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COMMAND AND STAFF TRAINING INSTITUTE
BANGLADESH AIR FORCE



Individual Staff Studies Programme (ISSP)

AIR FORCE LAW
Phase-8 : Part-I

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AIR FORCE LAW
PHASE-8 : PART-I

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INTRODUCTION TO THE PHASE

Purpose of the Phase

1. This Phase Note is made for the officers of the Legal Branch. It has been prepared in a way that it can cater your needs for dealing the day to day legal affairs of Bangladesh Air Force. As and when it is required you will have to deal with the legal matters and consequently, you may be asked to advise the concerned authorities on law matters. Study of this Phase Note will put you in convenient position in such cases. This Phase Note comprises topic-1 to 7 Part-I. Comparatively simpler topics have been allotted to Part-I candidates and harder topics have been allotted to Part-I students. Judicious study of the Note will make you well conversant on law matters. You are advised to study also Manual of Bangladesh Introduction to Military Law & other Laws, Admin measures & departmental action in BAF, Punishment and Penal deduction, Comprehensive Study on Service Offences Jurisdictional aspect of Civil Offences, Court-Martial Procedure in BAF, Important features of AFO-111 series and other important AFOs, AFIs and Policies and Investigation of offences and charges.

INTRODUCTION TO VARIOUS ASPECTS OF LAW

Definition of Law

1. It is very difficult to give a precise definition of Law. Many renowned jurists have given their own definitions of the term Law. In the broadest sense Law means a set of rules and norms and a standard of pattern of behaviour to which every individual of the society has to abide by. **According to Jurists Austin “Law is the command of the ‘sovereign’ authority”.** The law is the body of principles recognised and applied by the state in the administration of justice. **According to Salmond “The law consists of the rules recognised and acted on in courts of Justice”.** Law is the reason and opinion of the society and is created by the society to meet the needs of the society for its orderly existence and it grows with the growth of the society. Law is a system of rules and guidelines, usually enforced through a set of institutions.

The Object of Law

2. The main object of law is to maintain peace in the society. The law is enacted for application whenever it is required to maintain peace and stability in the society or state. There being no society or state there is no need of law. Generally, law is applied and imposed upon mankind by some authority which enforces obedience to it. It is a command which obliges a person or persons to a course of conduct. In fact, it is the very essence of a law to be imperative, otherwise it is not a law but a rule which may or may not be obeyed.

Source of Law

3. Source of law means, the development and origin of law. Several factors have contributed to the development of law. These factors are regarded as the sources of law.

4. Sources of law may be classified. These are:

- a. Legal sources.
- b. Historical sources.
- c. Formal sources.
- d. Non-formal sources.

5. Legal sources are those which are recognized as such by law itself. The legal sources of law are authoritative and are allowed by the courts of law as of right. The sources of law which are available in an articulated textual formulation embodied in an authoritative legal document are of Formal source, ie Constitutions and Statutes, Executive orders. Historical sources are those sources lacking formal recognition by law. On the other hand, Non-formal sources of law are legally significant materials and considerations, which have not received an authoritative, ie Customs or Customary law, Standards of justice and social trends.

6. Beside of the above, the sources of Laws are discussed below:

a. **Legislation.** Legislature is known by many names, the most common are parliament and congress. Legislature is the direct source of law. Legislature has power to pass, amend and repeal laws. In modern times, this is the most important source in the law making system. The law created by a legislature is called legislation or statutory law. Legislature not only creates new rules of law it also sweeps away existing inconvenient rules.

b. **Precedents.** It is one of the sources of law. The judgements passed by some of the learned jurists became another significant source of law. When there is no legislature on particular point which arises in changing conditions. The judges depend on their own sense of right and wrong and decide the disputes. Such decisions become authority or guide for subsequent cases of a similar nature and they are called precedents. Precedent is more flexible than legislation and custom. It is always ready to be used.

c. **Treaties.** A treaty is an agreement entered into by countries, nations or other legal persons recognized in international law. If only two nations or other international persons are the contracting parties, the treaty is called bilateral; if more than two are involved, it is usually called multilateral. The typical legislature of a modern nation-state may pass laws which a minority of the legislators are unwilling to approve, and these laws will bind everybody subject to the jurisdiction of the legislating body.

d. **Custom.** Custom means usages. It is a rule which in a particular family or in a particular district or in a particular section, Class or tribe. The custom is a law which is not written, but established by long use and consent of our ancestors, practice. It is an exemption to the ordinary law of the land, and every custom is limited in its application.

e. **Statutory Interpretation.** Interpretation is a very important function of the court, The process of ascertaining the meaning of letters and expressions by the court is either interpretation or construction. Interpretation is the process of which the court seeks to ascertain the meaning of a particular legislature.

f. **Equity.** Equity means neither natural justice, nor even all that portion of natural justice which is of being judicially enforced. It has a precise, definite, and limited significance and is used to denote a system of justice in a particular court. Its purpose is to administer justice in the particular case without regard to fixed or general rules, and indeed to set aside rules of law when essential to do so to the ends of natural justice.

Classification of Law

7. The following are the broad classification of law:

- a. Imperative Law.
- b. Physical or Scientific Law.

- c. Natural or Moral Law.
- d. Conventional law.
- e. Customary Law.
- f. Practical or Technical Law.
- g. International Law.
- h. Civil Law or the Law of the State.

8. The Civil law may again be sub-divided into two parts which may be distinguished as General Law and Special Law. General Law consists of ordinary law of the land. The principal forms of special law are:

- a. Local Law.
- b. The Foreign Law.
- c. Autonomic Law.
- d. Martial Law.
- e. Prize Law.
- f. Military Law.

Military Law

9. Military law is a distinct legal system where members of armed forces are subject. Most countries have special additional laws which are applicable to members of their military but not usually to civilians. Military law deals with issues such as; procedures for military discipline, a lawful command, and obligations for service personnel etc.

10. Military law is distinguished from both martial law (rule by domestic military forces over an area) and military government (rule by the military over occupied foreign territory). In time of peace it is generally limited to military offenses, e.g., absence without leave, desertion and breach of orders; during war it usually extends to crimes of a civil nature as well, and the penalties may be more severe.

11. Military law can also be imposed on the civilian population instead of normal civil laws. In this instance it may be called Martial law. Martial law is often declared in times of emergency, war, or civil unrest. Most countries have restrictions on when Martial law can be declared, and how long it can remain. Declaration of martial or military law is sometimes used by dictatorships, especially military dictatorships, to enforce their rule.

TOPIC-2

ESSENTIAL ELEMENTS OF AIR FORCE LAW

Source of Air Force Law

1. The sources of Air Force law include the Article 45 of the Bangladesh Constitution.

Air Force Law

2. Air Force Law is a special law. Members of air forces are subject to Air Force Law and Law of the country as well. As ordinary citizens, they remain subject to the civil law of the country, but as service personnel, they become subject to a purely military code, ie 'Air Force Law' and it is statutory law.

Origin and Background of Air Force Law

3. The First Royal Air Force aeroplane landed in this sub-continent in December 1918, dawning air age in the area. The need and importance of Air Force was felt by the Government of India resulting in Constitution of a Committee known as 'The Skeene Committee. On the recommendation of the Committee, the Indian Legislature took up the task of formulating a law for 'Indian Air Force' in 1932 and came into force in 1933. Consequent upon the partition of the sub-continent, extensive changes in the Indian Air Force Act, 1932 were brought and a new bill was drawn up to meet the requirements of the Pakistan Air Force. The proposed Bill was drafted on the lines of the Pakistan Army Act, 1952. The Bill was passed into an Act by the legislature in 1953 and was made operative in 1958.

4. After Liberation War, Bangladesh Air Force came into being and the Pakistan Air Force Act and rules were adopted for Bangladesh Air Force by promulgation of an ordinance with necessary amendments (Ordinance no. XVIII of 1978).

Definition of Air Force Law

5. Air Force law means the law enacted by this Act and the rule made thereunder and includes the usages of the service. It means Air Force law is the combination of three segments, these are Air Force Act, 1953, Air Force Act Rules, 1957 and usages of the service. The usages of service can be further clarified as Regulations, Air Force Instructions, Air Force Orders, Pamphlets, Memorandum, Publications and Policy, etc.

6. The term 'Air Force Law' may therefore be used properly as including provisions of both the classes; but in practice it is more often used with reference to the disciplinary provisions alone. More exemplary and speedy punishments are allowed under Air Force Law than under Civil Law.

Object of Air Force Law

7. The object of Air Force law is two folds:

- a. To provide for the maintenance of discipline among Air Force personnel.

- b. To provide for administrative matters, such as terms of service, enlistment, dismissal and discharge.

Nature and Purpose of Air Force Law

8. The Air Force law consists of the statutes governing the Air Force establishment. Air Force law includes jurisdiction exercised through courts-martial and the jurisdiction exercised by the Air Force Commanders with respect to summary trial and administrative action under the Air Force Act, 1953 and the Air Force Act Rules, 1957, respectively.

9. The main purpose of Air Force law is to enforce strict discipline in the Air Force. This objective is fulfilled if the Air Force commanders honour and observe the provisions of the service law. The other purposes of Air Force law is to promote justice, to assist in maintaining good order and Air Force discipline, to promote efficiency and effectiveness in the Air Force establishment.

10. The Air Force law also gives an outline of the terms of service of military personnel which is broadly called, "Determination of Terms of Military Service". These include the mode of enrolment, attestation, grant of commission and junior commission, the tenure of service of different categories of personnel and the various ways of separating a person from service like termination, release, discharge, retirement, removal and dismissal.

Application of the Air Force Act, 1953

11. Persons who become subject to the Air Force Act under clauses (a) to (c) of section 2 remain so subject until duly retired, discharged, released, removed or dismissed from the Service. Those who belong to Bangladesh Army or Bangladesh Navy become subject to the Act under clause (e) when seconded for service with the Air Force. Such persons remain subject to the Act during the period of their secondment to the Air Force. Section 3A empowers the Government to direct by order in writing that persons belonging to Bangladesh Air Force may be seconded to Bangladesh Army or Bangladesh Navy under such conditions as may be specified by regulations.

Air Force Act

12. The Air Force Act, 1953 was passed by the Legislature to provide for maintenance of discipline among Air Force personnel and administrative matters, such as terms of service, enlistment, dismissal and discharge. The Act is called as substantive law and this Act provides the detail of essential matter of legal requirement. In the Act, authority is delegated to the Government to enact required rules.

Air Force Act Rules

13. The Air Force Act Rules were made by the Government to carry into effect the provisions of the Act. It means that to implement the provisions of Act, it is require taking help of the Rules. These Rules are to be treated as procedural matter and as if enacted in the Act by Legislature and are a continuation of the Act. In case, Rule conflicts with any provisions of the Act, the statutory provision of the Act must be prevailed.

14. Air Force Act Rules are made by the Government, which are 224 in number. Section 202 of Air Force Act authorizes the Government to make Rules. Their scope can best be grasped by examining their titles. The students can make profitable use of the following manual, pamphlets and notes:

- a. Manual of BAF Law
- b. Law Pamphlet No- 5
- c. Notes on Air Force Law.
- d. AFO 111 series.
- e. AFO 40-3

Concurrent Jurisdiction

15. An ordinary court of criminal jurisdiction and a court-martial may each have jurisdiction in respect of the same offence when committed by any Air Force personnel. The manner of dealing with such concurrent jurisdiction is provided in section 123 and 124 of the Air Force Act, 1953. The section 123 gives the Air Force authorities the right of deciding by which court the alleged offender is to be tried. However, if a criminal court considers that proceedings ought to be instituted before itself, under section 124 it may require the service authority to deliver over the offender or to postpone proceedings pending a reference to the Government whose order is final in deciding before which court proceedings ought to be instituted.

Principles on Which Jurisdiction Should be Exercised

16. Though a wide power of trial by court-martial is given, it is not as a rule expedient to exercise the power universally. Where units are stationed at places having no competent criminal (civil) courts, it is necessary to try all offences committed by persons subject to the Act by service tribunals.

17. But in Bangladesh and at places outside Bangladesh where a competent civil court has been established it is, as a general rule, desirable to try by a civil court a civil offence committed by a person subject to the Act if the offence is one which relates to the property or person of a civilian or is committed in conjunction with a civilian, or if the civil authorities intimate a desire to bring the case before a civil court.

18. The general rule is, however, subject to qualifications. The line dividing the Air Force offence from the civil offence may be narrow. The offence may have been committed within the camp area. The offender may be one of a body of airmen about to proceed on active service. There may be reasons making the prompt infliction of punishment expedient. In any such case it may be desirable to try the offence by court-martial.

19. There may also be considerations arising out of the importance of maintaining discipline. If offences of a particular kind, or offences generally are rife in a unit or at a base, it may be necessary, for the sake of discipline, to try every offence, whether civil or Air force, by court-martial, so that the punishment may be prompt and in accordance with the requirements of discipline.

Delivery to Military Authorities of persons liable to be tried by Court-Martial

20. The section 549 of the Code of Criminal Procedure provides that the Government may make rules consistent with the Code and Army Act, 1952 (XXXIX of 1952), Air Force Act, 1953 (VI of 1953) and Navy Ordinance, 1961 (XXXV of 1961) and any similar law for the time being in force as to the cases in which person subject to Military, Naval or Air Force law, shall be tried by a court to which the Code applies, or by court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable, to be tried either by a Court to which the Code applies or by a court-martial, such Magistrate shall have regard to such rule, and shall in proper case deliver him, together with a statement of the offence of which he is accused, to the CO of the regiment, corps, ship or detachment, to which he belongs or to the CO of the nearest military, naval or air force station, as the case may be for the purpose of being tried by court-martial.

21. If the prisoner is apprehended by civilian authorities and remains in civilian custody at the request of military authorities, reasonable efforts will be made to bring the prisoner under military control in a timely fashion.

Delivery of Military offenders to Civilian Authorities

22. A member of the Armed Forces, accused of an offense against civilian authority or personnel may be delivered, upon request, to the civilian or law enforcing authority for trial. A member may be placed in restraint by military authorities for this purpose only upon receipt of a duly issued warrant for the apprehension of the member or upon receipt of information establishing probable cause that the member committed an offense.

TOPIC-3

ADMINISTRATIVE MEASURES AND DEPARTMENTAL ACTION IN BAF

Dismissal, Removal, Termination of Commission, Release and Retirement, etc

1. Every person subject to this Act shall hold office during the pleasure of the President. The pleasure of the President has been the subject of numerous judicial pronouncements. It must not be imagined that the power to dismiss or remove a member of defence force from the service is absolute. Every power shall be exercised by a statutory provision and following the fundamental principles of justice and fair play.

2. Subject to the provisions of the Air Force Act, Rules and Regulations made thereunder, the Government may **dismiss or remove** from the service any person subject to the Act.

3. The President may at any time **dismiss** from the service an officer without assigning any reason. It is a recognition and continuation of the same principle of supremacy that has been embodied in section 18 of the Act, to wit, that all persons subject to the Act shall hold office during the pleasure of the Head of the State, that is, the President. However, the pleasure of the President has been the subject of numerous judicial pronouncements. It must not be imagined that the power to dismiss or remove a public servant from the service is absolute. The dismissal of an officer must be approved by the President before the issue of orders.

4. A short or extended service commissioned officer shall be liable to have his commission **terminated** at any time during the first year of service if his retention is not considered desirable in any respect.

5. In every case, commission of an officer is liable to be **terminated** within the first year of his service if his retention in service is not considered desirable due to any reason. It would be both politic and just to allow an officer whose retention in service is no longer considered desirable. Before doing that the officer should be informed categorically of the grounds alleged against him by giving an opportunity to explain the circumstances appearing against him and to clear his position.

6. A short service commissioned officer shall be liable to be **removed** from the service at any time for misconduct. This provision should be called upon only if an officer has been proved to be guilty of misconduct. Since the officer will forfeit all claims to pension, gratuities, etc. on removal, it would be only equitable to allow him the same opportunity of clear his position. **Removal** is short of dismissal and it is always done after detail inquiry under section 106A of the Act.

7. **Dismissal and removal** involve the forfeiture of claim to any pension or gratuity which may have been earned. Termination of commission release or retirement does not involve such forfeiture.

8. Rule 18 of Air Force Act Rules, 1957 describes the provision of **compulsory resignation or retirement** of a short service or extended service commissioned officer. As per rule 18 (1), the Government may in its discretion call upon a short service or extended service commissioned officer to resign his commission as an alternative to

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removal under rule 17. If the officer fails to submit a formal application to resign within the time specified by the Government he may be removed from the service.

9. A short service or extended service commissioned officer who has not been guilty of misconduct necessitating his removal under rule 17 at any time, he may be called upon by the Government to retire on grounds of unsuitability, incapacity inefficiency or for any other reason. If the officer fails to submit a formal application to retire, his retirement may be effected compulsorily without such an application.

10. This provision considers compulsory retirement of a short service or extended service commissioned officer for reasons other than misconduct or culpability of even a minor degree. This type of retirement is more or less initiated for administrative reasons. Once the Government has come to the conclusion that the officer has outlived his utility, he is given the choice to go out voluntarily under Rule 20. An officer compulsorily retired under Rule 18 (2), does not suffer financially and allowed the benefit of whatever he has earned till the last day of service.

11. An officer may be retired at any time on account of medical unfitness. An officer of the General Duties Branch will retire, if he is at any time found permanently unfit for flying duties though fit for ground duties shall if the Government considers that he cannot suitably be retained in the service for ground duties. Wherever, the rules authorize or make, it is a responsibility of the Government to decide something.

12. A commissioned officer cannot claim as a matter of right to resign his commission. Resignations or voluntary retirements shall only be permitted subject to the exigencies of the service. However, an officer may apply to resign her or his commission or apply to retire voluntarily from service.

Provisions for Application to Retire

13. An officer who wishes to retire or resign his commission under Rule 20, must submit application through the commanding officer. In making the application, the officer should give his reasons in full so as to enable the Government to arrive at a decision. In forwarding the application the commanding officer shall certify that the application is not submitted on account of any misconduct on the part of the officer.

14. If the application is the result of misconduct or of any thing affecting the officer's honour or character as a gentleman the commanding officer in his forwarding letter shall state all the circumstances and particulars and shall obtain the officer's signature to any adverse report which he makes. The commanding officer shall also state whether there are any outstanding claims local or other against the officer and whether there is any objection to the resignation or application for voluntary retirement being accepted. A policy has been devised by Air Headquarters to use a particular format in this regard.

15. **Retiring Ages for Officers Holding Permanent Commissions:** The normal retiring age's service limit for officers holding permanent commission has been enumerated in Rule 24 of Air Force Act, 1957. On 27 May 2012, this Rule has been suitably amended to meet the Air Force requirement. The higher limit of serving tenure and retiring ages of an officer has been given in this Rule. If an officer wishes to retire on completion of service limit of the rank he or she holds, he or she has to submit a retirement option before six months of such service limit, otherwise it will be considered that the officer shall continue to serve.

Dismissal, Removal or Reduction by Chief of Air Staff or other Officers.

16. Chief of Air Staff or other Officers may remove from the service or to reduce to rank or reclassify any airman at any time under the following conditions:

- a. The Chief of Air Staff may at any time dismiss or remove from the service any person subject to the Act other than an officer.
- b. The Chief of Air Staff may reduce to a lower grade or to a lower rank or to the ranks any non-commissioned officer.
- c. The Chief of Air Staff may reduce to a lower class in the ranks any airman other than a non-commissioned officer.
- d. The commanding officer of an acting non-commissioned officer may order him to revert to his substantive rank as non-commissioned officer or if he has no substantive rank to the ranks ie to LAC.
- e. On active service, an officer commanding the Air Forces in the field may reduce to a lower rank or to the ranks any non-commissioned officer under his command.
- f. The exercise of any powers under this section shall be subject to the other provisions contained in this Act and the rules and regulations made there under.

Retirement, Release or Discharge of Person, other that officer

17. Any person subject to this Act may be retired released or discharged from the service by such authority and in such manner as may be prescribed in Rule 31. According to the pronouncement of this section authorities empowered to authorize retirement, release or discharges of persons other than officers have been prescribed in rule 31 of Air Force Act Rules.

18. The authorities specified in column 3 of the table shown in rule 31 shall be the authorities competent in respect of the persons specified in column 1 and for the causes and manners specified in columns 2 and 4 respectively to authorize the retirement release or discharge of persons subject to the Act other than officers. Any powers conferred by this rule on any authority may be exercised by any higher authority. That means if Assistant Chief of Air Staff (Administration) is authorized to discharge a person, the same authority can be exercised by the Chief of Air Staff.

19. **Certificate on Termination of Service.** Every junior commissioned officer or enrolled person who is dismissed, removed, discharged or released from the service shall be furnished by his commanding officer with a certificate setting forth:

- a. The authority terminating his service ;
- b. The cause for such termination ; and
- c. The full period of his service in the Air Force.

Reduction and Reclassification of Rank

20. The provisions of reduction and reclassification of rank of an airman shall be as under:

- a. The Chief of Air staff may reduce any non commissioned officer to any lower grade or to a lower or to the ranks for misconduct inefficiency or unsuitability.
- b. The Chief of Air Staff may reduce an airman other than a non commissioned officer to a lower class in the ranks for inefficiency.
- c. On active service an officer commanding the air forces in the field may reduce any non commissioned officer under his command to a lower grade or to a lower rank or to the ranks for misconduct inefficiency or unsuitability.
- d. An airman reduced under sub-rules (1) (2) and (3) shall not be reduced to a rank or classification actually or relatively lower than the rank or classification in which he was originally enrolled.
- e. Reduction for inefficiency shall normally be to the rank immediately below that held. In exceptional circumstances reduction by more than one step may be ordered but this power shall be exercised by the Chief of Air Staff only.
- f. An order for reduction or reclassification shall state whether such reduction or reclassification is for misconduct or inefficiency or unsuitability and when reduction is to the ranks the class in the ranks to which the airman is reduced. The order shall also state the date from which the reduction or reclassification is to take effect.

Letter of Reproof, Displeasure and Warning

21. In BAF, at times, the authority does not wishes to initiate disciplinary action under the Air Force Act, 1953, or take severe administrative action against an officer for a lapse of conduct or dereliction of duty. In such cases, the officer concerned may either be reproved in writing or a letter of displeasure or warning may be issued as a measure of initiating disciplinary action . In the same manner, an airman can also be issued with letter of displeasure. The occasions when such letters will be issued are discussed in AFOs.

