internal injuries.

(ad) Probable cause of death.

(ae) Who identified the dead body to the Medical Officer.

7. A C of I convened in connection with **accidents, defects and failures with weapons, ammunition and explosions** should normally consist of three or more members. In case of serious accidents, a rep of Dir Gen of Quality Assurance (DGQA) (Arms) will invariably be included as a technical adviser to the C of I. Offrs selected as members of the Court will be from a unit, depot or establishment other than the one involved in the accident. In case where ammunition depots are involved, one member of the court will, whenever possible, be an ammunition technical officer nominated by the MG AOC. At least one other member of the court must be from a department similar to that involved. In case of death, severe injuries to persons, either mil or civ, or extensive damage to military equipment, the Presiding Officer should not be below the rank of Lt Col as laid down in SAO 11/S/74.

8. A C of I convened in connection with a **fire involving public property** will not have any member from the unit involved. A rep of Sub Area or Bde or Area or Div or Fire Adviser Comd should attend. Where the fire occurs in a store holding depot, for eg, engr, sup, ord, amn, veh, pet, oil and lubs, med, remounts & veterinary corps, farm, etc, an officer from a similar depot will be detailed as a member of the court (RA Para 1195).

9. A C of I assembly to investigate the circumstances **resulting in injury to JCOs, WOs or OR** should consist of one Officer as Presiding Officer with two JCO, WOs or Senior NCOs as members (RA Para 520 (c)).

10. A C of I, assembly to investigate the **loss of a top secret, secret or confd docu or key** should consist of a Senior Officer as its Presiding Officer, not belonging to the Unit or HQ where the loss has occurred & not less than two other Offrs (Ref RA Para 525). In case of a C of I held in connection with loss of a ‘Secret’ docu, the court will sit ‘in camera’. In such cases the court should be convened by a Bde Cdr or equivalent. Every witness will be cautioned that any disclosure by them of any matter forming part of the proceedings of the Court may be treated as an offence against the Official Secret Act, 1923 (RA Para 525).

**Calling of witnesses.**

11. Any witness may be summoned to attend by order under the hands of the Officer assembling the court (AR 179 (5A)). Presiding Officer also can exercise similar powers (AA Sec 135). Thus, both Convening Authority and Presiding Officer can summon witnesses.

12. The Presiding Officer of the C of I (in consultation with the staff of the Convening Authority) should prepare a list of witnesses, indicating against each, the order, dates and likely duration for which the witness is required. Service witnesses will be procured through the Fmn Headquarters concerned for the required duration and returned as soon as their evidence has been recorded. In order to ensure that the witnesses are available at the required place for the required duration, the following aspects need to be borne in mind.

(a) Since it is not possible to record the statement of all witnesses on the same day, therefore, it does not sound to reason to gather all the witnesses together at the very commencement of the proceedings.

(b) If a number of witnesses are required from one unit their move will be staggered and they should be called in the order in which their evidence is to be recorded.

(c) A copy of the list of witnesses alongwith the tentative dates on which their evidence is required to be recorded should be endorsed to the concerned Command HQ and the units/formations from where the witnesses are required to move.

(d) The units/formations should consider this information as a warning order and make witnesses available on the dates indicated against each.

(e) Move sanctions should be issued expeditiously by the competent authorities. While according move sanctions the authorities will specify the date till which the move is valid.

(f) In no case should move sanction be accorded for more than four weeks. In case, the unit requiring witnesses to retain them beyond one month, reasons for extension will invariably be given along with the request for extension of the stay. Such a request must emanate at the level of MG IC Adm Comd HQ to Army HQ.

(g) Witnesses should be returned to their units when no longer required. If the witnesses are not returned within the sanctioned period, the concerned unit/formation should take up the matter with the Comd HQ concerned, endorsing a copy to Army HQ, DV Dte.

**Civilian witnesses.**

13. A separate list should be prepared for civilian witnesses, indicating against each, the order, dates and likely duration for which the witnesses are required. The following procedure to be followed :-

(a) In case of **civilians paid from defence services estimates** or those in the service of any government department, their attendance shall be procured through the head of the department.

