**22**.  **Hearing of Charge**.— (1) Every charge against a person subject to the Act shall be heard by the Commanding Officer in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call such witness and make such statement as may be necessary for his defence :

Provided that where the charge against the accused arises as a result of investigating by a court of inquiry, wherein the provisions of the rule [180](file:///F:\work_on_nlp\CHAPTER~6\352.htm#AR180) have been complied with in respect of that accused, the commanding officer may dispense with the procedure in sub-rule (1).

(2) The commanding officer shall dismiss a charge brought before him, if, in his opinion, the evidence does not show that an offence under the Act has been committed, and may do so if, in his discretion he is satisfied that the charge ought not to be proceeded with.

Provided that the commanding officer shall not dismiss a charge which he is debarred to try under sub-section (2) of section [120](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-10\208.htm#AA120) without reference to superior authority as specified therein.

(3) After compliance of sub-rule (1), if the commanding officer is of opinion that the charge ought to be proceeded with, he shall within a reasonable time –

(a) dispose of the case under section [80](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-07\181.htm#AA80) in accordance with the manner and form in Appendix III; or

(b) refer the case to proper superior military authority; or

(c) adjourn the case for the purpose of having the evidence reduced to writing; or

(d) if the accused is below the rank of warrant officer, order his trial by summary court martial: Provided that the commanding officer shall not order trial by summary court martial without a reference to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender unless –

(a) the offence is one which he can try by a summary court-martial without any reference to that officer.

(b) he considers that there is grave reason for immediate action and such reference cannot be made without detriment to discipline.

(4) Where the evidence taken in accordance with sub-rule (3) of this discloses an offender other than the offence which was the subject of the investigation, the commanding officer may frame suitable charge(s) on the basis of the evidence so taken as well as the investigation of the original charge.

### NOTES

1. For procedure in the case of an officer, see [AR 25](file:///F:\work_on_nlp\Downloads_nlp\275.htm#AR25).

2. Under [AA.s. 135](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-11\217.htm#AA135) police and other civilian witnesses may be summoned to attend before a CO if it is considered desirable to compel their attendance by the service of a summons. Witnesses cannot be sworn or affirmed.

3. As to procedure where a criminal court and court-martial have each jurisdiction in respect of a civil offence, see [AA.ss.125](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-10\213.htm#AA125) and [126](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-10\214.htm#AA126) and notes thereto and [AR 197-A](file:///F:\work_on_nlp\CHAPTER~7\359.htm#AR197). See also [Regs Army para 418.](file:///F:\DSR_VOLUME_1\CHAPTER_08\149.htm#418)

4. Every offence which a person subject to AA can commit, is an offence under the said Act, because it is either a military offence specified in the Act or a civil offence under [AA.s.69](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-06\173.htm#AA69).

In deciding whether a charge under [AA.s.63](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-06\169.htm#AA63) should be proceeded with, the CO must consider whether the alleged offence is prejudicial to good order and military discipline; if in his opinion, it is not, the charge must be dismissed. He must also consider whether having regard to the limitation of time prescribed by[AA.s.122](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-10\211.htm#AA122), the accused is able to be proceeded against.

5. The CO must dismiss the charge if there is no evidence of any offence under the AA having been committed or if the accused has been previously acquitted or convicted of the alleged offence by any court, military or civil, or has been summarily dealt with under sections 80, 83, 84 or 85 or the charge has previously been dismissed [AA.s.121](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-10\210.htm#AA121) and [AR 53(1)(a)](file:///F:\work_on_nlp\Downloads_nlp\297.htm#ARS3). He may dismiss it, if he considers that the evidence is doubtful or the case is trivial, or, in the exercise of his discretion, for any reason, e.g., the good character of the accused,

6. No particular time is fixed within which a CO must dispose of a case; so that he can always carefully consider a difficult case, but as a rule he should decide immediately, and should never delay for more than a day, unless further evidence is required.

7. To make an entry against a person without punishment is a summary disposal and not a dismissal of the case.

8. There is no offence which a CO is compelled by the AA or AR to send before a court-martial and each case should be considered on its merits. A CO. however, has no power to punish an officer, JCO or WO summarily (except by awarding stoppages under [AA.s.85](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-07\186.htm#AA85) to a JCO).

9. Except as provided in AR 25 a summary of evidence is to be made in every case where it is intended to remand the accused for trial by a GCM or DCM or where the accused is an officer JCO or WO, for summary disposal of the charge under [AA,ss.83](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-07\185.htm#AA83),[84](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-07\185.htm#AA84) or [85](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-07\186.htm#AA85). In the case of SCM, a summary of evidence need not be made, if it is intended to try the accused forthwith without reference to superior authority either because the charge admits of this or because of such grave necessity as is referred to in proviso (b) to [AR 22(3)](file:///F:\work_on_nlp\Downloads_nlp\272.htm#AR22). The offences which a CO must (except in cases of grave necessity falling under the above proviso) refer to superior authority before ordering trial by SCM are detailed in [AA.s.120(2)](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-10\209.htm#AA120_2). All other offences can be tried by SCM without such reference.

10. The summary of evidence, or a true copy thereof, should accompany the application for a GCM, DCM or summary disposal by superior authority, or for sanction to hold a SCM when such sanction is necessary.

11. A person subject to AA has no right to elect to be tried by court-martial, except as provided in [AA.s.84(a)](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-07\185.htm#AA84).

12. A CO disposes of a case summarily by awarding one of the punishments specified under [AA.s.80](file:///F:\ARMY_ACT_1950_WITH_NOTES\CHAPTER-07\181.htm#AA80) and which he can award. A term of imprisonment or detention awarded by a CO should be awarded in days and will commence to run from the day of award. In law (in the absence of any special provision), there is no division of a day,and therefore, however late in the day a prisoner is committed, his term of imprisonment or detention is considered to have commenced at the first minute of that day that is, the first minute after midnight. The sentence will therefore, begin on the first minute of the day of award, and end at sunset of the day it expires.

13. The award is considered final when the accused has been removed from the presence of the CO. The CO can at any time diminish the punishment before its completion, though he cannot add to it.

14. For "proper superior military authority" see [ARs 2](file:///F:\work_on_nlp\CHAPTER~1\252.htm#AR2) and [3](file:///F:\work_on_nlp\CHAPTER~1\253.htm#AR3).