TOPIC-4

SERVICE OFFENCES AND JURISDICTIONAL ASPECT OF CIVIL OFFENCES

Introduction

1. An offence means any act or omission punishable under Air Force Act, 1953 and it includes a civil offence. Chapter VI of the Bangladesh Air Force Act classifies under various heads and defines the Air Force offences and civil offences. From the BAF context, offences are two types, these are:

- a. Service offences;
- b. Civil offences;

2. Service offences mean an offence which is triable by court-martial or summary trial or can be disposed of through administrative actions. Service offences have been discussed in Sections 34 to 70. Civil offences mean an offence which is triable by both the court-martial and law of the land. A "civil offence" for the purposes of the Air Force Act, means an offence which is triable by a criminal court. A civil offence has been discussed in Sections 71 to 72 and includes any offence mentioned in the law of the land. Some of the important service offences are discussed to know their characteristic, implications and method of disposal.

Offences Punishable more Severely on Active Service than at other Times

3. Any person subject to Air Force Act, 1953 who commits any of the following offences, he/she will be tried by court-martial and on conviction by court-martial will be liable to suffer long imprisonment:

- a. forces a safeguard, or forces or use criminal force to a sentry.
- b. breaks into any house or other place in search of plunder.
- c. being a sentry sleeping upon his post, or intoxicated.
- d. without orders from his superior officer leaves his guard, piquet, patrol or post.
- e. intentionally or through neglect occasions a false alarm in camp or quarters ; or spreads reports calculated to create unnecessary alarm or despondency.
- f. makes known the parole, watchword or countersign to any person not entitled to receive it ; or knowingly gives a parole, watchword or countersign different from what he received.
- g. without due authority alters or interferes with any air signal.

4. The punishment for the offences here mentioned varies very widely according to whether the offences are committed on active service or not ; where a man is charged with committing any of them on active service, the words " when on active service" must always be inserted at the beginning of the statement of the offence.

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5. Offence under this section when committed on active service should not be dealt with summarily under section 82 or section 86.

Mutiny

6. Any person subject to Air Force Act, 1953 who commits any of the following offences, will be tried by court-martial and on conviction by court-martial, will be liable to suffer death:

- a. Begins, incites causes or conspires with any other person to cause any mutiny in the Military Naval or Air Forces of Bangladesh or any forces co-operating therewith.
- b. Joins in any such mutiny.
- c. Being present at any such mutiny does not use his utmost endeavours to suppress the same.
- d. Knowing or having reason to believe in the existence of any such mutiny or of any intention to commit such mutiny or any such conspiracy does not without delay give information thereof to his commanding or other superior officer.
- e. Endeavors to seduce any person in the Military Naval or Air Forces of Bangladesh from his duty or allegiance to the government.

7. As the maximum penalty for an offence under this section is death –

- a. A charge under this section should not normally be brought to trial except on the legal advice of Air Headquarters
- b. A summary of evidence must be taken
- c. A DCM should not try the case and
- d. A plea of guilty cannot be accepted rule 86 (4)

8. The limitation of three years period for trial by court-martial does not apply to any of the offences mentioned in the section 120 (2). It means there is no bar to try the offence. Mutiny implies collective insubordination. It means a combination of two or more persons –

- a. To overthrow or resist lawful authority in the Military Naval or Air Forces of Bangladesh or any forces co-operating therewith ; or
- b. To disobey such authority in such circumstances as to make the disobedience subversive of discipline that is to say any disobedience which is calculated to under min discipline and is not merely an act prejudicial to good order and air force discipline ; or
- c. To disobey such authority with the object of avoiding any duty or service against the enemy or in connection with operations against the enemy ; or to impede the performance of any duty or service in the said forces.

9. **Desertion and Aiding Desertion.**

a. Any person subject to this Act who deserts or attempts to desert the service, on active service, he/she shall on conviction by court-martial and he/she is liable to suffer long imprisonment. If he/she commits the offence under any other circumstances, he/she be liable to suffer short imprisonment.

b. Any person subject to this Act who knowingly harbors any such deserter, or who being concerned of any desertion or attempt at desertion of a person subject to this Act, shall, on conviction by court-martial be liable to suffer short imprisonment.

10. **Absence Without Leave.** Any person subject to Air Force Act, 1953 who commits any of the following offences, he/she will be tried by court-martial and on conviction by court-martial, he/she will be liable to suffer short imprisonment:

a. Absents himself without leave.

b. Without sufficient cause overstay leave granted to him or.

c. Being on leave of absence and having received information from proper authority that any unit or detachment to which he belongs has been ordered on active service fails without sufficient cause to rejoin without delay.

d. Without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty.

e. When on parade or on the line of March without sufficient cause or without leave from his superior officer quits the parade or line of march.

f. When in camp or elsewhere is found beyond any limits fixed or in any place prohibited by any general local or other order without a pass or written leave from his superior officer.

g. Without leave from his superior officer or without due cause absences himself from any school when duly ordered to attend there.

11. The absence without leave must be voluntary. The absence is voluntary if it is due to the deliberate intention of the accused to be absent or if it is caused by means which were within his own control.

12. The absence without leave must be Culpable. Thus a person who leaves his unit because he reasonably and honestly though mistakenly believes that he has been granted leave has committed no offence but a person who applies for leave and then leaves his unit believing that it will be granted but before he has been notified or has reasonable grounds for believing that it has been granted is guilty of absence without leave.

Striking or Threatening Superior Officer

13. Any person subject to Air Force Act, 1953 who commits any of the following offences, will be tried by court-martial and on conviction by court-martial, will be liable to

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suffer short imprisonment. If such officer is at the time in the execution of his office or if the offence is committed on active service, on conviction by court-martial, he/she will be liable to suffer short imprisonment.

- a. Uses criminal force to or assaults his superior officer.
- b. Uses threatening language to such officer.
- c. Uses insubordinate language to such office.

14. Using criminal force means whoever intentionally uses force to a person without his consent, in order to commit an offence, or with an intention to cause injury, fear or annoyance, is said to use "criminal force" .

15. Using Insubordinate Language means the words must be used with an insubordinate intent i. e. they must either in themselves or in the manner or circumstances in which they are spoken be insulting or disrespectful and in all case it must reasonably appear that they were intended to be heard by the superior. Expressions used of a superior but not in his hearing which would if used to his face have constituted an offence against this section may be charged as an offence under section 65 but cannot be charged under this section.

Disobedience to Superior Officer.

16. Any person subject to this Act who disobeys in such manner as to show a willful defiance of authority any lawful command given personally by his superior officer in the execution of his shall on conviction by court-martial, be liable to suffer long imprisonment.

17. Any person subject to this Act, who disobeys any lawful command given by his superior officer on active service, shall on conviction by court-martial, be liable to suffer long imprisonment and if not on active service be liable to suffer short imprisonment.

18. The command must not be contrary to the law of Bangladesh and must be justified by air force law. A superior has the right to give a command for the purpose of maintaining good order or suppressing a disturbance or for the execution of an air force duty or regulation or for a purpose connected with the welfare of his men. He has no right however to take advantage of his air force rank to give a command which does not relate to air force duty or usage or which has for its sole object the attainment of some private end. If a command is manifestly illegal the person to whom it is given would be justified in questioning and even refusing to execute it.

19. Lawful Commands means the command which is supported by the Air Force Act, 1953 and Rules, regulations, orders, etc. These are:

- a. To undergo electrical treatment
- b. To take medicine
- c. To get hair cut

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20. Unlawful Commands means the command which is not supported by the Air Force Act, 1953 and Rules, regulations, orders, etc. These are:

- a. To sign for pay when not received
- b. To undergo a surgical operation (this includes hypodermic injections)
- c. To an airman to exercise the officers dog
- d. To take part in private theatrical
- e. To undergo an illegal punishment

21. A breach of standing orders or of other routine orders of a continuing nature should not be charged under this section but under section 42 (e) for violation local or general orders.

22. The disobedience must relate to the time when the command is to be obeyed. If the command demands a prompt and immediate compliance the accused will have disobeyed it if he does not comply at once.

Insubordination and Obstruction

23. Any person subject to Air Force Act, 1953 who commits any of the following offences, will be tried by court-martial and on conviction by court-martial, will be liable to suffer short imprisonment:

- a. Being concerned in any quarrel or disorder refuses to obey any officer though of inferior rank who orders him into arrest or uses criminal forces to or assaults any such officer.
- b. Uses criminal force to or assaults any person whether subject to Air Force Act or not in whose custody he is lawfully placed and whether he is or not his superior officer.
- c. Resists an escort whose duty it is to apprehend him or to have him in charge.
- d. Breaks out of barracks camp or quarters.
- e. Neglects to obey any general local or other orders.
- f. Impedes the provost-martial or any person lawfully acting on his behalf or when called upon refuses to assist in the execution of his duty a provost-martial or any person lawfully acting on his behalf.
- g. Uses criminal force to, or assaults any person bringing provisions or supplies to the Forces.

24. General, Local or other Orders means that the orders are standing orders or orders are having a continuous operation e.g. standing orders for sentries orderly sergeants etc. The clause applies to all orders with which it is the duty of every Air Force personnel to acquaint them selves.

25. It does not apply to orders given by words of mouth as such orders only apply to the person or persons to whom they are actually given. AFO, AFI, etc may be the example of general orders while Base Standing Orders, Base/Unit Routine Orders, etc may be the example of Local Orders.

Fraudulent Enrolment

26. Any person subject to Air Force Act, 1953 who commits any of the following offences, will be tried by court-martial and on conviction by court-martial, will be liable to suffer short imprisonment:

a. Without having obtained a regular discharge from the Air Force of otherwise fulfilled the condition enabling him/her to enroll or enter enrolls himself/herself in or enters the said force or any part of the Military or Naval forces of Bangladesh.

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 circumstance that by enrolling he commits an offence against this Act.

False Answer on Enrolment

27. Any person having become subject to Air Force Act who is discovered to have made at the time of enrolment a willfully false answer to any question set forth in the prescribed form of enrolment which has been put to him/her by the enrolling officer before whom he/she appears for the purpose of being enrolled, he/she shall be liable to suffer short imprisonment if he is convicted by court-martial,.

Unbecoming Conduct

28. Any officer, MWO, SWO OR WO who behaves in a manner unbecoming his position and the character expected of him shall on conviction by court-martial be liable to be dismissed.

29. The unbecoming conduct may be of a service or social character. As a rule a charge should not be preferred under this section where the act or omission amounts to any one of the specific offences mentioned in other sections of this chapter of the Act. The conduct is not brought within the scope of this section by merely applying to it the conduct proved was unbecoming the position and the character expected of an officer, MWO, SWO OR WO having regard to its nature and to the circumstance in which it took place.

Ill-treating a Subordinate.

30. Any officer, MWO, SWO OR WO or non-commissioned officer who uses criminal force to or otherwise ill-treats any person subject to Air Force Act being his/her subordinated in rank or position shall on conviction by court martial be liable to suffer short imprisonment.

31. An offence under this section can only be committed by an officer master warrant officer warrant officer or NCO before a person can be convicted of the offence it must be shown that he knew the victim was of inferior rank or less seniority. If it is not possible to do this a charge should be preferred under section 65 or section 71 according to the circumstances.

Intoxication

32. Any person subject to Air Force Act who is found in a state of intoxication whether on duty or not shall on conviction by court martial if he is an officer be liable to be dismissed and if he is not an officer be liable to suffer short imprisonment.

33. When an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty the sentence imposed shall not exceed detention for a period of six months.

Permitting Escape of Person in Custody

34. Any person subject to Air Force Act who commits any of the following offences, if acted willfully, shall, on conviction by court martial, be liable to suffer long imprisonment and if not acted willfully to suffer short imprisonment, that means;

a. when in command of a guard, piquet, patrol or post, releases without proper authority, whether willfully or without reasonable excuse any person committed to his charge or refuses to receive any prisoner or person so committed.

b. willfully or without reasonable excuse allows to escape any person who is committed to his charge or whom it is his duty to keep or guard.

Irregularity in Connection with Arrest or Confinement

35. Any person subject to Air Force Act, 1953 who commits any of the following offences, will be tried by court-martial and on conviction by court-martial, will be liable to suffer short imprisonment:

a. Unnecessarily detains a person in arrest or confinement without bringing him to trial or fails to bring his case before the proper authority for investigation.

b. Having committed a person to Air Force custody fails without reasonable cause to deliver at the time of such committal or as soon as practicable and in any case within forty eight hours thereafter to the officer of other person into whose custody the person arrested is committed an account in writing signed by himself of the offence with which the person so committed is charged.

Escape from Custody

36. Any person subject to this Act who, being in lawful custody, escapes or attempts to escape, shall, on conviction by court-martial, be liable to suffer short imprisonment.

37. The word "lawful custody" is wide enough to include arrest in a foreign country which is lawful by the law of that country, detention in a foreign person and custody by officials of a foreign country which is lawful according to the laws of that country.

Offences in Respect of Property

38. Any person subject to Air Force Act, 1953 who commits any of the following offences, will be tried by court-martial and on conviction by court-martial, will be liable to suffer long imprisonment:

- a. commits theft of any property belonging to the Government or to any Military naval or Air Force mess band or institution or to any person subject to Military Naval or Air Force law or serving with or attached to the Air Force ; or
- b. dishonestly misappropriates or converts to his own use any such property or
- c. commits criminal breach of trust in respect of any such property or
- d. dishonestly receives or retains any such property in respect of which any of the offences under clauses (a) and (c) has been committed knowing or having reason to believe the commission of such offence or
- e. willfully destroys or injures any property of the Government entrusted to him or
- f. does any other thing with intent to defraud or to cause wrongful gain to one person or wrongful loss to another person.

Extortion and Corruption

39. Any person subject to Air Force Act, 1953 who commits any of the following offences, will be tried by court-martial and on conviction by court-martial, will be liable to suffer short imprisonment:

- a. Commits extortion.
- b. Without proper authority exacts from any person money provisions or service.

40. The principal ingredients of this crime are putting any person in fear of any injury and thereby dishonestly inducing such person to deliver property. The distinguishing feature of this offence is intimidation which may be of any kind. It is not necessary that the person threatening should himself receive the money. If two or more persons conspire and one utters the threat and the other receives the money they would be guilty of extortion. It is not necessary that the person intimidated should also be the person against whom injury should be threatened as long as the former is directly induced to part with the property.

Making Away with Equipment

41. Any person subject to Air Force Act, 1953 who commits any of the following offences, will be tried by court-martial and on conviction by court-martial, will be liable to suffer short imprisonment:

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- a. Making away with, or is concerned in making away with, any arms, ammunition, equipment, instruments, tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him.
- b. Losses by neglect anything mentioned in clause (a).
- c. Sells, pawns, destroy or deface any medal or decoration granted to him.

False Accusation

42. Any person subject to Air Force Act, 1953 who commits any of the following offences, will be tried by court-martial and on conviction by court-martial, will be liable to suffer short imprisonment:

- a. Makes a false accusation against any person subject to this Act knowing or having reason to believe such accusation to be false.
- b. In making a complaint under section 26 or section 27 makes any statement affecting the character of any person subject to this Act knowing or having reason to believe such statement to be false or knowing and willfully suppresses any material facts.

Falsifying Official Document and False Declaration

43. Any person subject to Air Force Act, 1953 who commits any of the following offences, will be tried by court-martial and on conviction by court-martial, will be liable to suffer short imprisonment:

- a. In any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement.
- b. In any document of the description mentioned in clause (a) knowingly makes or is privy to the making of, omission, with intent to defraud.
- c. Knowingly and with intent to injure any person or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce.
- d. Where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration.
- e. Obtains for himself, or for any other person, any pension, allowance or other advantage by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry containing a false statement, or by omitting to make a true entry or document containing a true statement.

Offences in Relation to Aircraft and Flying

44. Any person subject to Air Force Act who commits any of the following offences, he/she shall, on conviction by court-martial, be liable if he has acted willfully to suffer long imprisonment and in any other case to suffer short imprisonment:

- a. Willfully or without reasonable excuse damages destroys or loses any aircraft or aircraft material belonging to the Government.
- b. Is guilty of any act or neglect likely to cause such damage destruction or loss.
- c. Without lawful authority disposes of any aircraft or aircraft material belonging to the Government.
- d. Is guilty of any act or neglect in flying or in the use of any aircraft or in relation to any aircraft or aircraft material which causes or is likely to cause loss of life or bodily injury to any person.
- e. During a state of war willfully and without proper occasion or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any aircraft belonging to the Government.

Other Offences Relating to Aircraft and Flying

45. Any person subject to Air Force Act, 1953 who commits any of the following offences, will be tried by court-martial and on conviction by court-martial, will be liable to suffer short imprisonment:

- a. Signs any certificate in relation to an aircraft or aircraft material belonging to the Government without ensuring the accuracy thereof or
- b. Being the pilot of an aircraft belonging to the Government flies it at a height less than such height as may be specified by the Chief of Air Staff except while taking off or landing or in such other circumstances as may be specified by the Chief of Air Staff or
- c. Being the pilot of an aircraft belonging to the Government flies it so as to cause or to be likely to cause unnecessary annoyance to any person.

Disobedience of Lawful Command of Captain of Aircraft

46. Any person subject to Air Force Act, 1953 who commits any of the following offences, will be tried by court-martial and on conviction by court-martial, will be liable to suffer long imprisonment:

- a. While he is in Aircraft disobeys any lawful command given by the captain of the aircraft, whether such captain is subject this Act or not as respects all matters relating to flying or handling of the aircraft, or affecting the safety thereof.

- b. Being the captain of the aircraft, of a glider aircraft, towed by another aircraft, disobeys any lawful command given by the captain of the towing aircraft, whether the later is subject to the Act or not, as respect all matters aforesaid.

Violation of Good Order and Air Force Discipline

47. Any person subject to Air Force Act who is guilty of any act or omission which though not specified in Air Force Act is prejudicial to good order and Air Force discipline shall on conviction by liable to suffer short imprisonment.

48. The words Good Order are wide enough to include good order in the sense understood in civil life and applicable to civilians and in the same sense in which they would be understood in Air Force life as applicable to members of Air Force.

49. An act or omission prejudicial to good order is not necessarily prejudicial to Air Force discipline e g an officer who creates a disturbance when he is away necessarily of Air Force discipline. On the other hand and act which is prejudicial to Air Force discipline is also prejudicial to good order in the Air Force sense as applicable to members of Air Force.

50. Air Force Discipline shall mean, "it is the duty of all ranks to uphold the good reputation of the service". Any act or omission therefore which amounts to a failure in that duty by an individual may well prejudice air force discipline although it has no direct bearing on the discipline of the unit to which the offender belongs.

Civil Offences under Section 71

51. Subject to the provisions of section 72, any person subject to Air Force Act who at any place in or beyond Bangladesh commits any civil offence shall be deemed to be guilty of an offence against Air Force Act and if charged therewith under this section shall be liable to be dealt with under Air Force Act and on conviction be punishable as follows that is to say:

- a. If the offence is one which would be punishable under any law in force in Bangladesh with death or with transportation, he shall be liable to suffer any punishment other than transportation or whipping assigned for the offence by the aforesaid law and such less punishment as is in Air Force Act mentioned:

Provided that where transportation is assigned as a punishment for the offence by the law of Bangladesh he/she shall be liable to suffer in lieu of transportation rigorous imprisonment for a term not exceeding the term of transportation award able under such law for that offence rigorous imprisonment for fourteen years being deemed for this purpose the equivalent of transportation for life; and

- b. In any other case he shall be liable to suffer any punishment other than whipping assigned for the offence by any law in force in Bangladesh or to suffer short imprisonment or such less punishment as is in this Act mentioned.

52. This section gives to a court-martial or an officer exercising authority under section 82 or 86 jurisdiction to try or deal with any person who whilst subject to the act commits a civil offence whether within or beyond Bangladesh.

Civil Offences not Triable by Court-martial under section 72

53. This section provides an exception to the general power given under section 71 to a court martial of trying civil offences. The exception extends only to three offences specified in the section namely:

- a. Murder of a person not subject to the military naval or air force law.
- b. Culpable homicide not amounting to murder of such person and.
- c. Rape on woman who is not subject to military naval or air force law.

54. Normally therefore if a person subject to the act is charged with any one of these three offences he/she cannot be tried by a court-martial but must be handed over for trial before a criminal court. If however, any of these offences is committed while on-

- a. Active service or;
- b. At any place outside Bangladesh or,
- c. At any frontier post specified by the Government by notification in this behalf a court-martial will have jurisdiction under this section to try the offender.

TOPIC-5

METHODS OF DISPOSAL OF ALLEGATIONS

Initial disposition

1. **Who may dispose of offence.** Each commander has discretion to dispose of offenses committed by any members of that command. Ordinarily the immediate commander of a person accused or suspected of committing an offense triable by CM initially determines how to dispose of that offense. A superior commander may withhold the authority to dispose of offenses in individual cases, types of cases, or generally. A superior commander may not limit the discretion of a subordinate commander to act on cases over which authority has not been withheld.

2. Each commander in the chain of command has independent, yet overlapping discretion to dispose of offenses within the limits of that officer's authority. Normally, in keeping with the policy, the initial disposition decision is made by the official at the lowest echelon with the power to make it. A decision by a commander ordinarily does not bar a different disposition by a superior authority. Once charges are referred to a CM by a convening authority competent to do so, they may be withdrawn from that court-martial only in accordance with the existing rules and for which necessary consultation may be done with the JAG Branch.

3. Allegations of offenses should be disposed of in a timely manner at the lowest appropriate level of disposition. Many factors must be taken into consideration with balanced mind including, to the extent practicable, the nature of the offenses, any mitigating or extenuating circumstances, the character and military service of the accused, any recommendations made by subordinate commanders, the interest of justice, military exigencies, and the effect of the decision on the accused and the command. The goal should be a disposition that is warranted, appropriate, and fair. In deciding how an offense should be disposed of, the following factors the commander may consider:

- a. The character and military service of the accused;
- b. The nature of and circumstances surrounding the offense and the extent of the harm caused by the offense, including the offense's effect on morale, health, safety, welfare, and discipline;
- c. Appropriateness of the authorized punishment to the particular accused or offense;
- d. Possible improper motives of the person who complaint against the accused.
- e. Reluctance of the victim or others to testify;
- f. Cooperation of the accused in the apprehension or conviction of others;
- g. Availability and likelihood of prosecution of the same or similar and related charges against the accused by another jurisdiction;
- h. Availability and admissibility of evidence;
- j. Existence of jurisdiction over the accused and the offense and likely issues.