(b) The civilians who are **not paid from the defence services estimates** be summoned, through the Magistrate of the area, where the witness resides.

(c) The convening officer or the presiding officer may, by summons under his hand, require the attendance of any witness, at a time and place to be mentioned in the summons, either to give evidence or to produce any documents or other thing. (AA Sec 135).

(d) For Form of summons please refer Form IAFD 919C added to Appendix III to AR 1950 by SRO 17E, dated 6 Dec 93. A **specimen is attached as Appendix D.**

14. Witnesses attending C of I are entitled to conveyance and subsistence allowances vide TR 131.

**Important related aspects in connection with C of I:-**

15. (a) An officer who was a member of a Court of Inquiry convened to investigate into matters on which the charges against the accused are founded later, is disqualified from sitting on a GCM or DCM (AR 39 refers).

(b) Departmental inquiries will not be convened in cases where an element of theft, fraud, or neglect exists. Such cases will be reported to the staff for holding a staff C of I (See Sec 2.2 Rule 71(A) Financial Regulations Part-I).

(c) Essential facts should be collected and corroborated by direct or circumstantial evidence. **The Court of Inquiry should wherever necessary visit the scene of occurrence.** **Evidence of the expert witnesses where necessary should be recorded. Findings of the Court must be based on facts brought on record and not on conjectures or surmises.**

(d) The superior authorities, while commenting upon the administrative/disciplinary aspect, must also give directions about the financial aspect i.e., writing off the losses, where applicable.

(e) The total losses are written off independently of the liability imposed upon the units or the individuals. The competent financial authority alone will finalise the cases of losses. However, the proceedings should clearly bring out as to how the loss occurred, if there was any culpable negligence involved and what measures are required to be taken to avoid recurrence of such losses.

(f)Court of Inquiry must be directed as to the number of copies required for the purpose in separate letter. Proceedings will be typed on one side of the paper. All corrections and erasures will be initialed. The **proceedings must be signed in full and dated by all concerned including witnesses.**

(g)  **Opinion will be recorded by the Court in all cases when so directed**. When the proceedings are forwarded to higher HQ through normal channels, the recommendations of the unit and all formation commanders will invariably be endorsed on them and will be dated.

(h) Technical advisers at formation HQ will NOT endorse their opinion on the proceedings of the Court of Inquiry. They may, however, comment separately. When a Formation Commander’s recommendations/remarks/opinion is already recorded in his capacity as a lower formation commander, the proceedings will be sent to the next superior formation commander explaining the position.

(j) The proceedings (the number of copies ordered) will be forwarded by the Presiding Officer to the officer who assembled the Court. That officer will examine the proceedings with the least amount of delay and his opinion will be endorsed and dated. Proceedings will, if necessary, be forwarded to the next higher formation. The proceedings of C of I should be finalized speedily. Time schedule for the same has been given in Army HQ letter No A/46440/AG/DV-1(P) dated 03 May 2001.

(k) A copy of the direction of superior military authority, where obtained will be sent to the lower formation for information and necessary action. The copies of the directions will then be attached to all copies of the proceedings already sent to lower formations and units.

**Entitlement of Court of Inquiry Proceedings**

16. (a) A request made under AR 184 for a copy of the Proceedings of a Court of Inquiry will normally be disposed of by the formation concerned. Under Army Rule 184 as amended, following persons subject to Army Act are entitled to copies of the Court of Inquiry proceedings  **less findings and opinion** : -

(i) Any person subject to Army Act who is to be tried by Court Martial.

(ii) Any person whose character or military reputation is affected by such statement and documents produced at the Court of Inquiry unless the COAS for reasons to be recorded in writing orders otherwise.

(b) Only those cases where copies of proceedings are intended to be refused, should be submitted to Army HQ for obtaining the orders of the Chief of the Army Staff. When forwarding such cases, the reasons justifying refusal should also be stated.