4. **How offences may be disposed of.** A superior competent authority may withhold the authority of a subordinate to dispose of charges in individual cases, types of cases , or generally. Ordinarily charges should be forwarded to the accused's immediate commander for initial consideration as to disposition. Each commander has independent discretion to determine how charges will be disposed of, except to the extent that the commander's authority has been withheld by superior competent authority. Within the limits of the commander's authority, a commander may take the actions set forth in the Act and Rules to initially dispose of a charge or suspected offense.

5. **No action.** A commander may decide to take no action on an offense. If charges have been preferred, they may be dismissed. A decision to take no action or dismissal of charges at this stage does not bar to try the accused at the later stage. The decision of taking no action must be based on fairness not on arbitrary. When a decision is made to take no action, the accused should be informed.

6. **Administrative action.** A commander may take or initiate administrative action, in addition to or instead of other action taken under the Act and Rules. Administrative actions include corrective measures such as counseling, criticism, censure, rebuke, extra military instruction, or the administrative withholding of privileges, or any combination of the above or issuing letter of displeasure, reproof, warning, discharge, release, retirement, dismissal, removal, etc. from service.

7. **Prompt determination.** When a commander with authority to dispose of charges receives charges, that commander shall promptly determine what disposition will be made in the interest of justice and discipline. Prompt disposition of charges is essential (principal of speedy trial requirements). Before determining an appropriate disposition, a commander should ensure that a preliminary inquiry under the Act and Rules have been conducted. If charges have been preferred, the commander should ensure that the accused has been notified in accordance with the existing regulations and that charges are in proper form. Each commander who forwards or disposes of charges may make minor changes therein. If major changes are necessary, the affected charge should be preferred a new.

TOPIC-6

DEPARTMENTAL ACTION OF CIVILIAN EMPLOYEES SERVING IN BAF

Introduction

The conditions of service of civilian employees serving in BAF are governed by special regulations. Their departmental action for committing any offences during the service tenure are guided by a notification issued by the Ministry of Defence. This notification is called as "Civilian Employees in Defence Services (Classification, Control and Appeal), Rules, 1961 dated 27th July 1961. As an officer of BAF, must have enough knowledge to initiate departmental action under this notification. The salient features of the Rules are discussed in the subsequent paragraphs.

Chapter 1- General

1. **Short Title, Application and Commencement.**—(a) These rules may be called the Civilian Employees in Defence Services (Classification, Control and Appeal) Rules, 1961.

(b) They shall come into force at once.

(c) They shall apply to every person holding a post connected with defence and paid from the Defence Services Estimates, other than those subject to the Army Act, 1952, the Navy (Discipline) Act, 1934, and the Air Force Act, 1953, who is in the whole time employment of the Govt under the Ministry of Defence, except —

(i) Persons who, for the purpose of application of the Factories Act, 1934 (XXV of 1934) and Workmen's Compensation Act, 1923 (VIII of 1923), come within the meaning of "worker" or "workman" as defined in those Acts; extra temporary' establishments , extra temporary artificers and casual personnel employed in various installations of the Defence Services, including those employed against Service vacancies and on Form 497;

(ii) Members of Military Lands and Cantonments Services and Military Accounts Services.

(iii) Persons in respect of whose conditions of service, pay and allowances, pensions, discipline and conduct, or any one of them, special provisions have been made by agreement entered into before the commencement of these rules or by agreement entered into under sub-rule (7).

Provided that in respect of any matter not covered by the provisions special to him, his service or his post, these rules shall apply to any person coming within the scope of clause (iii).

(d) Notwithstanding anything contained in the preceding sub-rules, the Govt may by a notification published in the Gazette, declare in respect of any person or class of persons that these rules shall not apply in whole or in part to such person or class of persons and these rules shall thereupon cease to apply accordingly.

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(e) If any doubt arises as to whether these rules apply to any person, the matter shall be referred to the appointing authority and the decision of that authority shall be final.

(f) Nothing in these rules or in any rules made there under shall operate to deprive of any person of any right or privilege to which he is entitled—

(i) by or under any law, or

(ii) by the terms of any contract or agreement subsisting between such person and the Govt on the date these rules come into force.

(g) Where in the opinion of the Govt it is necessary to make any special provision relating to the conditions of service of any person subject to these rules, it shall be lawful for the Govt to make such provision in an agreement entered into with such person.

(h) All proceedings pending at the commencement of these rules shall be deemed to be proceedings under these rules, and shall be progressed under these rules as far as may be.

2. **Definitions.-** In these rules, unless there is anything repugnant in subject or context—

(a) "**Accused**" means a Govt servant against whom disciplinary action is contemplated under these rules;

(b) "**Appointing authority**" means the authority shown as such in the schedule or authority notified as such in accordance with the schedule ;

(c) "**Designated authority**" means the authority shown as such in the schedule or authority notified as such in accordance with the schedule ;

(d) "**Government**" means the Central Government in the Ministry of Defence:

(e) "**Misconduct**" means conduct prejudicial to good order or service discipline or unbecoming of an officer as a gentlemen.

(f) "**Notify**" means publication of a notification in the Official Gazette ;

(g) "**Penalty**" means a penalty which may be imposed under these rules ;

(h) "**Schedule**" means schedule to these rules.

Chapter 2- Classification

3. For the purpose of this rule, civilian posts under the Ministry of Defence which so far have been notified by the Govt as belonging to the Services mentioned in column 1 below shall be deemed to be classified as Services mentioned in Column 2 below:-

1	2
Present Designation	New Designation
a. General Central Service Class 1 (Gazetted).	Class I Services

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- b. General Central Service Class II (Gazetted). Class II Services
 - c. General Central Service Class II (Non-Gazetted). Class II (Non-Gazetted) Services
 - d. General Central Service Class III. Class III Services
 - e. General Central Service Class IV. Class IV Services
4. All first appointments to Classes I, II, II (Non-Gazetted), III and IV Services shall be made by the appropriate appointing authority.
- 5 Govt may modify the Schedule by notification from time to time.

Chapter 3- Conduct and Discipline

6. **Grounds of Penalty** - Where a Govt servant, in the opinion of the appointing authority or the designated authority:-

- (a) is inefficient, or has ceased to be efficient, whether by reason of infirmity of mind or body, otherwise, and is not likely to recover his efficiency; or
- (b) is guilty of misconduct :or
- (c) is corrupt, or may reasonably be considered corrupt because :-
 - (i) he, or any of his dependents or any other person through him or on his behalf is in possession (which he cannot reasonably account for) of pecuniary resource or of property disproportionate to his known sources of income: or
 - (ii) he has assumed a style of living beyond his ostensible mean's; or
- (d) is engaged, or is reasonably suspected of being engaged in subversive activities or who is reasonably suspected of being associated with others engaged in subversive activities and whose retention in service is, therefore, considered prejudicial to national security.

The appointing authority may impose on him one or more penalties, or the designated authority may impose on him one or more of the minor penalties:

7. **Penalties:-**

- (a) The following are the minor penalties –
 - (i) Censure;
 - (ii) the with-holding of increment or promotion, including stoppage at efficiency bar for a specified period;
 - (iii) recovery from pay of the whole or part of any pecuniary loss caused to Govt by negligence or breach of order, provided the amount to be recovered does not exceed six month pay of the accused.

and the following are the major penalties:-

- (iv) Recovery from pay of the whole part of any pecuniary loss caused to Government by negligence or breach of orders, if the amount to be recovered exceeds six months pay of the accused;
- (v) reduction to a lower post or time scale ;or to lower stage in a time scale;
- (vi) compulsory retirement ;
- (vii) removal from service;
- (viii) dismissal from service;

8. Procedure for disciplinary action in cases of inefficiency, misconduct and corruption (a) Where a Government servant is to be proceeded against under clauses (1), (2) or (3) rule 7, the procedure in the following sub-rules shall be observed.

(b) **Investigation.** (i) The designated authority may, if it thinks fit, appoint another officer serving in the office or department of the accused, or a Court of Inquiry, to investigate, to call explanation and to report on the allegations against the accused, to enable the designated authority to decide whether a formal charge should be framed against the accused. The Officer Commanding the establishment in which the accused is serving, even he is not the designated authority, may himself investigate and call for the explanation or order another officer to do it.

(ii) The designated authority, after the aforesaid investigation or without such investigation, shall decide whether a formal charge-sheet be framed against the accused, and whether, the charge, if proved, would call for a minor penalty or a major penalty.

(c) **Limited Inquiry for Penalties:**

(i) In cases calling for a minor penalty, the designated authority for such officer as may be appointed by it in that behalf, shall frame a charge, and in making it known to the accused, shall call upon him to answer it within a specified time, which shall not be less than 07 (seven) days not more than 14 (fourteen) days, and to state, together with his answer, whether he desires to be heard in person or to lead evidence in defence.

(ii) On receiving the answer, the designated authority, or the said officer, shall if satisfied that there is a prima facie case, and if the accused has so desired, give him the opportunity to be heard in person and to lead evidence in defence:

Provided that designated authority or the said officer may, for reason to be recorded, refuse to call a particular witness or to summon or admit particular evidence.

(iii) If the accused fails to answer within the specified time, or having answered, fails to appear or absents himself from the proceedings, the designated authority or the said officer may proceed with the inquiry and record a finding. After conclusion of the proceedings the designated authority may acquit the accused or

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inflict on him one or more of the minor penalties. A record of the entire proceedings shall be maintained. If the limited inquiry discloses necessity for a major penalty, and a major penalty is proposed to be inflicted then the procedure set out in the next rule shall be followed.

(iv) In the case of class III and IV Series where ensure only is to be imposed, the designated authority or an officer appointed by it may, in an appropriate case, in his own discretion, orally communicate the charge and the circumstances to the accused and after hearing him orally may inflict on him through a written order the penalty of censure provided that in that written order a brief mention is made of the charge against the accused, its circumstances, explanation of the accused and the finding. A copy of the order shall be supplied to the accused.

(d) Full inquiry for major penalties.

(i) In cases calling for a major penalty the designated authority shall call for an explanation and frame a charge, and communicate it after obtaining the approval of the appointing authority to the accused together with a statement of the allegations on which it is based and of any other circumstances which the appointing authority may take into consideration when passing orders on the case.

(ii) The designated authority shall require the accused within a reasonable time, which shall not be less than seven days nor more than fourteen days, from the date the charge has been communicated to him, to put in written defence, stating, at the same time whether he desires to be heard in person.

(iii) If the accused so desires, or if the designated authority with the approval of the appointing authority so directs, an inquiry Officer to be appointed under rule 11 shall hold an oral inquiry at which oral evidence shall be heard as to such of the allegations as are not admitted, and the accused shall be entitled to cross-examine the witness against him, to give evidence in person and to have such witnesses called in defence as he may wish, provided that the Inquiry Officer may, for reasons to be recorded in writing, refuse to call a particular witness or to summon or admit particular evidence.

(iv) The proceedings shall contain a sufficient record of the evidence and the Inquiry Officer's report of his findings and the grounds thereof.

(v) When the designated authority, having considered the report, has arrived at a provisional conclusion as to the penalty to be imposed, it shall so inform the accused, and supply him with a copy of the report, and call upon him to show cause within a reasonable time, which shall not be less than seven days nor more than fourteen days, why the penalty proposed should not be imposed. The designated authority shall complete the case and submit it to the appointing authority for orders. The latter shall take into consideration any cause shown by the accused before passing orders.

Explanation- Notwithstanding the delegation, the appointing authority may, whenever deemed necessary, itself exercise the powers conferred on the designated authority under sub-rules, (2), (3) and (4) of this rule and under rule 11.

(e) **Charge:-** For each fault or shortcoming there will be a separate charge under sub-rules (3) and (4) : each charge will be written and specified and will state clearly the nature, time, occasion, place, person, amount, etc concerning the fault of shortcoming.

(f) No person shall be represented by any one else at the proceedings under these rules.

9. **Exception.** - Nothing in rule 9 shall apply—

(a) Where the accused is dismissed or removed from service or reduced in rank on the grounds of conduct which has led to a sentence of fine or imprisonment; or

(b) Where the appointing authority is satisfied that for reasons to be recorded by that authority, it is not reasonably practicable to give the accused an opportunity of showing cause.

10. **Appointment and procedure of Inquiry Officer in a Full Inquiry.** (a) Where a Govt servant is proceeded against under clause (a), (b) or (c) of rule 7, and it is decided that the case prima facie calls for a major penalty, the designated authority shall appoint with the approval of the appointing authority an officer, being senior in rank, as far as possible, to the person proceeded against, to be an Inquiry Officer and to conduct the proceedings.

(b) The Inquiry Officer shall hear the case from day to day and no adjournment shall be given except for reasons to be recorded in writing, but when given it shall not exceed a week.

(c) If the Inquiry Officer is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry he shall administer a warning and if thereafter he is satisfied that the accused is acting in disregard of the warning, he shall record a finding to that effect, and proceed to complete the inquiry in such manner as he thinks best fitted to do substantial justice.

(d) The Inquiry Officer shall, within ten days of (the conclusion of the proceedings, or such longer period as may be allowed by the designated authority, submit his findings with grounds thereof and recommendation for penalty if any, to the designated authority who on receipt of the report shall take further action as laid down in rule 9 (d) (v).

11. **Suspension.** - A Govt servant against whom action is proposed to be taken under clause (2) or (.1) of rule 7, may be placed under suspension if, in the opinion of the designated authority, suspension is necessary or expedient.

12. **Inquiry procedure in cases of subversion.** (a) When a Govt servant is to be proceeded against under clause (4) of rule 7, the appointing authority:-

(i) Shall call for his explanation and by order in writing, inform him of the action proposed to be taken in regard to him and the grounds of that action; and

(ii) Shall give him a reasonable opportunity of showing cause against that action before an Inquiry Committee to be constituted under sub-rule (2) to inquire into the charge:

Provided that no such opportunity shall be given where the President is satisfied that in the interests of security of country, or any part thereof, it is not expedient to give such opportunity,

(iii) May, by order in writing, require the Govt servant concerned to proceed on such leave as may be admissible to him and from such date as may be specified in order.

(b) Where an Inquiry Committee is to constitute in pursuance of clause (b) of-sub-rule (1), the following procedure shall be followed:—

(i) In the case of members of Class I and Class II Services, the President shall constitute, in the case of members of Class II (Non—Gazetted) Class III and Class IV Services, authority specified in sub-rule (2) of rule 6 shall constitute the Committee of three officers military or civil (not below the rank of Lieutenant-Colonel in the former case);

(ii) The Committee shall call for explanation of the accused and inquire into the charge and submit its findings to the President or the authority who constituted the Committee and the President or the authority shall pass final orders in the case.

13. **Reinstatement.**—(a) If a Govt servant proceeding on leave in pursuance of an order under clause (c) of sub-rule (1) of rule 13 is not dismissed, removed, reduced in rank, or compulsorily retired, he shall be reinstated in service, or as the case may be, restored to his rank or given an equivalent rank, and the period of such leave shall be treated as duty on full pay.

(b) Reinstatement after suspension shall be governed by the Civil Services Regulations.

14. **Power to order medical examination as to mental or bodily infirmity.**—(a) Where it is proposed to proceed against a Govt servant on the ground of inefficiency by reason of infirmity of mind or body the designated authority may at any stage require a Govt servant to undergo a medical examination by a Medical Board or a Staff Surgeon as the designated authority may direct, and the report of the Board or the Staff Surgeon shall form part of the proceedings.

(b) If a Govt servant refuses to undergo such examination, his refusal may, subject to the consideration of any grounds he may give in support of it, be taken into consideration against him as showing that he had reason to believe that the result of the examination would prove unfavorable to him.

15. **Compensation pension, gratuity etc, of Govt servants compulsorily retired, removed or dismissed-** (a) Subject to any, order of the President to the amount of compensation pension or gratuity to be paid, a Government servant compulsorily retired except as hereinafter provided, be entitled to such compensation pension or gratuity or provident fund benefits as would have been admissible to him on the date of the retirement under the Rules applicable to his service or post if he had been discharged from service on account of the abolition of his post without alternative suitable employment being provided.

(b) Subject to any order of the President made on compassionate grounds, a Govt servant who is removed or dismissed shall not be entitled to any compensation pension, gratuity or benefits accruing from Govt contribution to a contributory provident fund.

Chapter 4 – Appeals

16. (a) Every person subject to these rules shall be entitled to only one appeal as hereinafter provided from an order passed by an authority—

- (i). Imposing upon him any of the penalties specified in rule 8;
- (ii). discharging him in accordance with the terms of his contract if he has been engaged on a contract for a fixed or for an indefinite period and has rendered under either form of contract continuous service for a period exceeding 5 years at the time when his services are terminated;
- (iii) reducing or withholding maximum pension, including an additional pension admissible to him under the rules governing pensions:

Provided that a person appointed by the President shall have no right-of appeal from order passed by the President but may apply for a review of the order. An application for review will conform to the conditions prescribed for appeals in rules 19 and 20 and such applications will be dealt with in the manner prescribed for the disposal of petitions to the President.

(b) (i) A member of a Class I Service may appeal to the President from an order passed by a designated authority.

(ii). A member of a Class II Service may appeal to the Secretary from an order passed by the appointing authority except that where Secretary/Joint Secretary is the appointing authority; an appeal against his order shall lie to the President.

(iii). A member of Class II (non-gazetted) or Class 111 or Class IV Service may appeal to the appointing authority from an order passed by the designated authority and from an order of the appointing authority to the authority to be notified by the rule making authority specified in sub-rule (2) of rule 6:

Provided that in respect of the Armed Forces Headquarters in the cases in which Chief Administrative Officer is the appointing authority, an appeal from his original order shall lie to the Secretary/Joint Secretary.

(c) An appeal from an order passed by an authority reducing or withholding the maximum pension, including an additional pension admissible under the rules

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governing pensions shall lie to the authority immediately superior to the authority which has reduced or withheld the pension.

17. Every person subject to these rules shall be entitled to one appeal to the appointing authority against an order passed by an authority subordinate to it which —

- (i) Alters to his disadvantage his conditions of service, pay, allowances or pension as regulated in rules or in a contract of service ;
- (ii) Interprets to his disadvantage the provisions of any rules or contract of service whereby his conditions of service, pay, allowances or pension are regulated.

18. Every person preferring an appeal shall do, so separately and in his own name.

19. Every appeal preferred under the«e rules shall contain all material statements and arguments relied on by the applicant, shall contain no disrespectful or improper language and shall be complete in itself. Every such appeal shall be submitted through the head of the office, to which the appellant belongs or belonged and through the authority from whose order the appeal is preferred.

20. In case of an appeal against an order imposing any penalty specified in appellate authority shall consider:-

- (a) Whether the facts on which the order was based, have been established.
- (b) Whether the facts established afford sufficient ground for taking action.
- (c) Whether the penalty imposed is adequate, inadequate or excessive, and after such consideration pass such order as it thinks proper:

Provided that if the appellate authority proposes to enhance the penalty it shall before passing such order, call upon the appellant to show cause why the imposed upon him shall not be enhanced.

21. An authority from whose orders an appeal is preferred under these rules effect to any order made by the appellate authority.

22. (a) An appeal may be withheld by an authority not lower than the authority whose order it is preferred, if -

- (i) No appeal lies under these rules,
- (ii) It is not preferred within six months of the date on which the appellant with formed of the order appealed against and no reasonable cause is showing for,
- (iii) It is repetition of the previous appeal,
- (iv) It is not in accordance with rule 19 or 20,
- (v) It is addressed to an authority to which no appeal lies:

Provided that-

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(a) When an appeal is withheld for any of these reasons the appeal be informed of the fact and the specific reasons for it;

(b) An appeal withheld on account only of failure to comply with the provision of rule 19 or 20 may be resubmitted at any time within one month of the date on which the appellant was informed of the withholding of the appeal and if re-submitted in an form which complies with those provision, shall not be withheld on that ground.

(b) A list of all appeals from orders imposing major penalties, withheld together with the reasons for withholding them shall be submitted quarterly by the withholding authority to the appellate authority.

23. No appeal shall lie against the withholding of an appeal under rule 23.

24. Every appeal which is not withheld under these rules shall be forwarded to the a concern authority by the authority against whose order the appeal is preferred with an expression opinion.

25. An appellate authority may call for any appeal admissible under these rules which has been withheld by a subordinate authority and may pass such orders thereon as it considers fit.

26. Notwithstanding anything contained in the foregoing provisions the Govt or an appellate authority may, of its own motion or otherwise, call for the record of any case in which an order has been made by an authority subordinate to it in the exercise of any power conferred on such authority by these rules, and —

(a) confirm, modify or reverse the order, or

(b) direct that a further enquiry be held in the case ; or

(c) Reduce or enhance the penalty imposed by the order ; or

(d) Make such other order in the case as it may deem fit :

Provided that where it is proposed to enhance the penalty imposed by any such order, the Govt servant concerned shall be given an opportunity of showing cause against the proposed enhancement.

THE TABLE

Classification	Appointing Authority	Designated Authority
Class III Services	Director of Personnel	DDP (Mng)/Base Commanders/OC Unit
AFNS (Local)	DGMS	DMS (Air)
Midwife	DMS (Air)	-
Class IV Services	OC Admin Wing/OC Unit	Base Adjutant/Officer-in-Charge Personnel Squadron/Unit

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All Departments	President	Secretary, MOD	
Class II Services Authority	Army	PSO, E-in-C, DM (Army)	Authority to be notified by the Appointing
	Navy	D.C.N.S. (Personnel)	Do
	Air Force	ACAS (Admin)	Do
	Ordinance Factory	Chairman, Ordinance Factory Board	Do
	Dte General of Medical Services and Inter Services Medical Units.	DGMS	Do
	AFHQ.	Secretary/Joint Secretary Defence	Do
notified General	Army	Authority to be notified by Adjutant General	Authority to be by Adjutant
Class II (Non-Gazetted) (P).	Navy	Authority to be notified by DCNS (P).	Authority to be notified by DCNS
Service Class III Services and Air Force noti- Class IV Services (Admin)		Authority to be notified by ACAS (Admin)	Authority to be fied by ACAS
noti-	Ordinance Factory	Authority to be noti- fied by Chairman,	Authority to be fied by Chairman,
notified	Dte General of Medical Services and Inter Services Medical Units	Authority to be notified by DGMS	Authority to be by DGMS
notified	AFHQ	Authority to be notified by CAO	Authority to be by CAO

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Civilian Employees in Defence Services (Classification, Control
and Appeal) Rules, 1961

In exercise of the powers conferred by clause (c) of sub-rule (2) of rule 17 read with sub-rule (2) of rule 6 of the Civilian Employees in Defence Services (Classification, Control and Appeal) Rules, 1961, the Chief of Air Force is pleased to notify the authorities specified in column 2 of the Table below to whom members of Class II (Non - Gazetted) Services, Class III Services, and Class IV Services mentioned in column 1 of the said Table may appeal from an order of their respective appointing authorities, namely :—

The Table

Classification (1)	Authority to whom an Appeal may be Made (2)
Class II (Non-Gazetted) (Administration) Services.	Assistant Chief of Air Staff
Class III Services	Director of Personnel
Class IV Services	Station Commander (Base Commander)

In pursuance of the provisions of the Schedule to the Civilian Employees in Defence Services (Classification, Control and Appeal), Rules, 1961 the Assistant Chief of Air Staff (Administration) is pleased to notify the appointing and designated authorities set out in the table below in respect of Civilian Personnel employed in the lower formations of Bangladesh Air Force, namely :—

The Table

Classification	Appointing Authority	Designated Authority
Class III Services	Director of Personnel	DDP (Manning)/Base Commanders/ OC
Unit. AFNS (Local)	DGMS	DMS (Air),
Midwife	DMS (Air)	-
Class IV Services in-	OC Admin Wing/OC Unit	Base Adjutant/Officer- charge Personnel Squadron/Unit Adjutant.

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TOPIC-7

ESSENTIAL ELEMENTS OF MILITARY JUSTICE SYSTEM

Report of offence

1. **Who may report.** Any person may report an offence committed by a service person and the offence is subject to be tried by court-martial.

To whom reports conveyed for disposition

2. Ordinarily, to the CO of the offender or any military authority. On receive of the report of an offence, it shall be forwarded as soon as practicable, accompanying information to the Base Commander/Unit Commander of the suspect. Competent authority superior to that commander may direct otherwise.

3. Any military authority may receive a report of an offense. Typically, such reports are made to law enforcement or investigative personnel, or to appropriate persons in the chain of command. A report may be made by any means, and no particular format is required. When a person who is not a law enforcement official receives a report of an offence, that person should forward the report to the immediate commander of the suspect. If the suspect is unidentified, the military authority who receives the report should refer it to a law enforcement or investigative agency. Upon receipt of a report, the immediate commander of a suspect should arrange an investigation or inquiry either by himself or by deputing any officer of his command or referred the matter for investigation by the Provost or Security Unit.

Arrest by Military or Air Force Authorities

4. **Arrest or Apprehension.** Arrest or apprehension is the taking of a person into custody for committing any offence. An arrest or apprehension is not required in every case. An arrest or apprehension is different from detention of a person for investigative purposes. An arrest restrict the freedom of movement of a person. An arrest or apprehension must be based on probable cause.

5. **Who may arrest or apprehend.** The following officials may arrest or apprehend any person subject to trial by court-martial:

- a. The military law enforcement officials such as; security personnel, military police, persons designated by proper authorities to perform provost duties, police duties, etc.
- b. The non- commissioned officers not otherwise performing law enforcement duties should not apprehend a commissioned officer unless directed to do so by a commissioned officer.

Arrest by Civil Authorities

6. **Civilians authorized to apprehend deserter.** Under section 104, any police or civilian officer having authority to apprehend offenders under laws of the Bangladesh may arrest or apprehend a deserter from the Armed Forces.

7. **Grounds for apprehension.** A person subject to the Air Force Act may be apprehended for an offence triable by court-martial upon probable cause to apprehend. Probable cause to apprehend exists when there are reasonable grounds to believe that an offence has been or is being committed and the person to be apprehended committed or is committing it. Persons authorized to apprehend or release from the arrest are more clearly described in section 101 to 107 of the Act.

8. **How an apprehension may be made.** An arrest or apprehension is made by clearly notifying the person to be apprehended that person is in custody. This notice should be given orally or in writing, but it may be implied by the circumstances.

a. **Warrants.** Neither warrants nor any other authorization shall be required for arrest or apprehension under the Air Force Law.

b. **Use of force.** Any person authorized under these rules to make an apprehension may use such force and means as reasonably necessary under the circumstances to effect the apprehension.

Investigation of allegation or Charge

9. The preliminary inquiry is usually informal. It may be an examination of the charges and an investigative report. In other cases a more extensive investigation may be necessary. Although the CO may conduct the investigation personally or by detailing other officer of the command, in serious or complex cases the CO should consider whether to seek advice from the Air HQ (JAG Branch) in conducting any inquiry or further investigation. The inquiry should gather all reasonably available evidence bearing on guilt or innocence and any evidence relating to aggravation, extenuation, or mitigation.

10. **Duty of CO in respect of persons in custody.** Section 102 of the Act makes it the duty of every CO to take care that a person under his command when charged with an offence is not detained in custody for more than 48 hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him to be impracticable with due regard to the public service. It is also his duty in every case where a person has been detained in custody beyond a period of 48 hours, to report the fact together with the reasons thereof, to the air or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

11. **Report of delay under section 103 of the Act.** Section 103 of the Act provides that whenever any person subject to the Act has been in such custody for a longer period than on active service) and remains in such custody for a longer period than 8 days without a court-martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by his commanding officer in the manner prescribed

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in rule 45. A similar report must be forwarded every 8 days until a court-martial is assembled or the person is released from custody.

a. The special reports are to be submitted to the officer who would be responsible for convening a court-martial for the trial of the accused. They must be submitted notwithstanding that the person in custody is in hospital or whatever the cause of the delay. It is the duty of the convening officer to satisfy himself :-

- (1) that continued custody is necessary, and
- (2) of the reasons for delay in bringing the accused to trial.

b. It is an offence under section 50 (a) of the Act, for a person subject to Air Force law, unnecessarily to detain a person in arrest or confinement. Without bringing him to trial or to fail to bring his case before the proper authority for investigation.

Rights of the Accused/Detainee

12. **Release from arrest of persons awaiting trial.** When an accused person is remanded for further investigation or for trial by CM, the CO should consider whether he may be released from close arrest and placed in open arrest, or released from either form of arrest without prejudice to re-arrest. As an accused person is deemed innocent until proved guilty, he should be kept in close arrest awaiting trial only in exceptional circumstances; e.g. when:-

- a. He is deliberately trying to undermine discipline by acts of misconduct. Isolated instances of insubordinate language or violence would justify placing an accused person in close arrest immediately and retaining him there until he is brought before his commanding officer on a charge, but would not in themselves justify his retention in close arrest awaiting trial;
- b. The offence charged is one for which the maximum sentence is death;
- c. his conduct is so violent that it would be unsafe to himself or to others not to place him in close arrest;
- d. He is known to have habitually absented himself without leave, and it is considered he will be unlikely to be present to stand trial unless kept in close arrest;
- e. He is likely to suborn witness.

13. **Irregularity in connection with arrest or confinement.** Under section 50 (b) it is an offence for any person subject to Air Force law if he fails to send or forward any allegation within 48 hours after sending the person in custody or keeping him in close arrest. It is the duty of the superior officer to send the allegation or charge in writing and signed by himself of the offence with which the person so committed is charged. The "account in writing" need not be in the form of a formal charge-sheet but should set out in ordinary language details of the allegations made against the accused, e.g., "creating a disturbance in the Mess", not "an act prejudicial to good order and air force discipline".

14. **Close arrest not to exceed 90 days without permission from higher authority.** An accused is not to be held in close arrest for more than 90 consecutive days without a court-martial being convened and assembled for his trial unless the officer who be responsible for convening the court-martial directs in writing that he is not to be released from close arrest.

15. **Action by civil courts in case of prolonged close arrest.** It should always be remembered that it is the right of every person detained, whether by order of the Govt or by any one else, to apply to the High Court and demand either that he be dealt with according to law or that he be set a liberty. This power has been given by the Legislature to the High Courts so as to safeguard the liberty of the subject against excesses of the Executive and against an abuse of power. Thus if an officer, master warrant officer, warrant officer or airman had been held in arrest awaiting trial for so unreasonable a period that the High Court thought there was oppression, it might order his release and admit him to bail.

Inspection, Seize and Searches

16. **Searches.** A CO has by virtue of his position and responsibilities an inherent power without a warrant to make a full search of any camp, barracks and married or other quarters within his command, and may, while doing so, search the persons of personnel subject to the Act and any kit-bags, boxes or other receptacles or any vehicles belonging to such persons. A commanding officer, however, is not entitled, when exercising this power, to search :-

- a. The persons of wives of such personnel, if they are civilians and do not consent to such search ; or
- b. Any bag, box or other receptacle or any vehicle, which is the separate property of any such wife unless she consents to the search ; or
- c. quarter other than those within his command. For example, he cannot without a warrant search a flat which is rented and occupied by one of his officer through private arrangements.
- d. Service police as such have no right without a warrant to search personnel subject to the Act who are not in Air Force custody unless such personnel consent to the search.

17. **Power to seize.** Any commissioned officer, MWO, SWO, WO, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security police, military police, or individual designated by proper authority to perform guard or police duties, or any agent of any such person, may seize property pursuant to this rule.

18. **Seizure of Property .** Probable cause to seize property or evidence exists when there is a reasonable belief that the property or evidence is an unlawful weapon, contraband, evidence of crime, or might be used to resist apprehension or to escape.

19. **Foreign Searches.** Execution of a search authorization outside the Bangladesh and within the jurisdiction of a foreign nation should be in conformity with existing agreements between the Bangladesh and the foreign nation. Non compliance with such an agreement does not make an otherwise lawful search unlawful.

20. **Search Warrants.** Any civilian or military criminal investigate or authorized to request search warrants pursuant to applicable law or regulation is authorized to serve and execute search warrants following the provisions of Code of Criminal Procedure.

21. **Abandoned Property.** Abandoned property may be seized without probable cause and without a search warrant or search authorization. Such seizure may be made by any person.

22. **Government Property.** The Govt property may be seized without probable cause and without a search warrant or search authorization by any person unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein, as provided any other law, at the time of the seizure.

TOPIC-8

INVESTIGATION OF CHARGES

Introduction

1. A person subject to the Act accused of an offence may be dealt with or without the intervention of a Court-Martial by an officer authorized under Section 82 or 86 of Air Force Act. This method of dealing with a case is called Summary Disposal. An offender must not ordinarily be put up for trial by Court-Martial. After giving due regard to the merits of the case, ends of justice and service discipline. Otherwise a minor offence can be disposed of summarily to meet the requirement of justice and discipline.

2. It is a legal necessity that the charge is investigated thoroughly by the Commanding Officer of the individual. It is a requirement of law that the cases are to be investigated in the presence of the accused before arriving at the conclusion, so as to dispose of the same to finality. The process of investigation of charges is to commence with the confirming of the accuracy and correctness of the charge. In case of aircraftsman and NCO, the charge framed is to be of informal type or as distinguished from the cases of WO and officers (up to the rank of Flight Lieutenant) wherein the formal charge is to be preferred.

Hearing of Charge

3. Every charge against a person subject to the act shall be heard in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him and to call any witnesses and make any statement in his defence.

4. Procedure in the case of an officer or MWO, SWO OR WO. If the commanding officer is satisfied that there is a case to be investigated against an officer or MWO, SWO OR WO, will order a summary of evidence to be recorded.

5. In the case of Non-Commissioned (NCO) officer and airmen below NCO ranks. In the case of an N C O and an airman the procedure will be –

- a. The accused is to be brought before the commanding officer and the charge is read to him.
- b. Each witness against the accused is to give his evidence orally in the presence of the accused
- c. The accused is to be allowed to cross examine any witness against him
- d. The evidence is not to be given on oath or affirmation
- e. If at the conclusion of the evidence against the accused the commanding officer is of the opinion that no prima face case has been made out he is at once to dismiss the charge otherwise the accused is to be asked if he wishes to say anything in answer to the charge ;

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f. The accused is then to be asked if he wishes to call any witness and any witness asked for should be made available if reasonably possible.

g. Having heard all the evidence the commanding officer is to proceed with the case according to rule 41.

6. The procedure outlined above will apply when the case is being investigated by an officer commanding a unit located at a base or an officer specified by the chief of air staff. When such an officer cannot adequately punish a person under rule 49, he should remand the case to the Base Commander.

Duties of Commanding Officer

7. It is provided by section 50(b) of the Air Force Act that any person subject to Air Force Act who has ordered to place another person into Air Force custody must within 48 hours of the arrest deliver to the officer or other person into whose custody the person arrested is committed, an account in writing, signed by himself, of the offence with which the person so committed is charged. It is then the commanding officer's duty to investigate the case without delay.

Procedure in the Case of an Officer

8. If the commanding officer is satisfied that there is a case to be investigated against an officer he will order a summary of evidence to be prepared.

9. After the summary of evidence has been taken the commanding officer should:

a. Dismiss the case against the officer, or

b. Remand him for trial by court-martial, or

c. If the officer is below the rank of Squadron Leader refer the case to the appropriate officer, specified in section 86 of the Air Force Act, for such officer to consider whether the matter should be dealt with by court-martial or disposed of summarily by him under the said section, if he himself is not empowered to dispose it of summarily.

10. In dealing with the charge against an officer or master warrant officer or warrant officer the specified officer will follow the BAF Form -253 and proceed as below:

a. He is to ask the accused if he/she has received a copy of the charge sheet and the summary of evidence not less than forty eight hour previously and if he/she has had sufficient time to prepare his defence.

b. He is then to read the charges to the accused and ask him/her if has agreed that the witness against him/her need not appear in person.

c. If the accused has agreed in writing to dispense with the witnesses the specified officer is to read the summary of evidence to the accused if he so requires.

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- d. If the witnesses appear in person their evidence is to be recorded on a separate sheet and attached to the form above referred to. Every witness is to be administered oath or affirmation according to the form given in the Fifth Appendix to the rules.
- e. The accused is then to be asked if he/she wishes to make an un-sworn statement he is to be informed that such statement may relate to the facts of the case character and mitigating circumstances.
- f. The accused is then entitled to call other witnessed in his/her defence.
- g. If the accused makes a statement or call witnesses, a record is to be made on a separate sheet and attached to the proceedings.
- h. The specified commander will consider all evidence, and, if he determines that the accused is guilty, he is to examine the service record of the accused. Before announcing the award unless if be a severe reprimand or forfeiture of pay and allowances under section 86(d) he is to ask the accused "Do you elect to be tried by court-martial or will you accept may award?". If the accused elects to be tried by court-martial the specified officer shall take steps for bringing him to trial by a court- martial.
- j. If the accused is willing to accept the award the specified officer will award only such punishment which must be within the limits of those set out in section 86 of the act. The award is forthwith to be announced and recorded.

Procedure in the Case of a MWO, SWO OR WO

11. A case against a MWO, SWO OR WO should be investigated in the same manner as prescribed for an officer, below the rank of Squadron Leader. A commanding officer may, as in the case of an officer, dismiss the charge, if he thinks it should not be proceeded with. For the purpose of the Air Force Act and the Rules the term "master warrant officer", "senior warrant officer", "Warrant Officer", includes an acting MWO, SWO OR WO as well as MWO, SWO OR WO of the Air Force volunteer Reserve who is for the time being subject to the Air Force Act.

Procedure in the Case of NCO and Airmen

12. In the case of a NCO or airman an investigation is made by his commanding officer. Having heard all the evidence, the commanding officer is to consider whether the case is proved or not. If it is not proved the case is to be dismissed forthwith. If the case is proved the commanding officer should then and not until then examine the conduct sheets of the accused. He should then proceed as follows:

- a. Award a suitable punishment bearing in mind the provisions as applicable of section 82 and 84 and rules 47 and 48 (rule 49 in the case of commanding offices of units or specified officer) or

- b. Refer the case to the proper superior authority where he thinks that the case should be disposed of summarily but which cannot be so dealt with without reference to superior authority under section 83 of the Act, or
- c. If the case appears to be serious he should order a summary of evidence to be reduced in writing.

Investigation by Commanding Officer

13. The manner in which investigation of charges by a commanding officer is to be carried out is regulated by rules 40 to 43. This duty requires deliberation and the exercise of temper and judgment, in the interest alike of discipline and of justice to the accused. The investigation must be conducted in the presence of the accused, which must be given full liberty to cross-examine any witness against him/her, and to call any witness and to make any statement in his/her defence. The commanding officer, after hearing what is stated against the accused will, if he is of opinion that no offence at all, or no offence requiring notice, has been made out, at once dismiss the charge. If the commanding officer is of opinion that the charge ought to be proceeded with, he shall have the following courses open to him/her:

- a. He may dispose of the case summarily where the accused is a non-commissioned officer or airman, and the offence is one for which no previous sanction is required under section 83 of the Act, or
- b. He may apply under section 83 to the officer having power to convene a district court-martial for sanction to deal with the accused summarily; or
- c. He may adjourn the case for the purpose of having a summary of evidence recorded against the accused.

14. When a commanding officer applies for sanction, under section 83 of the Air Force Act, to deal summarily with an accused, he does not thereby divest himself of the power to dismiss the charge or to condone the offence. When, however, he refers a case to the proper superior air force authority under rule 43 for a decision by that authority as to the action to be taken, the commanding officer is "functus officio" and is no longer in a position of his own authority to dismiss the charge or to condone the offence.

TOPIC-9

RECORDING OF SUMMARY OF EVIDENCE

Preparation of charge and charge-sheet

1. Immediately after the CO has adjourned a case for the purpose of having the evidence reduced to writing (rule 41(2) (c)), ie recording a summary of evidence the Base/Unit legal officer (BLO/ULO) with the approval of the CO, detail a suitable officer, through base routine orders, to record the summary of evidence. He himself can record the same. The BLO or ULO shall prepare a charge-sheet (or charge-sheets) against the accused.

Charges and Charge-sheets

2. **Charge-sheet.** The charge-sheet should contain the whole issue, or all the issues, to be tried at one time, and may contain one charge or several charges. It should consist of following :-

- a. The commencement,
- b. The charge, or charges, each being divided into two parts, namely the statement of offence and the statement of the particulars of the act, neglect, or omission constituting the offences,
- c. The signature of the CO with the place and date of his signature. A space should be left at the bottom of the charge-sheet for the order for trial to be signed by the convening officer or by a personnel staff officer on his behalf and for the place and date of this signature to be inserted.

Commencement of charge-sheet

3. A charge-sheet should commence with the number, rank, name and unit of the accused and should show by the description of the accused how he is subject to Air Force law. The commencement should follow one of the forms of commencement set out in the BAF law Manual.

4. The rank referred to above will be the accused's substantive rank. Any acting rank held by the accused on the date of the charge-sheet should immediately follow the substantive rank, in brackets, e.g., Corporal (Acting Sergeant).

Statement of offence

5. The statement of the offence for section 34 to 70 should follow one of the forms set out in the Fourth Appendix to the BAF law Manual. In the case of the charge under Section 71 of the Act (i.e., a civil offence) the statement should be in such words as sufficiently describe that offence, but not necessarily in technical words.

6. Each charge must comprise one offence only, and in no case should an offence be described in the alternative in the same charge. If it is wished to make two or more charges, they should be separately made, and if alternative, should be so laid. If charges

are laid in the alternative, care should be taken to place the major, or graver charge first, wherever this is possible.

Particulars of the offence

7. The particulars of the offence are the particulars of the act, neglect or omission constituting the offence. The particulars should comprise:-

a. Such circumstances respecting the alleged offence as will enable the accused to know every act, neglect or omission which it is intended to prove against him.

b. Any additional facts which it is intended to prove as justifying the punishment of stoppages (e.g., in a charge relating to negligent driving, the words "thereby causing damage to the said vehicle amounting to Rs. 50").

8. In every case the particulars should give the place, and the date, approximate date, or dates between which the offence is alleged to have been committed. The date should be exact when it relates to a charge of desertion under section 38 (i) of the Act or to a charge of absence without leave under section 39 (a). Because pay is forfeited for every day of absence without leave, it is desirable to allege the commencement and termination of a desertion on specific days and in nearly every case it is possible to do so. There is, however, no legal objection to alleging desertion as commencing "on or about" a particular date, or "not later than" a particular date; similarly it may be alleged that a desertion terminated "not earlier than" a particular date. This may be necessary in cases where all records have been destroyed.

9. The particulars should detail every ingredient of the offence. In a charge under section 65, where the statement of offence alleges "an act prejudicial to good order and air force discipline". the particulars should relate to a transaction which has some bearing on order and air force discipline, and which, if established, would be capable of being an offence under the section.

10. **Joint charges.** A number of accused (though preferably not more than six) may be charged jointly in one charge for an offence committed by them jointly. Where so charged, any one or more of such accused may at the same time be charged on the same charge-sheet with any other offence alleged to have been committed by him or them individually or jointly, if the charges are founded on the same facts or form or are part of a series of offences of the same or a similar character.

11. **Reference of charge to higher authority.** When a CO submits to higher authority a charge against an officer, MWO, SWO, WO or airman, with a view to his trial by CM, he is to send to the higher authority the documents mentioned in para. 6 of the "Form of application for a court-martial" given in the Fifth Appendix to the Rules of BAF law Manual.

12. **Taking of a summary of evidence.** Before an officer commences to take a summary of evidence he should inform the accused :

a. That a summary of evidence is about to be taken,

b. He should read and explain the charge(s) to the accused.

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- c. That after the summary has been taken it will be considered by the CO and that the charges at present preferred may be added to or altered, or that the case may be dismissed.
- d. That the evidence will be taken on oath or affirmation.
- e. That he may cross-examine the witnesses for the prosecution,
- f. That he may call witnesses in his defence,
- g. That after the witnesses for the prosecution have given their evidence, he, the accused, will be cautioned in accordance with rule 42 (4), which afford him an opportunity of making a statement (not on oath or affirmation),
- h. That he cannot claim to be represented by a defending officer or by counsel at the taking of summary of evidence.