**Guidelines for Staff Officers**

17. Following aspects/issues are required to be dealt with/borne in mind by Staff Officers in connection with C of I:-

(a) Issue of convening orders when the C of I is ordered by the Fmn Cdr. This will also include detailing of Presiding Offr and other members of the court. Convening Order must be specific and comprehensive. Terms of ref should be clear and put in a simple language w/o any possibility of any ambiguities. If the court is required to express its opinion, same should be specifically indicated in the Convening Order.

(b) Members should be carefully selected. Their service & experience should be taken into account. The detailment of members should be by name and not merely by rank or appointment. Anyone who is likely to be even remotely connected with the case should not be detailed. While detailing members care should also be taken to ensure that they are not due to proceed on posting, course or on leave. Anyone who is not subject to the AA cannot sit as a member of the court.

(c) Arrange presence of witnesses particularly when some of these belong to other Fmns.

(d) Witnesses required by the Court of Inquiry should not be allowed to leave the station before the proceedings are finally closed. In case of officers under posting, they should be permitted to join new unit/fmn and called back on temporary duty for recording the evidence.

(d) Keep a watch on the progress of the proceedings.

(e) Study the proceedings, when received to determine adequacy of evidence. Check if AR 180 has been complied in respect of persons whose character and mil reputation are involved in the C of I (in every case a person is found blameworthy by the court). If not, the court should be reassembled for due compliance of said provision.

(f) Put up draft recommendation to the Fmn Cdrs.

(g) Subsequent action to see the results of the C of I to a logical conclusion.

(h) Civil police should always be informed and invited to send a representative to produce evidence when a C of I is held to investigate cases of injuries to civilians or damage to civil property.

**Guidelines for Presiding Officer and the Members**

18. A C of I is not bound by strict rules of evidence. Rules of evidence are relaxed. Hearsay evidence may be admitted and documents may be included without formal proof, provided the Court is satisfied as to its origin. It is not advisable to dispense with the attendance of witnesses whose evidence is likely to be disputed.

19. If the court doubts the truthfulness of a witness, it should test his evidence by cross-examination while bearing in mind the evidence already before the Court.

20. Witness **is not allowed to be represented by an advocate**, though his legal representative may be allowed to sit silently in the Court while evidence is being recorded. No right of audience to such advocate/legal representative should be accorded.

21. The Court should  **strictly adhere to the terms of reference** and avoid recording unnecessary, irrelevant or superfluous evidence.

22. The Court must record  **detailed findings and express opinion, if directed by the convening authority** to do so.

23. The proceedings should be submitted to the convening authority or to such authority as has been stated in the convening order.

24. Before submitting the proceedings of the Court of Inquiry, the Presiding Officer will ensure that an index as shown below has been attached separately for statements of witnesses and Exhibits.

**LIST OF WITNESSES**

**LIST OF EXHIBITS**

25. Each copy of the C of I proceedings duly completed in all respects shall be placed in separate file cover. The following information shall be neatly written on each cover: -

(a) Copy No.

(b) Proceedings of the Court of Inquiry in respect of No. Rank, Name \_\_\_\_\_\_\_\_\_\_ and unit \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to investigate the circumstance etc. held on\_\_\_\_.

26. In view of computer generated copies, the copy duly signed and marked Copy No. 1 be treated as original (manuscript dispensed with).

**Common Mistakes observed in C of I Proceedings**

27. (a) Incomplete evidence is recorded.

(b) Medical evidence is not recorded where it is necessary.

(c) Technical experts are not examined where such evidence is essential e.g. for checking vehicles by mechanics (EME).

(d) Identity of the individual involved in an incident is not established through the evidence particularly when AR 180 is complied with.

(e) Failure to ensure corroboration of witnesses’ testimony in material particulars.

(f) Omission to bring on record the material evidence, both oral and documentary.

(g) Failure to ensure that provision of AR 180 was complied with.

(h) Arriving at findings unsupported by the evidence on record.

(j) Failure to ensure that each copy of the proceedings is complete in all respects with authenticated copies of documents ref to in the proceedings.

(k) Improper compliance of AR 180 wherever applicable.

(l) Improper composition of C of I in terms of RA Para 518 of Regulations for the Army, 1987 (Revised Edition).

(m) Essential evidence not taken on record and the gaps are left out in the investigation.