13. The officer taking the summary of evidence will have regard to the rules of evidence as set out in the Air Force Act Rules, 1957, Evidence Act, 1872 and the guidelines given in the part – 1 of the BAF Law manual. He is to see that any document produced in evidence is admissible.

14. **Witness who cannot attend at the summary of evidence.** If a witness is unable to attend at the summary of evidence, or if, in opinion of the officer taking the summary, the attendance of a witness can not be readily procured owing to the exigencies of service or other grounds (including the expense and loss of time involved), the officer must certify such opinion in writing, and obtain a written statement of the witness's evidence purporting to be signed by him, read it to the accused and include it in the summary of evidence. The object of this provision is to avoid unnecessary expense and delay. If, therefore, a statement of an air force witness, who is on leave at the time of the taking of the summary, is available, it should be used if possible, and the taking of the summary should not be adjourned are not admissible and should not be used under this provision.

15. **Calling of witnesses not subject to Air Force Law.** A civilian witness can be summoned to attend at the taking of a summary of evidence. For form of summons see the Fifth Appendix to the Rules.

Rights of the Accused

16. When the witnesses for the prosecution have given their evidence, the accused should be cautioned in accordance with rule 42 (4). The accused may make a statement or say nothing. If he does make any statement he must not be sworn or affirmed. The officer taking the summary should record any statement made by the accused 'verbatim'. The accused should on no account be cross-examined, and only questions to clear up ambiguities, if any, should be put.

17. The accused should be asked to sign his statement, but is not to be ordered to sign it, if he is unwilling to do so. If the accused does not make a statement, the fact that he has declined to do so should be recorded.

18. After the accused has made a statement, or has declined to do so, he should be asked if he wishes to call witnesses. The evidence of every witness is to be on oath or affirmation and recorded in the same way as that of the prosecution witnesses. The witnesses must sign their evidence, but should not be cross-examined by the officer taking the summary, although he may ask questions to clear up any ambiguities.

Completion of the Record

19. When all the evidence has been recorded the officer taking the summary is to certify at the foot that A.F. Act rule 42 has been complied with and that the summary was taken in the presence of the accused. He should attach any statement read in accordance with rule 42 (9) and then number the pages of the summary of evidence through-out, including these statements. Any documents produced by witnesses as exhibits should finally be attached and marked with a distinguishing letter. Non-documentary exhibits (e.g., tools, motor tyres, weapons, etc.) should be labeled with an identifying letter and held in safe custody.

20. A great care is necessary in taking a summary of evidence. The discrepancies not infrequently observable between the statements recorded in the summary and the evidence given before a court-martial may often be traced rather to the hasty or careless preparation of the summary than to any prevarication or desire to mislead on the part of the witnesses. Moreover, a carelessly prepared summary of evidence may require references between the convening officer and the commanding officer of the accused and be a cause of delay in bringing the accused to trial.

21. **Disposal of the summary of evidence.** Once a summary of evidence has been prepared, it should not be destroyed, even though it may contain irrelevant evidence. It must first be considered by the commanding officer who will proceed either :-

- a. To dismiss the case, or
- b. To deal with it summarily, or
- c. To forward it to higher authority.

22. **Additional evidence.** On reading the summary of evidence the CO should consider whether any further evidence is required. If these are needed he should order an additional summary to be prepared. At these additional proceedings the accused must again be cautioned as described in the preceding paragraphs, and given a further opportunity of making a statement.

23. Where a summary of evidence has been taken and the additional evidence required is not of a substantial or fundamental nature, an additional summary of evidence need not be taken. It will be sufficient if a statement is obtained from the witness concerned and a copy supplied to the accused. The original statement should be attached to the original summary of evidence and a copy to all the copies of the summary of evidence.

TOPIC-10
SUMMARY DISPOSAL OF CHARGES

When a Charge should normally be dealt with summarily

1. When a person commit any minor offence and if the CO considers that such offence should be dealt with without the intervention of CM, he may summarily dispose of the offence subject to the restriction imposed in section 83 of the Air Force Act, 1953. It must be borne in mind, that the power to award minor punishments is limited in all cases only to such acts or omissions as amount to a minor offence only. If, for instance, any such punishment is inflicted in respect of any of the offences mentioned in section 83 of the Act without obtaining previous sanction in writing of an officer having power to convene a district court-martial for the trial of the accused person, the punishment would be illegal and liable to be cancelled by a superior Air Force authority under section 88 of the Act.

Who can Summarily dispose of charges

2. **Commanding officer for the purpose of section 82 of the Act.** The minor punishments specified in section 82 of the Act may be awarded to a non-commissioned officer or an airman by :-

- a. An officer of the rank of Squadron Leader or above, who is commanding a base or any independent unit;
- b. An officer in command of a unit located at a base, empowered in this behalf by a "special order" of the Chief of Air Staff. Such special order, if any must notified in Air Force Orders as well as in BAF Routine Orders.

3. **Limitation of powers of punishment.** Minor punishments which can be awarded by a CO of an independent unit of the rank of Flight Lieutenant or below are prescribed in rule 48; and those which can be awarded by an officer commanding a unit located at a base or by an officer specified by the Chief of Air Staff under sec 82 of the Act are prescribed in rule 49.

4. **Minor punishments under section 86 of the Act.** An officer having power to convene a general court-martial or such other officer as is, with the consent of the Govt , specified by the Chief of air Staff, may award to an officer below the rank of Sqn Ldr or a MWO, SWO, WO any one or more of the punishments mentioned in section 86 of the Act.

5. **Procedure for summary disposal of charges against an officer, MWO, SWO or WO.** The procedure for dealing summarily with a charge against an officer, master warrant officer or warrant officer is laid down in rule 50, and the form use as such summary disposal is given in the Third Appendix to the Rules.

6. **Review of summary awards.** Section 88 of the Act makes provision for the review of punishments awarded under sections 82 and 86 and empowers the "superior Air Force authority" (as defined in section 89), to cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case, if it appears to the said authority that the punishment is illegal, unjust or excessive.

7. **Limitation of powers of punishment officers.** Any summary punishments are not intended for offences of serious nature, which should normally be dealt with by courts-martial. It is, therefore, advisable that the authority having power to deal summarily with a case against an officer, MWO, SWO or WO should exercise this power only when the offence is laid under section 83 of the Act.

Rights of the Accused

8. In the summary trial, the accused call defence witness in his favour. He can cross-examine the prosecution witness in front of the CO. He may submit any documents to prove his innocence. The Adjutant of the accused shall inform the accused before hand to prepare his defence. In summary trial under section 82 (read with rule 48 and 49), the accused can not be represented by any counsel or defending officer in his trial.

9. When an officer or MWO, SWO or WO is remanded for the disposal of a charge against him by an authority empowered under section 86 of the act to deal summarily with that charge a certified copy of the summary of evidence shall be delivered to him gratis without copy of the charge as soon as practicable after its preparation and in any case not less than forty eight hours before the disposal of such charge.

10. Where the authority empowered under section 86 of the act decides to deal summarily with a charge against an officer or MWO, SWO or WO he shall unless he dismisses the charge or unless the accused has consented in writing to dispense with the attendance of the witnesses hear the evidence in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him and to call any witness and make a statement in his defence.

11. The evidence of every such witness whether for or against the accused shall be taken on oath affirmation and the oath or affirmation shall be administered by the authority dealing summarily with the case in the same form and manner as provided for a CM.

12. If an officer dealing summarily with a case under section 86 of the Act when the officer proposes to award any of the punishments mentioned in (a), (b) or (d) of section 86, it is his duty to ask the accused the question : "Do you elect to be tried by court-martial or will you accept my award? , and if the accused elects to be tried by CM, he must not be awarded any punishment summarily under section to the Rules.

TOPIC-11

COURTS- MARTIAL PROCEDURE IN BAF

Courts-Martial

1. "Courts-martial" means a court-martial held under Air Force Act, 1953. Court-martial has the jurisdiction of trying the persons subject to Air Force Law for committing different service offences. It has also got the jurisdiction to try the BAF personnel for committing civil offences which is triable by a criminal court of the Country subject to the provisions of Section 72 of the Air Force Act.

Types of Courts-Martial

2. For the purposes of the Action there are three kinds of Court-Martial. They are;
 - a. General Court-Martial (GCM).
 - b. District Court-Martial (DCM).
 - c. Field General Court-Martial (FGCM).
3. The difference between a DCM and a GCM consists mainly in their composition and in the extent of punishment which each tribunal can award.

Procedure of Convening a Court-martial

4. An officer before convening a court-martial shall satisfy himself that:
 - a. The charges to be tried by the court are for offences within the meaning of the act.
 - b. The evidence justifies a trial on those charges.
 - c. The case is a proper one to be tried by the description of court-martial which he proposes to convene.
5. The officer convening a court-martial shall:
 - a. Appoint or detail the officers to form the court as members.
 - b. Appoint or detail officers as waiting members (if he thinks necessary).
 - c. Appoint or detail an interpreter to the court (if he thinks necessary).
 - d. Send the order for the assembly of court martial to the senior member and each of the other officers appointed or detailed to form the court a copy of the charge sheet.
 - d. Send to the senior member the summary of evidence.

Composition, Jurisdiction & Powers of diff Courts-Martial

6. **Composition.** A GCM must be composed of at least five officers each of whom has held commission for not less than three years and four of the members at least must not be below the rank of Flight Lieutenant. The President should be Group Captain (if available).

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In addition, all members for the trial of an officer should be of equal, if not superior rank to the accused (if available) and if the accused is an officer of the rank of Squadron Leader or above none of the members must be below the rank of Flight Lieutenant.

7. A district court-martial must have at least three officers each of whom must hold a commission for at least two years. The President must be a Squadron Leader (if available).

8. Officers composing a GCM or DCM shall as far as possible, be drawn from different units or stations and in no case shall it consist exclusively of officers of the same unit as the accused.

9. A field GCM shall have at least three officers.

Jurisdiction

10. A GCM can try any person subject to the Act. It has complete jurisdiction to try and air force or civil offence except offences mentioned in section 72 of the Act.

11. A DCM can try any person subject to the Air Force Act other than an officer or warrant officer. It has complete jurisdiction to try any air force offences for which the only punishment is death.

12. A court-martial has jurisdiction to try and punish a person who since the time at which an offence is alleged to have been committed by him, has ceased to be subject to air force law, but, except in the case of mutiny, desertion or fraudulent enrolment he can only be tried within six months after he has ceased to be so subject.

Rules and procedure of Court

13. Judge Advocate General concerned and persons designated by the Judge Advocate General may make rules of court not inconsistent with the Act and Rules for the conduct of court-martial proceedings. Such rules shall be disseminated in accordance with procedures prescribed by the Judge Advocate General concerned or a person to whom this authority has been delegated. In this regard, the Air Force Orders 111-27 and 111-42 have been promulgated by Air HQ (JAG Branch) to conduct the proceedings of GCM and FGCM.

Jurisdiction in General

14. **Nature of courts-martial jurisdiction.** The jurisdiction of court-martial (CM) is entirely penal or disciplinary. "Jurisdiction" means the power to hear a case and to render a legally competent decision. A CM has no power to adjudge civil remedies. For example, a CM may not adjudge the payment of damages, collect private debts, order the return of property, or order a criminal forfeiture of seized property. The CM must be convened by an official empowered to convene it. The CM must be composed in accordance with the rules with respect to number and qualifications of its personnel. As used here "personnel" includes only the Air Force officer as per the provisions of Air Force Act, 1953 and Air Force Act Rules, 1957, respectively. Each charge before the CM must be referred to it by competent authority and must be triable by the CM. The accused must be a person subject to CM jurisdiction; and the offence must be subject to CM jurisdiction. The judgment of a CM without jurisdiction is void and is entitled to no legal effect. A court martial always has jurisdiction to determine whether it has jurisdiction. The CM normally sits in the country where the offence is committed.

Persons subject to the jurisdiction of courts-martial

15. **In general.** Courts-martial may try any person when authorized to do so under the Act. Section 2 of the Act lists classes of persons who are subject to the code. These include active duty personnel, such as:

- a. Officers, MWO, SWO and WO.
- b. Additionally following persons are subject to the Act:
 - (1) Airmen
 - (2) Flight Cadets
 - (3) MODC (Air) personnel
 - (4) Reservist when called to serve with regular Air Force
 - (5) Civilian employees serving in BAF during active aervice
 - (6) Civilian personnel seducing any service persons.
 - (7) Civilian personnel violating 'The Official Secret Act, 1923.
 - (8) An officer of the Army and Navy when on seconded to serve in BAF.

Who may convene courts-martial.

16. In BAF perspective, all the base commanders of the rank of Group Captain are empowered by the COAS through a Warrant to convene a DCM. The Chief of Air Staff by virtue of his appointment can convene all types of CM and he has empowered the Assistant Chief of air Staff (Administration) to hold a GCM. The BAF deployed unit commanders of United Nations Peacekeeping Mission are empowered to convene a FGCM.

Preparation for trial.

17. The Base legal officer or Adjutant of the Base/Unit should:
- a. Ensure that a suitable room and necessary equipment and supplies are provided for the CM.
 - b. Make or obtain necessary copies of the charges and convening orders for each member and all personnel of the CM.
 - c. Give timely notice to the members, other parties and personnel of the CM.

Pre-trial Confinement or restraint

18. **Pretrial confinement.** The pretrial confinement is physical restraint, imposed by order of competent authority, depriving a person of freedom pending disposition of charges.

19. **Who may be confined.** Any person who is subject to trial by court-martial may be confined if the requirements of rule 44 are met. A person should not be confined as a mere matter of convenience or expedience. Some of the factors which should be considered under this subsection are:

- a. The nature and circumstances of the offenses charged or suspected, including extenuating circumstances;
- b. The weight of the evidence against the accused;
- c. The accused's character and mental condition;
- d. The accused's service record, including any record of previous misconduct;
- e. The accused's record of appearance at or flight from other pretrial investigations, trials, and similar proceedings; and

20. The likelihood that the accused can and will commit further serious criminal misconduct if allowed to remain at liberty. The CO should judge the reliability of the information available. Before relying on the reports of others, the CO must have a reasonable belief that the information is believable and has a factual basis. The information may be received orally or in writing. A commander may examine the prisoner's personnel records, police records, and may consider the recommendations of others. Less serious forms of restraint must always be considered before pretrial confinement may be approved.

Attendance of Witnesses

21. The Base Legal Officer is to arrange for the attendance of witnesses both for the prosecution and the defence. Summons for the attendance of witnesses are to be issued and signed by the Base Legal Officer on behalf of the convening officer. Form of Summons is given in part (2) of Fifth Appendix to Air Force Act Rules. In the summon the date, time, place, and uniform in the court martial should be intimated to the prosecution and defence witnesses (if known).

Determining which witness will be produced

22. **Witnesses for the prosecution.** The prosecutor shall obtain the presence of witnesses whose testimony he considers relevant and necessary for the prosecution.

23. **Witnesses for the defence.** The defense shall submit to the convening authority or to the court a written list of witnesses whose production is necessary or requested. A list of witnesses whose testimony the defense considers relevant and necessary on the merits or on an interlocutory question shall include the name, telephone number, if known, and address or location of the witness such that the witness can be found upon the exercise of due diligence and a synopsis of the expected testimony sufficient to show its relevance and necessity.

Procedures for production of witnesses

24. **Military witnesses.** The attendance of a military witness may be obtained by notifying the commander of the witness of the time, place, and date the witness' presence is required and requesting the commander to issue any necessary orders to

the witness. When military witnesses are located near the court-martial, their presence can usually be obtained through informal coordination with them and their commander. If the witness is not near the court-martial and attendance would involve travel at government expense, or if informal coordination is inadequate, the appropriate superior should be requested to issue the necessary order. If practicable, a request for the attendance of a military witness should be made so that the witness will have at least 48 hours notice before starting to travel to attend the court-martial. The attendance of persons not on active duty should be obtained in the manner prescribed in the passage regulation.

Detailing members, Judge Advocate, Prosecutor, Defending Officer and others

25. **Members.** The convening authority shall detail qualified persons as members for courts-martial following the provisions of Rules 69, 70 & 71 of the Air Force Act Rules, 1957.

26. The following persons are subject to challenge and disqualified from serving on a general or district court martial if:

- a. He is the officer who convened the court or
- b. He is the prosecutor or a witness for the prosecution or
- c. He investigated the charges before trial or took down the summary of evidence or was a member of a board of inquiry respecting the matters on which the charges against the accused are founded, or was the flight Squadron station unit or other commander who made preliminary inquiry into the case or
- d. He is the commanding officer of the accused or of the unit or station to which the accused is attached or belongs or
- e. He was a member of a previous court martial which tried the accused in respect of the same offence or
- f. He has a personal interest in the case.

Dispatch of Convening Instructions

27. The Base Legal Officer or the officer appointed by the Base Comd is to ensure that the documents listed below are sent to the following persons at least seven days before the trial :

- a. President — Original convening order, original charge sheet and a copy of the summary of evidence with exhibits.
- b. Each member of the court — A copy of the charge sheet.
- c. Judge Advocate — A copy of the convening order, charge sheet, summary of evidence with exhibits.
- d. Prosecutor — A copy of the charge sheet, summary of evidence, with exhibits, list of witnesses to be produced by the prosecution and the defence and the prosecutor's brief, if any.

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e. Defending officer — A copy of the charge sheet, summary of evidence and list of names of Defence counsel the officers detailed as members of the court.

f. Original summary of evidence is to be retained by the prosecutor and produced at the trial, when necessary.

Warning of the Accused for Trial

28. As soon as possible, after the trial has been ordered and at least 48 hours before the trial, the accused is to be informed by the BLO or other responsible officer of the date and the place of his impending trial and ensure that all the instructions given in Rules 73 and 74 are fully complied with. Failure to comply with these instructions may invalidate the trial.

Responsibilities of Judge Advocate

29. The Judge Advocate is to equally share the responsibility with the president of the court-martial in conducting the court matters. He is solely responsible for ensuring that court-martial proceedings are conducted in a fair and orderly manner, without unnecessary delay or waste of time or resources. The details duty and responsibilities of the judge advocate has been enumerated in rule 147 of the Air Force Act Rule, 1957.

Presence of the accused at trial proceedings

30. The accused shall be present at the arraignment, the time of the plea, every stage of the trial except as otherwise provided by the Act and Rules.

Public trial

31. Except as otherwise provided in the Act and Rules, CM shall be open to the public. For purposes of this rule, "public" includes members of both the military and civilian communities.

32. Because of the requirement for public trials, CM must be conducted in facilities which can accommodate a reasonable number of spectators. Military exigencies may occasionally make attendance at CM difficult or impracticable, as, for example, when a CM is conducted on a ship at sea or in a unit in a combat zone. This does not violate the rule. However, such exigencies should not be manipulated to prevent attendance at a CM. Although not required, service members should be encouraged to attend CM.

33. When public access to a CM is limited for some reason, including lack of space, special care must be taken to avoid arbitrary exclusion of specific groups or persons. This may include allocating a reasonable number of seats to members of the press and to relatives of the accused, and establishing procedures for entering and exiting from the courtroom.

34. In order to maintain the dignity and decorum of the proceedings or for other good cause, the president or judge advocate may reasonably limit the number of spectators in, and the means of access to, the courtroom, and exclude specific persons from the courtroom. When excluding specific persons, the military judge must make findings on the record establishing the reason for the exclusion, the basis for the president or judge

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advocate belief that exclusion is necessary, and that the exclusion is as narrowly tailored as possible.

35. The president or judge advocate must ensure that the dignity and decorum of the proceedings are maintained and that the other rights and interests of the parties and society are protected. Public access to a session may be limited, specific persons excluded from the courtroom, and, under unusual circumstances, a session may be closed.

36. Exclusion of specific persons, if unreasonable under the circumstances, may violate the accused's right to a public trial, even though other spectators remain. Whenever specific persons or some members of the public are excluded, exclusion must be limited in time and scope to the minimum extent necessary to achieve the purpose for which it is ordered. Prevention of overcrowding or noise may justify limiting access to the courtroom.

37. Disruptive or distracting appearance or conduct may justify excluding specific persons. Specific persons may be excluded when necessary to protect witnesses from harm or intimidation. Access may be reduced when no other means is available to relieve a witness' inability to testify due to embarrassment or extreme nervousness. Witnesses will ordinarily be excluded from the courtroom so that they cannot hear the testimony of other witnesses.

38. The CM shall be open to the public unless (1) there is a substantial probability that an overriding interest will be prejudiced if the proceedings remain open; (2) closure is no broader than necessary to protect the overriding interest; (3) reasonable alternatives to closure were considered and found inadequate; and (4) the president or judge advocate makes case-specific findings on the record justifying closure.

39. The president or judge advocate is responsible for protecting both the accused's right to, and the public's interest in, a public trial. A CM session is "closed" when no member of the public is permitted to attend. A CM is not "closed" merely because the exclusion of certain individuals results in there being no spectators present, as long as the exclusion is not so broad as to effectively bar everyone who might attend the sessions and is put into place for a proper purpose.

40. A session may be closed over the objection or request of the accused or the prosecutor to any temporary reason. The accused may waive his right to a public trial. The fact that the prosecution and defense jointly seek to have a session closed does not, however, automatically justify closure, for the public has a right in attending CM. Opening trials to public scrutiny reduces the chance of arbitrary and capricious decisions and enhances public confidence in the court-martial process.

41. The most likely reason for a defense request to close CM proceedings is to minimize the potentially adverse effect of publicity on the trial.

Preparation of Prosecution case

42. The prosecutor shall assist the court in the administration of justice. It is his prime responsibility to prosecute the case on behalf of the Govt and prepare theme to prosecute the case through the prosecution witnesses and evidence. In the court he is to make an opening address and should state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into any unnecessary detail.

Duties of the Prosecutor (before trial)

43. It shall be the duty of the prosecutor to assist the court in the administration of justice to behave impartially to bring the whole of the transaction before the court and not to take any unfair advantage of or suppress any evidence in favor of the accused.

44. The prosecutor shall not refer to any matter not relevant to the charge or charges then before the court or any matter which the court is not investigating and it shall be the duty of the court to stop him from so doing and also to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor. However, the prosecutor has to perform the following primary duties:

- a. Prepare to make a prompt, full, and orderly presentation of the evidence at trial.
- b. Consider the elements of proof of each offense charged, the burden of proof of guilt of the accused
- c. Arrange for the presence of witnesses and evidence in accordance with the rule.
- e. Prepare to make an opening statement of the prosecution's case
- f. Prepare to conduct the examination and cross-examination of witnesses
- g. Prepare to make closing address

Duties of the Prosecutor (on trial)

45. He should bring to the attention of the Judge Advocate any substantial irregularity in the proceedings.

46. The prosecutor should not allude to or disclose to the members any evidence not yet admitted or reasonably expected to be admitted in evidence or intimate, transmit, or purport to transmit to the judge advocate or members the views of the convening authority or others as to the guilt or innocence of the accused, an appropriate sentence, or any other matter within the discretion of the court-martial.

Preparation of Defence case

47. The defending officer, after being detailed by the convening authority shall submit a list of witnesses whom the accused wishes to produce as defence witnesses in his favour. He shall represent the accused in matters under the Act and Rules and the rules arising from the offenses of which the accused is then suspected or charged. He should promptly explain to the accused the general duties of the defending officer and inform the accused of his rights in the trial. At the close of the evidence for the prosecution the accused shall be asked by the court if he wishes to make a statement or call any witnesses to the facts of the case. If he produces any defence witness as to the facts he should invariably make an opening address to explain the facts from the defence point of view and the points urged upon his defence.

General Duties of Defending Officer

48. He must guard the interests of the accused zealously within the bounds of the law without regard to personal opinion as to the guilt of the accused.

49. He should disclose to the accused any of his personal interest which he may have in connection with the case, any disqualification, and any other matter which might be helpful to defend the case.

50. He should represent the accused with undivided fidelity and may not disclose the accused's secrets or confidences except as the accused may authorize under the provisions of Evidence Act.

51. A defending officer designated to represent two or more co-accused in a joint or common trial or in allied cases must be particularly alert to conflicting interests of those accused. In such a case, the defending officer should bring such matters to the attention of the Judge Advocate so that the accused's understanding and choice may be made a matter of record.

52. A defending officer must explain to the accused about the elections available as to composition of the court-martial and assist the accused to make any request necessary to effect the election

53. A defending officer must explain to the accused about the right to plead guilty or not guilty and the meaning and effect of a plea of guilty.

54. A defending officer must explain to the accused about the rights to introduce evidence, to testify or remain silent, and to assert any available defense

55. A defending officer must explain to the accused about the rights to present evidence and the rights of the accused to make an un-sworn statement, and have counsel make a statement on behalf of the accused. These explanations must be made regardless of the intentions of the accused as to testifying and pleading.

56. The defending officer should try to obtain complete knowledge of the facts of the case before advising the accused, and should give the accused a candid opinion of the merits of the case.

57. The defending officer should prepare to make an opening statement of the defense case and prepare to examine and cross-examine witnesses, and to make final argument on the defence and prosecution case.

Duties of Defending Officer (on trial)

58. The defending officer should represent and protect the interests of the accused at trial.

Assembly of the court

59. At the beginning of first session, in a close session, the court may sit in camera where the President/Judge Advocate shall check that the Judge Advocate, all Members,

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waiting Members and Officers Under Instruction are present. They shall take their seats as per rule 111 of the Air Force Rules, 1957.

60. The court will ensure that a copy of the S of E (duplicate), charge-sheet (original) and the convening order (original) are available. The court will be satisfied that the composition of the court and members of the court have been detailed as per rule and they are not disqualified to serve the CM to try the accused. The charge(s) and charge sheet referred to the court are valid and is signed by convening officer or by his Staff Officer and the offence is within the AF Act. The accused is subject to the Act.

61. **In open session.** Once the court is satisfied on the conditions mentioned in above paragraph, the President shall order to put on the head dress to the Members, Waiting members and Officer(s) Under Instruction and say, "The court is called to order". The Court orderly shall announce the same to the Prosecutor, Defending Officer and Shorthand Writer and they should enter inside the court.

Procedure at trial

62. As a first event, the President/Judge Advocate shall ask the Prosecutor, whether the accused is fit for trial. On received of the medical certificate as fit for trial, the President shall bell the court orderly to enter any member of the public inside the court. The on the instruction from the President, the court orderly shall inform the escort/escort officer to march in the accused who shall be without head dress. Then the President shall instruct the court orderly to invite the officer, airmen and civilian witnesses (as an optional events).

63. The President shall read the convening order in full and are to answer to their names (individually). Then he is to ask the accused whether he object to be tried by him as President or by any of the officers whose names he heard read. If there is no object to anyone, the waiting members shall retire from the Court.

64. Then the Judge Advocate shall give oath to President and members. The members may take oath collectively or separately. The Judge Advocate shall take oath from the President and then the Officer Under Instruction and shorthand writer shall take oath from the Judge Advocate or President.

Arraignment of the Accused

65. The accused shall be arraigned on each charge. The arraignment means reading out of the charge to the accused for his answer whether he pleads guilty or not guilty to the charges. While doing so, the President/Judge Advocate shall order the accused and escort to stand up. The President/Judge Advocate shall read the charge-Sheet in full. After reading out No, Rank, Name, he should ask "Is that your No, Rank, Name"? If there is a mistake in description can be corrected by the court. The followed by question to the accused, "Are you guilty of the first charge, which you have heard read"? The accused is to personally answer the question. It shall be repeated in the same manner if there are any more charges contained in the charge sheet.

66. If the accused pleads guilty of the charge, the President shall ask the accused whether he seeks adjournment on the ground that provisions of any of the rules relating to procedure before trial have not been complied with or he did not get sufficient time to prepare his defence or he have been prejudiced on any other ground. If not, the court

may invite the prosecutor to deliver his opening address and followed by calling the first prosecution witness.

67. The prosecutor shall conduct the examination-in-chief, then the defending officer shall get chance to cross-examine the witness followed by question by the court. The similar sequence shall be followed if there are more numbers of witnesses.

Withdrawal of charges

68. **Withdrawal.** The convening authority or a superior competent authority may for any reason cause any charges to be withdrawn from a court-martial at any time before findings are announced. The charges which are withdrawn from a court-martial should be dismissed unless it is intended to refer them a new promptly or to forward them to another authority for disposition.

69. The charges should not be withdrawn from a court-martial arbitrarily or unfairly. Charges which have been properly referred to a court-martial may be withdrawn only by the direction of the convening authority or a superior competent authority or with the advise of the court. When directed to do so by the convening authority or a superior competent authority, or court the particular charge may be withdrawn and re-numbering the remaining charges as necessary, and initialing the changes by the President. But such withdrawal must be done before the court sits for deliberation on the finding.

70. At the end of both prosecution and defence case, the court may invite the prosecutor and the defending officer to called or re-called any witnesses or may call any witness to clarify any special point or technical points which have been reasonably overlooked by the prosecutor or defence. The court shall asks the prosecutor and defending officer to deliver their closing addresses. This closing addresses are not the evidence. These are mere the relationship, clarification and explanation of their respect evidences and arguments.

Deliberations and voting on findings

71. After the president or judge advocate instructs the members on findings, the members shall deliberate and vote in a closed session. Only the members shall be present during deliberations and voting. Superiority in rank shall not be used in any manner in an attempt to control the independence of members in the exercise of their judgment.

72. The deliberations properly include full and free discussion of the merits of the case, unless otherwise directed by the president or judge advocate, members may take with them in deliberations their notes, if any, any exhibits admitted in evidence, and any written instructions. Members may request that the advice of the judge advocate is required. In such a case the court-martial be reopened and advice of the judge advocated may be resorted to by reading the portions of the record to them. The court may also request advice from the judge advocate to call or re-called any witness to record any additional evidence. The judge advocate may, in the exercise of discretion, grant such request.

Procedure on conviction

73. When the court find guilty on any charge, then for guidance of the court in determining their sentence and of the confirming authority in considering the sentence the court before deliberating on their sentence shall wherever possible take evidence of and record of:

- a. The general character, age, service rank.
- b. Any recognised acts of gallantry of distinguished conduct of the accused any previous conviction of the accused either by a court martial or a criminal court any previous punishments awarded to him by an officer excising authority under section 82 or 86 of the act the length of time he has been in arrest or in confinement awaiting trial on the present charge or charges and any deferred pay a military naval or air force decoration or reward.

74. The evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the service records respecting the accused and identifying the accused as the person referred to in that summary. A previous conviction by a criminal court respecting the accused may be proved by:

- a. Producing an extract certified under the hand of the officer having the custody of the records of the court in which such conviction was laid to be a copy of the sentence or order; or
- b. A certificate signed by the officer in charge of the prison in which the sentence or any part thereof was executed; or
- c. Production of warrant of commitment under which the punishment was suffered; together with in each of such cases evidence as to the identity of the accused with the person so convicted.

75. The accused may cross examine any such witness and may call witnesses to rebut such evidence and if the accused so requests the service records or a duly certified copy of

the material entries therein shall be produced and if the accused alleges that the summary is in any respect not in accordance with the service records or such certified copy as the case may be the court shall compare the summary with those records or copy and if they find it is not in accordance therewith shall cause the summary to be corrected accordingly. When all the evidence on the above matters has been given the accused may address the court thereon and in mitigation of punishment and may call witnesses as to character.

76. The court cannot take oral evidence that accused is of bad character. But oral evidence of good character they may be cross-examined by prosecutor with a view to testing their veracity and thereby indirectly bringing out evidence of bad character. Witnesses as to character can also be called during the hearing of the case for the defence and before the finding.

77. The previous convictions of the accused will be proved by the production of a verbatim extract from the service records extracts to be incorporated in the case of officers in B A F from 731 and in the case of airmen in BAF form 296 duly completed by the officer in charge of these records. The witness producing the extract from the service record and the statement as to age service rank etc of the accused should be the adjutant or some other officer and there is no objection to the prosecutor giving such evidence. He must be sworn as any other witness and may be cross examined by the accused and questioned by the court. The copy of the material entries in the service record must be certified by the officer having the custody of the original records section 140 custody includes temporary custody for the purpose of the trial.

Deliberations and voting on Sentence

78. The court shall deliberate on the sentence in closed court. The court shall award one sentence in respect of all the offences of which the accused is found guilty and such sentence shall be deemed to be awarded in respect of the officer in each charge in respect of which it can be legally given and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.

Recommendation to mercy

79. If the court makes a recommendation to mercy they shall give their reasons for their recommendation. The number of opinions by which a recommendation to mercy mentioned in this rule or any question relative thereto is adopted or rejected may be entered in the proceedings. A recommendation to mercy will be recorded at the appropriate place in baf form P-6 it forms part of the proceedings of the court.

80. In view of the discretion of the court in the matter of awarding sentences a recommendation to mercy will be exceptional. It will usually be made only when the court though unwilling to pass a lenient sentence lest the offence should be considered a venial one think that owing to the offenders character or other exceptional circumstances he should not suffer to adjust the sentence according to what in their judgment the offender should suffer having regard to the attendant circumstances. It is indisputable that offences are more effectually prevented by certainty than by severity of punishment.

81. As a recommendation to mercy is part of the proceedings any expression of opinion in it in relation to the finding must be read with and as part of the finding. Accordingly, where in a recommendation to mercy a court expresses an opinion inconsistent with the guilt of the person under sentence e g where the charge is for striking a superior and the court state their opinion that the accused did not intend to strike it must be treated as an acquittal the intent being an element of the offence.

Post-trial Advice

82. After the conclusion of the trial, the proceedings are to be forwarded to Air Headquarters (JAG Branch) for post-trial advice.

Procedures of promulgation

83. The charge finding and any recommendation to mercy shall together with the confirmation or non-confirmation of the proceedings be promulgated in such manner as the confirming authority may direct and if no direction is given according to the custom of the service. Until promulgation has been effected confirmation is not complete and the finding and the sentence shall not be held to have been confirmed until they have been promulgated.

Remedy of aggrieved person by the sentence of the court-martial

84. Any person who has been tried by a court-martial and who considers himself aggrieved by any order passed by a court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

85. Any person who considers himself aggrieved by a finding or sentence of a court martial which has been confirmed may present a petition to the Government or the Chief of Air Staff who may pass such order thereon as it or he thinks fit.

86. The competent authority stated above may provide a remedy against any interim order passed by a court-martial and which has given rise to a grievance. In practice this provision would cover cases where a prompt petition followed by an equally prompt action would save the parties (prosecution and the defence) from possible prejudice at a later stage of the trial. Unnecessary delay both in the submission and disposal of petitions may create a situation where the proceedings of a complete trial may have to be quashed.

87. It will be open to the authorities competent to act either under section 161 and to annul the proceedings or under section 177 to accord pardon or remission etc or under section 180 suspend the sentence awarded by the court martial provided the said authority has been empowered under these sections as well.

TOPIC-12

PUNISHMENTS AWARDABLE BY COURTS-MARTIAL AND SUMMARY TRIAL

Punishments Awardable by Sentence of Courts-Martial

1. Punishments awardable by courts-martial are mentioned in section 73 of the Act. These punishments may be inflicted in respect of offences committed by persons, tried by court-martial and found guilty for committing such offences. The punishments awardable by courts-martial shown below are according to the scale of their gravity:-

- a. Death.
- b. Long imprisonment which shall be rigorous and for a term not exceeding fourteen years.
- c. Short imprisonment which may be rigorous or simple for a term not exceeding two years
- d. Detention for a term not exceeding two years in the case of airmen
- e. Dismissal from service
- f. Reduction to the ranks or to a lower rank or to a lower grade in the case of non-commissioned officers
- g. Forfeiture of seniority of rank in the case of officers master warrant officer warrant officer and non-commissioned officers and forfeiture of all or nay part of their service for the purpose of promotion in the case of any of them whose promotion depends upon length of service
- h. Forfeiture of service for the purpose of increased pay pension or any other prescribed purpose
- j. Service reprimand or reprimand in the case of officers master warrant officers warrant officers and non commissioned officers.
- k. Forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service
- l. Forfeiture in the case of a person sentenced to dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such dismissal
- m. Stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good

Punishment of Awardable by Summary Trial to Airmen under 82

2. A commanding officer or any specified officer may try an airman who is charged with an offence under Section 82 the Air Force Act and award to such person one or more of the following punishments. The punishment must be awarded in conjunction of section 83 and 84 of the Act. The awards of these punishments are called as minor punishment. The punishments are:-

- a. Detention up to twenty eight days
- b. Confinement to the camp up to fourteen days
- c. Extra guard or duties not exceeding three in number
- d. Deprivation of acting rank
- e. Relinquishment of substantive rank of Cpl
- f. Forfeiture of badge pay
- g. Server reprimand or reprimand
- h. Fine up to fourteen days pay in any one month
- j. Penal deductions under clause (g) of section 91
- k. Admonition
- l. Any prescribed field punishment up to twenty eight days in the case of a person on active service.

3. The punishments laid down in this section can be inflicted only on persons below the rank of warrant officer. Once the commanding officer award punishment it is obligatory for him to forward a report to the superior Air Force Authority for review of the punishment. Section 84 limits the extent and permits combination of punishments.

4. A commanding officer has the power of awarding the punishment prescribed in this section. Only the Base commander can exercise full powers of punishment under this section. These powers will of course be exercised subject to the provisions of sections 83 and 84. The extent of the powers is further regulated by rules 47 and 48 in the case of commanding officers and rule 49 in the case of officers commanding units located at a base.

5. The punishment of detention and confinement to camp run from the date of the award. An airman shall forfeit pay for every day in detention. Detention may be combined with confinement to camp at the time of the award or if the offender is already undergoing one of these two punishments the other may be awarded in addition to the one already in operation. In such a situation the whole extent of the punishment must not exceed in the aggregate forty two days.

6. The punishment of forfeiture of badge pay cannot be awarded to a non-commissioned officer or to one who was holding such rank at the time of the commission of the offence. There is no limit to the number of badge pays that may be forfeited.

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7. The punishment 'Fine' can only be awarded to persons below non commissioned rank. The maximum fine that can be imposed in any one month –irrespective of whether one or more offences have been committed by the same person must not exceed an amount equivalent to fourteen days pay.

8. This punishment 'Penal deduction' as per clause (h) can be awarded to all airmen. The occasions which may lead to penal deductions under clause (h) are listed in clause (g) of section 91 the extent of deductions if more than one are in operation at the same time under this clause is regulated by section 94.

9. This punishment 'Admonition' can be awarded to all airmen.

Summary Punishment of Officers and JCOs under Section 86

10. The Chief of Air Staff, Assistant Chief of Air Staff (Administration), All Base Commanders of the rank of Group Captain and Commandant 101 Special Flying Unit or any specified officer may try an officer below the rank of Squadron Leader or a MWO, SWO or WO who is charged with an offence. The awards of these punishments are called as minor punishment. The following one or more of the punishments may be awarded that is to say –

a. Forfeiture of seniority or in the case of any of them whose promotion depends upon length of service forfeiture of service for the purpose of promotion for a period not exceeding twelve months but subject to the right of the accused to elect to be tried by a court martial

b. Server reprimand or reprimand

c. Stoppage of pay and allowances for a period not exceeding three months or until any proved loss or damage occasioned by the offence of which he is convinced is made good whichever is less but subject to the right of the accused.

d. Forfeiture of pay and allowances for a period not exceeding three months for an offence under clause (e) of section 42 in so far as it consists of neglect to obey flying orders or under section 62 or section 63 of the Act.

11. This provision obviates the necessity for trying by court martial a junior officer or a MWO, SWO or WO who commits some offence which does not require server punishment but yet cannot be overlooked. A definite charge should be laid and the procedure laid down in rule 50 must be strictly followed.

12. Charges against an officer who at the time of the offence held the temporary rank of Squadron Leader cannot be dealt with summarily under this section unless the officer has ceased to hold his temporary rank at the time the case is referred by his CO either for summary disposal.

13. An authority has no power under this section to deal summarily with a charge against an officer below the rank of Squadron Leader or a MWO, SWO or WO referred for that purpose if the charge relates to an offence committed by such officer of master warrant officer or warrant officer when he was a non commissioned officer or an aircraftman. Any charge so referred should be sent to the CO who should either dismiss the charge or refer the case of the proper superior Air Force authority for trial by court-martial.

14. When an authority deals summarily with a case, he must award one or more of the punishments specified in the section, consequently summary disposal should be resorted to only when the offence is of such a nature as to merit punishment. "Reproof" is not a punishment and cannot be awarded under this section.

15. An award under this section is subject to review by superior to review Air Force authority under section 88 of the Act.

TOPIC-13

PENAL DEDUCTION

Deductions from Pay and Allowances of Officers under section 90

1. The pay and allowances due to any person subject to the Air Force Act shall be paid without any deductions other than those authorized by law. The penal deduction that may be made from the pay and allowances of an officer is permissive, not mandatory. Subject to the provisions of section 94 the following penal deductions may be made from the pay and allowances of an officer that is to say:-

- a. All pay and allowances due to an officer for every day he absents himself without leave or overstays the period. It is not necessary for an officer to be found guilty of absence without leave before any forfeiture of pay for the period of absence can be enforced under this clause.
- b. All pay and allowances for every day while he is under suspension from duty on a charge for an offence of which he is afterwards convicted by a criminal court or a court martial or by an officer exercising authority under section 86.
- c. Any sum required to make good the pay of any person subject to Air Force Act which he has unlawfully retained or unlawfully refused to pay.
- d. Any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of an offence as may be determined by the court-martial by whom he is convicted of such offence or by an officer exercising authority under section 86.
- e. All pay and allowances ordered by a court martial or an officer exercising authority under section 86 to be forfeited or stopped.
- f. Any sum required to pay a fine awarded by a criminal court or a court martial exercising jurisdiction under section 71.
- g. Any sum required to make good any loss, damage or destruction of public or service property which after due investigation appears to the Government to have been occasioned by the wrongful act or negligence on the part of the officer. An invitation to an officer to make a payment towards any loss or damage occasioned by his wrongful act or neglect does not bar the Government from making an order under this clause.
- h. All pay and allowances forfeited by order of the Government if the officer is found by a board of inquiry constituted by the Chief of Air Staff in this behalf to have deserted to the enemy or while in enemy hands to have served with or under the orders of the enemy or in any manner to have aided the enemy or to have allowed himself to be taken prisoner by the enemy through want of due precaution or through disobedience of orders or willful neglect of duty or having been taken prisoner by the enemy to have failed to rejoin his service when it was possible to do so.

j. Any sum required by order of the Government which after due investigation appears to be reasonable to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child. The Government is not liable to provide for the mother of an illegitimate child from the pay of an officer.

Deductions from Pay and Allowances of a MWO, SWO, WO and Airmen

2. Penal deduction may be imposed on any MWO, SWO, WO and Airmen subject to the provisions of section 94. The following penal deductions may be made from the pay and allowance that is to say:

a. All pay and allowances for every day of absence either on desertion or without leave or as a prisoner of war and for every day of transportation or imprisonment awarded by a criminal court or a court martial or of detention or field punishment awarded by a court martial or an officer exercising authority under section 82.

b. All pay and allowances for every day while he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or a court martial or on a charge of absence without leave for which he is afterwards awarded detention or field punishment by an officer exercising authority under section 82.

c. All pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this act committed by him. The deduction of pay and allowances for days in hospital is only authorized where the sickness is caused by an offence of which the person has been found guilty.

d. For every day in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence such sum as may be specified by order of the Chief of Air Staff. He will continue to forfeit pay until he is discharged from hospital and pay and allowances will be deducted for the period covered by the medical certificate of a doctor attending him in hospital.

e. All pay and allowances ordered by a court martial or by an officer exercising authority under section 82 or section 86 to be forfeited or stopped.

f. All pay and allowances for every day between his being recovered from the enemy and his dismissal from the service in consequence of his conduct when being taken prisoner by or wholly in the hands of the enemy.

g. Any sum required to make good such compensation for any expenses loss damage or destruction caused by him to the Government or to any building or property as may be awarded by his commanding officer.

h. Any sum required to pay a fine awarded by a criminal court a court martial exercising jurisdiction under section 71 or an officer exercising authority under section 82. Any sum required by order of the Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said government to the said wife or child.

Procedure of Penal Deduction

3. **Computation of Time of Absence or Custody** – For the purposes of penal deduction for absent without leave or in custody following procedure shall be applicable to compute the time for absence or custody:

a. No person shall be treated as absent or in custody for a day unless the absence or custody has lasted whether wholly in one day or partly in one day and partly in another for six consecutive hours or upwards. An absence or custody of less than six hours shall not involve any penal deductions. This consideration however would not debar any disciplinary action against the offender. Where the absence stretches over a period of six hours irrespective of whether the entire period falls in one day or partly in one and partly in another one full days pay and allowances may be deducted.

b. Any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any Air Force duty which was thereby thrown upon some other person. A period of absence or custody however short its duration can be reckoned as one whole day for the purpose of deductions if any air force duty originally the absentee's has been thrown upon some other person.

c. Absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody. If a master warrant officer or a warrant officer or an airman is absent or in custody for twelve consecutive hours or upwards and this period falls partly in one and partly in the following day penal deduction may be ordered as if the two periods amounted to two whole days.

d. A period of absence imprisonment or detention which commences before and ends after midnight may be reckoned as a day. Normally the award of punishments and the termination of stay in the places of custody coincide with normal working hours. It may however happen in times of war or emergency that this period commences a little before midnight and terminates, a little after midnight on a different day the period over and above one day calculated on a 24 hour basis may be reckoned as another full day. The same principle will be followed in the case of imprisonment or detention which is either awarded or terminates near about midnight.

4. **Pay and Allowances During Trial** – In the case of any person subject to Air Force Act who is in custody or under suspension from duty on a charge for an offence the prescribed officer may direct that the whole or any part of the pay and allowances of such person shall be withheld, pending the result of his trial on the charge against him in order to give effect to the provisions of deduction.

5. **Limit of Certain Deductions** – The total deductions from the pay and allowances shall not, except where he is sentenced to dismissal, exceed in any one month one half of his pay and allowances for that month. The underlying idea is to ensure that penal deductions do not result in complete destitution of the offender and that a sizeable portion of the pay and allowances is left to him to meet other commitments. It may happen for instance that the total months pay and allowances. The realization of this amount must be so regulated that no installment exceeds in any one month one half of an offenders pay and allowances for that month.

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TOPIC-14

IMPORTANT FEATURES OF AFO-111 SERIES

AFO NO 111-10 Dt 02 April 1990

LEGAL SERVICES

**COURTS- MARTIAL-INSTRUCTIONS FOR GUIDANCE OF BASE COMMANDERS
EMPOWERED TO CONVENE DISTRICT COURT- MARTIAL**

Introduction

1. This order sets out general instructions for the guidance of Base Commanders who have been invested with power to convene district courts-martial.

Investigation of Charges and Summary of Evidence

2. A charge against an airman at a Base where the Base Commander or the commandant has been empowered to convene a district court-martial, will be investigated, in the first instance, by officer commanding unit or wing, to which the airman belongs. If after hearing the charge, it appears probable that it will be necessary for the accused person to be remanded for trial by court martial, the officer commanding unit or wing will proceed to have the evidence reduced to writing. Air Force Act Rule 4 has been suitably amended so as to enable officers commanding units/wings at such Bases to investigate charges, sign the charge sheets, and order summary of evidence.

Action after the Summary of Evidence

3. When the summary of evidence is complete, the officer commanding unit/wing will take action as outlined in Air Force Act Rule 43, i.e., he will either:

a. Dismiss the charge, or

b. Remand the accused for trial by court martial and make an application to the base commander/commandant on Form 116, or

c. If he considers that there is a prima-facie case, but does not feel it necessary to apply for court martial, he will either:

(1) Award a punishment within his power, or

(2) Remand the case to the Base commander for summary disposal under Air Force Act Rule 47.

4. If the accused is remanded for trial by court martial, the application for trial is to be made to the base commander/commandant in accordance with the instructions given in paragraphs 54 and 55 of Notes on Air Force Law. The application is to be accompanied by all documents mentioned therein.

Duties of Base Legal Officer

5. As confidential staff officer to the Base commander the Base Legal Officer or any other staff officer who may be detailed by the Base commander in this behalf, will examine the application for court martial, and other documents which accompany it, and satisfy himself on the following points:

- a. That the application (Form 116) includes:
 - (1) The name of the officer who investigated the charge.
 - (2) The name of the officer who took the summary of evidence.
 - (3) The names of the president and members of the board of inquiry, if there has been an inquiry. It is essential to know the names of these officers as by virtue of their association with the case, they are disqualified from serving as members of courts-martial.
- b. That the application is accompanied by all the documents mentioned in paragraphs 54 and 55 of the Notes on Air Force Law.

Action by Base Commander

6. Before convening a district court-martial, the base commander/commandant will obtain pre-trial advice from Air Headquarters (JAG Branch). A request for advice is to be accompanied by- the following documents:

- a. Application for trial by court-martial (Form 116, original).
- b. Charge sheet —two copies.
- c. Summary of evidence —original and two copies.
- d. List of witnesses —two copies.
- e. List of exhibits —one copy.
- f. Form 296 —one copy.
- g. Accused's choice of defending officer.
- h. A covering letter containing a short precise of the case with an explanation of any matter, not otherwise clear from the summary.

Convening the Court

7. On receipt of pre-trial advice, the base commander/commandant may order the assembly of a district court martial. The convening order will be issued by the Base Legal Officer or any other staff officer who may be detailed in this behalf.

8. The rules for the composition of a district court-martial are:
 - a. There is to be a minimum of three members including th& president.
 - b. Each member is to have at least two years' commissioned service.

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- c. The president is to be of the rank of squadron leader or above.
- d. A judge advocate is to be appointed, if so advised by Air Headquarters (JAG Branch).

9. It is to be noted that a court-martial cannot be convened by an officer who has investigated the case or who has signed the charge sheet as the accused's commanding officer.

10. In issuing the convening order, the Base Legal Officer or the officer appointed by the Base Cdr is to ensure that:

- a. The accused is under the jurisdiction of the convening officer.
- b. The convening order is properly issued in accordance with the specimen given in Fifth Appendix to Air Force Act Rules, 1957 and that it contains no erasures or blanks. If alterations or changes in the composition of the court are necessary, the original order is to be withdrawn and a new one issued.
- c. The court is properly composed and no officer is detailed who is ineligible or disqualified under Air Force Act Rule 68.
- d. Special certificate, as required by Rules, is included in the convening order in the following cases
 - (1) When an officer of the prescribed rank is not available as president (Rule 70).
 - (2) When all the officers composing the court belong to the same Base (Rule 71).
- e. The accused is correctly described in the heading of the charge-sheet.
- f. The charges correspond to those advised by the JAG Branch. No addition or alteration is to be made in the charge sheet without consulting the JAG Branch.
- g. The charge sheet is signed by the commanding officer of the unit to which the accused belongs, or, in case of personnel on the strength of the Base headquarters, by the officer commanding wing under whose order the accused has been placed by a previous entry in the BROs.
- h. The charge sheet is properly endorsed with direction for trial.
- j. Order for the assembly of the court-martial appears in base routine orders at least 24 hours before the trial.

Dispatch of Convening Instructions

11. The Base Legal Officer or the officer appointed by the Base Cdr is to ensure that the documents listed below are sent to the following persons at least seven days before the trial :

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- a. President— Original convening order, original charge sheet and a copy of the summary of evidence with exhibits.
 - b. Each member of the court — A copy of the charge sheet.
 - c. Judge Advocate — A copy of the convening order, charge sheet, summary of evidence with exhibits.
 - d. Prosecutor — A copy of the charge sheet, summary of evidence, with exhibits, list of witnesses to be produced by the prosecution and the defence and the prosecutor's brief, if any.
 - e. Defending officer — A copy of the charge sheet, summary of evidence and list of names of Defence counsel—the officers detailed as members of the court.
12. Original summary of evidence is to be retained by the prosecutor and produced at the trial, when necessary.

Warning of the Accused for Trial

13. As soon as possible, after the trial has been ordered and at least 48 hours before the trial, the accused is to be informed by the Base Legal Officer or other responsible officer of the date and the place of his impending trial and ensure that all the instructions given in Rules 73 and 74 are fully complied with. Failure to comply with these instructions may invalidate the trial.

Attendance of Witnesses

14. The Base Legal Officer is to arrange for the attendance of witnesses both for the prosecution and the defence. Summons for the attendance of witnesses are to be issued and signed by the Base Legal Officer on behalf of the convening officer. Form of Summons is given in part (2) of Fifth Appendix to Air Force Act Rules.

Post-trial Advice

15. After the conclusion of the trial, the proceedings are to be forwarded to Air Headquarters (JAG Branch) for post-trial advice.

BY ORDER OF THE CHIEF OF THE AIR STAFF, BANGLADESH AIR FORCE
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LEGAL SERVICES

DISCIPLINE -ASSISTANCE TO CIVIL POLICE

1. Instances have occurred in which officers have not given the necessary assistance to the civil police .heir investigation. These cases have been of two kinds, those in which the civil police were refused emission to search premises within Air Force establishments and others in which the civil police were refused permission to arrest Air Force personnel. This is nearly always due to the mistaken belief that civil police have no power to make searches in Air Force establishments or to arrest Air Force personnel.
2. In this connection attention is drawn to Chapter XIV of the Code of Criminal Procedure relating to I the powers of civil police to investigate. It will be seen that in the matter of arrest the civil police have | vide powers, while Air Force personnel enjoy no special privileges, and the commanding officer I of an alleged offender cannot impede the arrest of that offender, or the investigation of the offence by the civil police.
3. Attention is also drawn to Air Force Act, Sections 123 and 124, Air Force Act Rule 217, which lay down the procedure for the adjustment of jurisdiction of courts-martial and criminal courts. It must, however, be clearly understood that all officers and their subordinates are responsible for ensuring the fullest co-operation with the civil police at all stages, and that they are liable to be dealt with under the law for any failure in this respect.

BY ORDER OF THE CHIEF OF THE AIR STAFF BANGLADESH AIR FORCE.

LEGAL SERVICES

DELAY IN DISPOSAL OF COURT-MARTIAL CASES

1. It is of the utmost importance to avoid all unnecessary delay in bringing accused persons to trial by court-martial. Delay in the assembly of a court is not only harmful to the accused, who is kept in suspense, but is prejudicial to the proper administration of justice, as witnesses are required to give detailed evidence on oath of events which occurred a considerable time before. Further more, the difficulty of securing the attendance of witnesses is increased, as time goes on, by their dispersal to other Bases or return to civil life.
2. On conviction, the court in determining the sentence must have regard to the length of time an accused person has been in close arrest awaiting trial. As a consequence, a sentence which takes into account a long period of close arrest before trial, may seem unduly light and may fail to have the exemplary effect which the gravity of the offence should demand.
3. Accordingly, everybody concerned in the preparatory stages of trial by court-martial must act with the utmost dispatch, and, if possible, deal with all correspondence on the day it is received. It is equally important that the proceedings of court-martial should be dealt with expeditiously at all stages so that finding and sentences may be promulgated as soon as possible after trial.
4. Detailed instructions on the preparation of cases for trial are contained in "Notes on Air Force Law" and they are to be followed with the greatest care. Particular emphasis is laid on the following points:
 - a. If difficulty is anticipated or experienced in investigating or preparing a case, the advice of Air Headquarters (JAG Branch) is to be sought at once. Time is often wasted in attempting to secure the attendance of witness whose evidence proves, in the light of legal advice, to be immaterial.
 - b. Disciplinary action is not to be delayed until a board of inquiry or formal investigation is held, unless it is considered impossible to take adequate disciplinary action without such an inquiry.
 - c. If, during the course of recording the summary of evidence, further offences come to light, charges in respect of these offences may be added to the original charge, but investigation of additional charges which will have little or no effect on the sentence are not to be allowed to delay the trial.
 - d. Only when exceptional circumstances exist, such as are described in Air Force Act Rule 44, is an accused person to be kept in close arrest awaiting trial.
5. Commanding officers are to ensure that this order is brought to the notice of all concerned.

BY ORDER OF THE CHIEF OF THE AIR STAFF BANGLADESH AIR FORCE :

LEGAL SERVICES

**GENERAL INSTRUCTIONS FOR AWARDED SUMMARY PUNISHMENT
TO OFFICERS AND WARRANT OFFICERS**

1. This order sets but general instructions for the guidance of Base Commanders who have recently been empowered to award summary punishment to officers below the rank of Squadron Leader or Master Warrant Officers for Warrant Officers.

Investigation of Charges and Summary Of Evidence

2. A charge against an Officer or Master Warrant Officer or Warrant Officer is to be investigated, in the first instance, by OC unit or wing to which the Officer or Master Warrant Officer or Warrant Officer belongs. If he finds adequate grounds for further action, he is to prepare a tentative charge sheet and order summary of evidence

3. Air Force Act Rule 4 has been suitably amended so as to enable Officers Commanding units located at a Base and Wing to investigate charges, sign the charge sheet and order summary of evidence.

4. It is to be noted that a summary of evidence is a legal necessity in case of Officers, Master Warrant Officers and Warrant Officers who are charged with an offence and no minor punishment is to be awarded unless this formality has been complied with.

Action after the Summary of Evidence

5. After the summary of evidence has been recorded, the OC Unit/wing will have three courses open to him. He can either:

- a. Dismiss the charge, or
- b. Remand the accused for trial by court martial and make an application for trial to Air Headquarters (JAG Branch) , through Base Commander, or
- c. If he considers there is a prima facie case, but does not feel it necessary to apply for trial by court martial, he may refer the case to the Base Commander for Summary disposal under Section 86 of the Air Force Act.

Action by Base Commander

6. If on receipt of summary of evidence, the Base Commander finds that the summary discloses a prima facie case, the summary of evidence and the charge sheet is to be forwarded to Air Headquarters (JAG Branch) for advice. This is to be accompanied by a covering letter containing a short precis of the case with an explanation of any matter, not otherwise clear from the summary.

7. After the receipt of the advice, the charge is to be disposed of in the manner indicated. If summary disposal is advised the proceedings are to be recorded on Form 253. The procedure for summary disposal is given in Air Force Act Rule 50 and 53. The law governing the award of summary punishments is to be found in Sections 86—89 of the Air Force Act. The instructions and the notes given on Form 253 are to be carefully studied before the form is filled in.

8. Specimen form of the written consent required under Air Force Act Rule 50 (2) is given as appendix to this order.

Punishments

9. Any one or more of the punishments given in Section 86 of the Air Force Act can be awarded to the accused. In case it is intended to award any of the punishments mentioned in clause (a) or (c) of Section 86 of the Air Force Act, the accused is to be given an option to elect trial by court martial. If the accused elects to be tried by a court martial, a note to that effect is to be made on Form 253 and the proceedings forwarded to Air Headquarters (JAG Branch) for further advice. If he offers to accept the award, any one or more of the punishments mentioned in Section 86 of the Air Force Act, including clauses (a) and (c) may be awarded. Care must, however*, be taken to ensure that the punishment is expressed in the words given in Air Force Act and Rules.

10. The difference between the punishment of "forfeiture of seniority of rank" and "forfeiture of service for the purpose of promotion" is to be noted. The effect of the former punishment is that the seniority of the person in the rank held by him at the time of punishment is alone affected and NOT the period of his service in that rank. His promotion to the next higher rank takes the normal course. The latter punishment however, retards the promotion of the officer to the next higher rank only and NOT any subsequent promotions.

11. It is to be noted that reproof is not a recognised punishment and is not to be awarded under Section 86 of the Air Force Act.

Dispatch of Proceedings

12. After summary disposal, 2* copies of Form 253, each accompanied by a copy of Charge sheet, summary of evidence, written consent, and form 731 and form 296 (as applicable) are to be forwarded to Air Headquarters (JAG Branch);

BY ORDER OF THE CHIEF OF THE AIR STAFF BANGLADESH AIR FORCE,

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AFO NO 111-25 Dt 15 January 1992

LEGAL SERVICES

ARREST OF MILITARY PERSONNEL BY CIVIL POLICE

An extract from the Ministry of Interior letter No 30/129/55-Police (1), dated 2 April 1957 is published as an Annex to this order for the information of all concerned.

BY ORDER OF THE CHIEF OF THE AIR STAFF, BANGLADESH AIR FORCE :

AFO No 111-25
ANNEX A TO
AFO No 111—25
Dated 15 January
1992

**AN EXTRACT FROM THE MINISTRY OF INTERIOR LETTER
NO
30/159/55-POLICE (1) DATED 2 APRIL 1957**

**REGARDING ARREST OF MILITARY PERSONNEL BY CIVIL
POLICE**

Subject : Arrest of Military Personnel by Civil Police

Refer to the Ministry of Defence letter No 4861/1818/PSIA/534/D—2 dated 1 February 1956 and letter No 4861/1818/PSIA/1307/D-2 dated 17 March 1956 on the subject mentioned above.

As the Armed Forces are strictly disciplined forces, it is extremely desirable that the respective commanding officers of units should immediately know to the arrest of their men by the civil police, his commanding officer may kindly be invariably informed of such arrest in advance. Where this is not possible for certain special considerations, he may please be informed immediately after the arrest has been made.

Copy forwarded to the Ministry of Home Affairs with reference to their letter No 2425-Pol/129/56 dated 23 August 1956.

It is felt that an intimation about the arrest of a military person to his commanding officer before his arrest where possible, or immediately thereafter, has no effect of bestowing any privilege on that person. Such a privilege could imply only if it was suggested that the arrest of a military person should not be made without the consent of his commanding officer.

LEGAL SERVICES

**BOARDS OF INQUIRY—ATTRIBUTABILITY OF DISABILITY OR DEATH TO
MILITARY SERVICES**

Introduction

1. Considerable difficulty is experienced in adjudicating disability and family pension claims because the board of inquiry proceedings are not properly prepared. It has been observed that in most cases the board of inquiry fail to take into account all the factors and attendant circumstances leading to injuries or deaths. They often base their judgment on superfluous premises, leading to wrong conclusions. Sometimes they fail to express any opinion whether the cause of injury or death is attributable to military service. These lapses can result in rejection of certain genuine pension claims thus causing hardship to the claimants. It is, therefore, imperative that the members of the board of inquiry must very carefully consider each of the points enumerated in the succeeding paragraphs.

Criterion for Grant of Disability and Family Pension

2. The basic criterion for acceptance of family disability pension claim is that the disablement/death is acceptable as attributable to military service. The latest rules on the subject are contained in Ministry of Defence letter No 4824/6345/PS-4/2721/D-2A dated 12 h February, 1960 as amended vide corrigendum No 4824/11821/PS-4/D-8A dated 25th November, 1961 (reproduced as Annex 'A' to this AFO). Army Regulations Vol-I Rule 715 (Annex 'B' to this AFO) and Army Regulation Vol-II Instructions No 343, 344, 345 and 801 -H(b) (Annex 'C' to this AFO).

3. If the cause of disablement/death is disease, it should present little or no difficulty in determining attributability. It is essential that the medical documents are correctly prepared, presenting full medical history of the case. The medical opinion should be clear and leave no doubt attributability/non-attributability. In accordance with the rules this is to be regarded as final in so far as it relates to the actual cause to disability. Particular care should be exercised in preparation of IAFF P-35/IAFM-1231, which should take into account, how far military service has contributed towards the cause action or aggravation of disablement/death.

Action in Case of Injury or Death Caused by Injury

4. It is in case of injuries that difficulty is mostly experienced in settling pension claims. It is mainly due to the fact that either the completion of IAFF P-27/AFB-117 is negligently done, or the boards of inquiry fail to provide the information which proves helpful in adjudication. It is, therefore, imperative that the instructions contained in RAI (Instruction 446 on holding of courts of inquiry) are carefully studied and rigidly followed. The various factors as set out in paras 5 and 6 below should be fully borne in mind before a final opinion is expressed.

5. **Injuries Sustained in Games.** These are to be accepted as attributable to military service if it is established that games were organised under unit arrangement. The board of Inquiry must specifically state that games were organised, and Base unit orders detailing the individual to play did exist. In case of spectators it must be established whether the individual proceeded to the place of occurrence under order as an organised body or on his own accord.

6. **Injury or Death resulting from Accidents.** The following points should be carefully considered in case where injury or death has been caused by an accident to cycle, motor-cycle or any other vehicle:

a. **Ordinary Accidents.**

- (1) Whether the vehicle was performing bonafide military duty.
- (2) Whether the individual driving the vehicle was in possession of a driving license.
- (3) Whether the individual was ordered to travel in the vehicle.
- (4) Whether the individual was travelling in the vehicle of his own accord.
- (5) Whether the vehicle was fit in all respects to be taken out on the road.
- (6) Whether there was any way of averting such injury. If the individual is to be blamed, the extent of negligence or misconduct involved must be stated.

b. **Accidents while Testing Vehicles.**

- (1) Whether it was essential to carry out vehicle tests.
- (2) Whether the individual was competent and authorised to carry out vehicle tests.
- (3) Whether the individual had been ordered to carry out tests either within the premises of unit lines, work-shop or outside.
- (4) Whether the individual, carrying out tests, was in possession of a driving licence.
- (5) Whether there was any way of averting such injury. If the individual is to be blamed, the extent of negligence or misconduct involved must be stated.

Action in case Death Caused by Drowning

7. In case of death caused by drowning, the attendant circumstances must clearly be stated with particular reference to the following facts:

- a. Whether the individual was detailed for any military task, i.e. training in river and canal crossing or organised swimming exercises.

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- b. Whether the individual could swim.
- c. Whether any order existed as to the place where training in water-craft or swimming exercises was to be carried out.
- d. Whether any help was afforded to rescue him from drowning.
- e. If the individual is to be blamed in any way it must be so stated and the extent of negligence explained.

Action when Injury/Death is caused by Accident to a Civilian Transport

8. Any case in which an accident responsible for injury/death was occasioned, while the individual was travelling as a passenger in a civilian lorry, it must be clearly stated that the individual was/was not proceeding on duty, and the only economical means of transport was utilised by the individual, and that government transport could not be made available, nor it was economical to do so.

9. It must also be established whether driver/owner of the vehicle was to be blamed and whether evidence suggests the possibility of a claim for compensation.

Action in Case of Self-Inflicted Injury or Suicide

10. It has to be brought out that the act of the individual was intentional and deliberate, and no one else was responsible.

Need for Correctness in B of I Proceedings and Injury Reports

11. It is again emphasized that early settlement of pension claims depends on the correct completion of injury report/board of inquiry proceedings and, therefore, every effort must be made to bring out the relevant facts which may help in speedy settlement of cases.

12. Military service is to be held responsible for causation of the disablement/death when such occurrence resulted from its required performance.

BY ORDER OF THE CHIEF OF THE AIR STAFF, BANGLADESH AIR FORCE:

**MINISTRY OF DEFENCE LETTER NO 4824/6345/PS-4/2721/D-2A DATED 12TH
FEBRUARY, 1960 AS AMENDED VIDE CORRIGENDUM NO 4824/11821/PS-4/D-8A,
DATED 25TH NOVEMBER. 1961**

"Subject : Disability and Death Attributable to/Aggravated/ Hastened by Service in the Armed Forces— Officers and other ranks.

I am directed to say that the President has decided that the following principles and procedure will govern the determination of attributability to service of disability/death of officer and personnel below commissioned rank in the Armed Forces:

a. Casualties Due to Wound or Injury

- (1) It should be established in such cases that the cause of the casualty was the result of duty in military service.
- (2) Where the injury or death resulted from the risk inherent in military service attributability will be conceded.
- (3) It is immaterial whether the cause giving rise to disability or death occurred in field service area or peace area.
- (4) An individual is on duty for 24 hours of the day except when on leave other than casual leave in the base.
- (5) Individuals detailed to take part in organized games, sports or physical recreations vide RAI Rule 312 and RAI Instruction 446 will be regarded as on duty.
- (6) An individual will be deemed to be in the performance of Military duty when:
 - (a) He is physically present in camp/barracks.
 - (b) He is traveling on leave at government expenses.
 - (c) When traveling to or from duty e.g. in the case of a married person, living with family, from his married quarters to his place of duty but not whilst he is in his married quarters.
 - (d) Whilst traveling on duty i.e. where it is established that but for the duty he would not have been traveling at all.
- (7) Injury/death sustained by personnel, otherwise than through their own negligence or misconduct, while being carried on duty in aircraft under proper

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authority or when employed on bomb disposal" duties, shall be viewed as attributable to military service in a field service area.

(8) Disability resulting from purely personal acts such as shaving or similar private pursuits would not normally be treated as attributable to military service.

(9) Disability or death resulting from violence provoked by performance of military duty will be viewed as attributable to military service unless the circumstances of the case warrant a different conclusion.

(10) If circumstances are such that military service played no part in the causation of disability/death, attributability will not be conceded.

Illustration: If a military person driving a motor-cycle etc, on duty, collides with a truck the injury received may be attributed to military service but if he is out for a walk and sustains injury from a passing truck, his case will not qualify for the concession.

b. Casualties Due to Disease

(1) The cause of disability or death resulting from a disease will be regarded as attributable to military service only when it is directly due to risks which may be regarded as peculiar to the circumstances of duty in military service. In determining attributability in such cases due regard should be paid to the question whether service in a particular region or of a particular type, involved exposure to exceptional risk of contraction of, or infection by, a disease as well as to the actual circumstances of the case.

(2) Attributability will not be conceded if, though contracted during the period of actual performance of military duty, the disease if, in the opinion of the medical authorities concerned, due to risks which cannot be regarded as peculiar to such duty in military service.

(3) Where a disease or its aggravation resulted from risk of military duty, attributability/aggravation will be conceded.

(4) All cases of tuberculosis will be accepted as attributable to or aggravated by service where the medical opinion is in favour of the acceptance.

(5) Where medical or other supporting documents are incomplete, cases will be dealt with on merits with due regard to medical opinion and other evidence."

ANNEX B TO
AFO No I11-26
DATED 02 APRIL 1990

THE ARMY REGULATIONS VOLUME I (RULES) RULE NO 715

"Physical Training and Games

13. All physical training and exercises including physical training games carried out as part of a soldier's training during parade hours under a physical training instructor or platoon or company commander are compulsory. Games and sports out of parade hours are not compulsory but if organized by, or with the approval of military authority, will be regarded as physical training-Injuries sustained by officers and men (including non-combatants) taking part in such parades, games and sports or deaths arising from these injuries will be considered to have occurred while on duty."

ANNEX C TO
AFQ No 111—26
DATED 02 APRIL 1990

THE ARMY REGULATIONS VOLUME- II (INSTRUCTIONS) NO 343, 344, 345 AND 801-H(b)

14. **Courts of Enquiry.** A court of enquiry will investigate injuries, (See AR(I) 533), other than those resulting from participation in games, sports or physical recreation, in the following circumstances only :

- a. If the injury is fatal, where an inquest is held, a copy of the coroner's report will be attached to the court of inquiry proceedings.
- b. If, in the opinion of the CO, doubt exists as to the cause of the injury.
- c. If, in the opinion of the CO, doubt exists as to whether the injured person was on or off duty at the time he received the injury.
- d. If, for any reason, it is desirable thoroughly to investigate the causes of the injury.
- e. If the injury was caused through the fault of some other person.
- f. In circumstances falling under AR(I) 801-H(b).

15. The proceedings of the court will be submitted, with an expression of opinion by the CO, to the formation commander who will record thereon his decision whether the disability or death was attributable to military service and whether it occurred on field service- Such a court of enquiry will NOT give an opinion. In the case of personnel of the President's Bodyguard, the authority has been delegated to the Military Secretary to the President to adjudicate on courts of enquiry.

16. A court of enquiry need not necessarily be held to investigate deaths or injuries sustained through taking part in organized games, sports and other physical recreations as defined in AR Rule 715.

17. In all cases where a court of enquiry is not held, BAFA-867 will be completed with the statements of witnesses as required by item four therein and when applicable, the CO, will certify that the games, sports or physical recreations were organised ones. The brigade or equivalent commander will record on the form his decision whether or not the injury was attributable to military service, and whether it occurred on field service. BAFA-867 or the proceedings of the court, so endorsed, as the case may be, will accompany the pension claim when submitted to the pension sanctioning authority, who will either accept the decision of the brigade commander, or, if in doubt, will submit the pension claim for the orders of the Government Bangladesh. (See also pension regulations). The medical board or the medical officer who furnishes a death certificate will not any opinion in such cases in regard to Attributability to service, except on purely medical express grounds which should be clearly specified."

Casualties of Unusual Nature.

18. In case of injury due to unnatural causes and which necessitates the injured person being placed on SI or DT list, including subsequent death, the officer commanding will report the casualty as in sub-para (a) above and will also hold a Board of inquiry at first opportunity after the casualty has occurred. The proceedings will be disposed of as per AR(I) 343 to 345."

NOTE: The term 'Un-usual Casualty' implies sudden death occurring due to accident while a person is on duty provided death is NOT due to his culpable negligence. When the CO is in doubt about this point, the death will be reported within forty-eight hours and a further report rendered by signal as soon as the doubt has been cleared.

LEGAL SERVICES

COURTS-MARTIAL PROCEDURE—INSTRUCTIONS FOR GUIDANCE OF PRESIDENTS

Introduction

1. This order sets out the procedure which is invariably to be followed at Courts-Martial.

General

2. The president is responsible for the trial to be conducted in the proper order and in a manner befitting a court of justice. It is his duty to see that the accused gets a fair trial and he does not suffer any disadvantage through ignorance or incapacity to examine or cross-examine witnesses.

3. If no judge advocate is appointed, the president is responsible for the accuracy of the record of the proceedings of the court. It is important that the evidence is carefully recorded and written in a way that the confirming and reviewing authorities are able to read and understand it.

4. If no shorthand writer is appointed, the president is normally to appoint a member of the court to do the writing. A president is thus to keep himself free to:

a. Study the demeanor of witnesses giving evidence. This will help him in assessing the value of evidence given; and

b. follow the summary of evidence and note any discrepancies between the evidence given at the trial and that given at the summary of evidence.

Seating of Members and Preliminary Matters

5. The members are to take their seats in the order given in the Air Force Act Rule 111.

6. During closed court, the president or the judge advocate is to explain to the officers under instruction the different phases of procedure and draw their attention to the relevant cases so that they may follow the discussion and action of the court. This can be done in open court, but the proceedings must not detract from the judicial conduct of the trial or the solemnity of the proceedings.

Wearing of Head-Dress

7. After the court have complied with the Air Force Act Rules 76 and 77, the president is to give directions that the members of the court, the waiting member (if any), and officers under instruction (if any), are to put on head-dress. When this instruction has been complied with, the president is to instruct the court orderly to invite the prosecutor, defending officer or counsel, shorthand writer (if any), to enter the court and take their places.

Accused's Medical Certificate

8. The prosecutor is then to place before the court a medical certificate stating whether or not the accused is fit to undergo trial.

Members of the Public

9. The president is then to instruct the court orderly to admit members of the public, press and services, who may wish to attend the trial, up to the limit of the accommodation available. The persons admitted will be seated except during the swearing of the court etc. (see para 14 below), and when members of the court or the judge advocate are entering or leaving the court.

Entry of the Accused

10. The president is next to instructing the court orderly to take the necessary action to bring the accused before the court. If the accused is an officer, warrant officer, or NCO. he is to be attended by an escort. If the accused is an officer, the officer having him in custody is to march him before the court; if a warrant officer, NCO, or aircraftman, the court orderly is to march him and the escort before the court. An accused is not to wear his head-dress; this is to be in the possession of the attending officer or NCO, or the escort, as relevant.

Entry of Witnesses

11. When the accused has been brought before the court, the president is to tell the court orderly to ask the officer, warrant officer and civilian witnesses to attend before the court. These witnesses are to be positioned behind the accused, and are to remain standing. When these witnesses have taken their places, the president is to tell the court orderly to march airmen witnesses before the court. They will also take up a position behind the accused. The president may, however, dispense with the attendance of witnesses if, in his opinion, there is not enough room in the court.

Reading of the Convening Order

12. When all the witnesses are assembled, the president is : a. to read the convening order in full; and b. to call on the members and waiting members to answer to their names.

Accused's Objection to Members of Court

13. The president is to ask the accused if he objects to be tried by him or by any of the officers whose names he has heard read out. If no objection is made, the waiting member (if any) may be allowed to retire. In the event of an objection the court is to proceed in accordance with the Air Force Act Rule 79.

Swearing of Court

14. The court is to be sworn/affirmed, in accordance with the Air Force Act Rule 80. After the court have been sworn, the judge advocate (if any), officers attending for the purpose of instruction (if any), the shorthand writer (if any) and interpreter (if any), are to be sworn/affirmed in accordance with the Air Force Act Rule 81. All present during the swearing are to stand.

15. A person who is a Muslim or has otherwise any objection to making an oath shall instead of making an oath make a solemn affirmation in the Form given in part (3) of Fifth Appendix to the Air Force Act Rules, 1957.

Withdrawal of Witnesses

16. After the swearing, the president is to ask the officer, warrant officer, and civilian witnesses, to withdraw. When such witnesses have withdrawn, the president is to tell the court orderly to march out of court any other service witnesses.

Arraignment of the Accused

17. After the witnesses have withdrawn, the accused is to be arraigned by the president or judge advocate (if any) in the manner prescribed in the Air Force Act Rule 82. During arraignment, the accused and the escort are to stand to attention. If, however, the accused is to be arraigned in a number of charges, the president may grant him permission to stand at ease during arraignment. Members of the court should have copies of the charge sheet before them when the accused is arraigned.

Removal of Head-Dress

18. After arraignment and the recording of the accused's plea on each charge, the president may give permission to the members of the court, officers under instruction (if any), the prosecutor, and defending officer, and, with the exception of the escort, any other service personnel present in the court, to remove head-dress.

Calling Witnesses

19. The witnesses are to be called into court by the court orderly when they are required to give evidence. Witnesses will not seat themselves until the president has first given them leave to be seated. This leave should invariably be given unless the witness is merely tendering brief documentary evidence, which he may do so standing. The president may at any time revoke such leave, if in his opinion; the witness's demeanour shows a lack of proper respect to the court.

Record of Evidence

20. The evidence is to be recorded in narrative form, as far as possible, in the words used by the witness and no attempt is to be made to amend the wording.

Marking of Exhibits

21. Every document which is read to the court, whether an exhibit in the case, an address by the prosecutor, counsel, or defending officer, or a written statement by the accused, is to be marked in sequence alphabetically, starting with the convening order which is marked 'L'. Each document is to be signed by the president or judge advocate and attached to the proceedings.

22. Exhibits which, by their nature, or bulk, cannot easily be attached to the proceedings are also to be signed and marked; they may, however, be left with the commanding officer for safe custody.

Finding

23. After the address of the prosecutor and the defending officer and the summing up of the judge advocate, if any* the court shall deliberate on their finding in closed court. The judge advocate, however, shall not be present at these deliberations. The president is to initiate the deliberations of the court by outlining the questions to be considered and giving the order in which they are to be studied. Each member is to give his opinion of the guilt or innocence of the accused on each separate charge. Opinions are to be taken upward in order of seniority, starting with that of the most junior member.

24. The finding is to be determined by an absolute majority and the president has no second or casting vote. If there is an equality of votes, the finding must be 'not guilty*.

Adjournment During Consideration of Finding

25. Once a court-martial is closed for deliberation on finding, it is essential that the finding should be arrived at during that very sitting and the deliberations are not postponed to any other day. The underlying idea is that, after the addresses the court should not have any communication with anybody who is not a member of the court about the subject matter of the trial and that they should arrive at a conclusion while the addresses are quite fresh in their mind.

Announcement of Finding

26. Before the court is reopened for the announcement of the finding, as required by the Air Force Act Rule 97, and of the sentence, as required by the Air Force Act Rule 102, the president is to instruct the members of the court and officers under instruction (if any) to put on their head-dress for the concluding stages the trial in open court.

Officers Under Instructions

27. Officers under instructions are on no account to be allowed to express their opinion on the finding until the court itself has arrived at a finding on each charge in the charge sheet. The precaution applies equally to any other matter which the court has to decide in closed court.

Making up the Proceedings

28. Proceedings are to be put together in the order given in para 135 of Notes on the Air Force Law. When the proceedings have been put in order, all pages of the proceedings (including charge sheet, pages on which evidence or addresses are recorded and attached exhibits) are to be numbered consecutively.

29. President or judge advocate is to ensure that he has initialed all deletions of written or printed matter, and all corrections.

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30. All papers are to be placed in a file cover and securely fastened with tape or string passed through two holes punched at suitable distances in the left hand margin of each paper.

31. A copy of this order is to be placed in the Unit Base Court-Martial Box.

LEGAL SERVICES

REVIEW OF MINOR PUNISHMENTS

1. Base Commanders/Commanders are authorized to review punishments awarded to airmen under Section 82 of the Air Force Act by the officers commanding units and specified officers, functioning within the limits of their jurisdiction.
2. The law on the subject of review of minor punishments is contained in Section 88 and 89 of the Air Force Act and the procedure is outlined in Rules 51, 52, 54 and 55 of the Air Force Act Rules to which the attention of all concerned is drawn. It is to be noted that the power to review a punishment implies power to cancel, vary or remit a punishment that is illegal, unjust or excessive. It also includes the power to make such directions as may be considered appropriate in the circumstances of a particular case. It does not, however, include the power to increase a punishment.
3. The report required by the Air Force Act Rule 51, that is, Form 281 is to be submitted as follows:
 - a. Forms 281 in respect of punishments awarded by officers commanding units/ specific 1 officer, functioning under the administrative control of a Base, are to be submitted to the Base Commander/Commandant as appropriate.
 - b. Forms 281 in respect of minor punishments awarded by a Base Commander/Commandant are to be submitted to Air Headquarters.
 - c. Forms 281 in respect of punishments awarded by specified Officers/Officers Commanding units, not under the administrative control of a Base, are to be submitted to Air Headquarters.

BY ORDER OF THE CHIEF OF THE AIR STAFF, BANGLADESH AIR FORCE

LEGAL SERVICES

CIVIL OFFENCES COMMITTED BY AIR FORCE PERSONNEL

1. It is desirable that Air Force personnel charged with civil offence (other than those mentioned in Section 72 of Air Force Act) should be dealt with in accordance with the Air Force Law. Such persons are, therefore, not to be handed over to the civil authorities unless prior permission of Air Headquarters has been obtained. In urgent cases, the advice of Air Headquarters may be obtained on telephone. Should the civil authorities insist on the apprehension of such an accused person, they may be informed that the matter has been referred to superior Air Force Authority and that the final decision would be communicated to them in due course.
2. As regards the offences mentioned in Section 72 of the Air Force Act, when they are committed in circumstances when a trial by court martial is not permitted by law, Air Headquarters must be informed immediately of the occurrence and their advice obtained.
3. The above procedure will not apply to cases which are triable by special military or summary courts under Martial Law Regulations. Personnel claimed for trial by such courts, are to be handed over to the authorities without question.

BY ORDER OF THE CHIEF OF THE AIR STAFF, BANGLADESH AIR FORCE

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AFO NO 111-35 Dt 02 April 1990

LEGAL SERVICES

REPORT ON FATAL ACCIDENTS INVOLVING CIVILIANS

1. Cases have occurred, and may in future occur, wherein members of the public or Government servants may be involved in fatal accidents, the cause of which may be attributable to negligence on the part of Defence Services personnel, and the Government may be drawn into legal proceedings in some of them.
2. With a view of ensuring proper action at the appropriate level, it has been decided that in future all cases in which fatalities occur, must be immediately reported to Air Headquarters by signal. This is to be followed by a detailed report indicating the circumstances in which the accident took place.

BY ORDER OF THE CHIEF OF THE AIR STAFF, BANGLADESH AIR FORCE

LEGAL SERVICES

**BOARDS OF INQUIRY/FORMAL INVESTIGATIONS—ASSEMBLY
IMMEDIATELY AFTER OCCURRENCE**

1. The purposes of boards of inquiry/formal investigations are:
 - a. To ascertain reason/reasons of an occurrence, extent of damage, its cost and fix liability
 - b. To prevent recurrence.
 - c. To enforce discipline in Air Force.
2. Cases resulting in loss or damage to Government stores have occurred in the past where boards of inquiry/formal investigations were ordered to assemble too long after the incident. The result was that in some cases the person/persons responsible for the loss or damage escaped disciplinary action either for lack of legally admissible evidence or on account of their release or discharge from the service.
3. The following instructions are, therefore, issued for compliance by all concerned in future :
 - a. A board of inquiry or a formal investigation, as appropriate is to be ordered to assemble immediately on receipt of information about loss or damage to Government stores.
 - b. While deciding whether a board of inquiry or a formal investigation is to be ordered in a particular case, the base/unit commander is to keep in view the provisions of Rule 73 of financial regulations part I i.e. where the cost of loss involved is Tk 500.00 or more, a board of inquiry is invariably to be ordered. A formal investigation may be held in other cases.
 - c. To ensure timely action by the boards and investigating officers, bases are to maintain a register of board of inquiry, formal investigations on Form 10266. The register is to be made available to staff officers on their inspection visit.
 - d. Proceedings, requiring approval of Air Headquarters, are to be submitted to Air Headquarters in triplicate within 10 days of submission by the board/investigating officer.
 - e. Proceedings of the boards of inquiry/investigations are always to contain a day-to-day diary of action.

BY ORDER OF THE CHIEF OF THE AIR STAFF. BANGLADESH AIR FORCE:

LEGAL SERVICES

INVESTIGATION OF CHARGES AGAINST AIRMEN : PROCEDURE

Introduction

1. This order sets out general instructions regarding summary disposal of charges against airmen below the rank of warrant officer by commanding officers or specified officers under section 82 of the Air Force Act.

Principles of Investigation

2. Every charge in the first instance is to be investigated by the commanding officer of the unit or wing to which the accused person belongs. It must always be investigated without delay in the presence of the accused, which should have full liberty to cross-examine any witness against him and to call any witness and make any statement, in his defence.

3 The period of time between the preferring of the charge and the investigation of it by a competent authority must be as short as possible. Investigation should normally begin within 48 hours of the accused being committed to custody. The charges are not normally heard on Fridays and holidays and these days may be excluded when, calculating the period of 48 hours.

4. When the accused is detained in custody for more than 48 hours without an investigation of the charge against him, a report is to be made in accordance with section 102(2) of the Air Force Act.

Forms to be Used for Offences

5. Three forms are used in the investigation of charges by commanding officers:

a. **Form 252 (Charge Sheet).** The form contains a statement of the alleged offence signed by the person preferring the charge. It acts as a traveling copy from which details are transferred on to Forms 281 and 160.

b. **Form 281 (Minor Punishment Report Form).** This form is the source of information for PORs and documentary action necessitated by punishments, and is to be used by commanding officers and the officers specified by the Chief of Air Staff under section 82 of the Air Force Act.

c. **Form 160 (Guard Report).** This form is used to record details of airmen held in custody and is normally completed by the guard room. The charges which come before base commander for disposal are recorded on page 4 of the form which is then used by him when disposing of the cases.

Action Prior to Investigation of Charges

6. Before a case is put up to the commanding officer for disposal, it is to be ensured that:

- a. All the witnesses and relevant documents are handy.
- b. The accused is placed under close arrest and is properly escorted. He is to be deprived of his cap and any other articles he could use as missiles.
- c. The requirements of sanction under section 83 of the Air Force Act, where applicable, have been complied with.
- d. The charge is properly made out in accordance with the Air Force Act and Rules.

Orderly Room Procedure

7. The following procedure is to be adopted by all concerned at the time of investigation of charges:

- a. **Preliminaries.** After ascertaining that the accused, Escort and witnesses are present and all documentary evidence is handy, the Adjutant is to report to the commanding officer that the charge is ready for investigation and should place before him the charge sheet. The commanding officer should examine the charge and see that it is correctly framed and is in order.
- b. **Appearance of the Accused and Witnesses.** The commanding officer should then order the accused followed by the escort and all witnesses to be marched in (except any officer, warrant officer or civilian, who should be asked to go in first). The accused is to be deprived of his cap and any articles he could use as missiles before he is marched in. The commanding officer while disposing of the charge shall put on his cap.
- c. **Reading out the Charge Sheet.** The commanding officer is then to read out particulars of the accused and the charge(s) against him together with the names of the witnesses. He should satisfy himself that the accused has fully understood the charge(s). If necessary, he should explain the charge(s) in simple words to the accused.
- d. The procedure for disposal of charge(s) shall be as under :
 - (1) The first witness is to be heard in the presence of the accused.
 - (2) The accused is asked whether he wishes to cross-examine the witness.
 - (3) After the cross-examination, if any, the witness may be questioned by the commanding officer if any points need clarification.
 - (4) The witness is to be marched out when no longer needed.
 - (5) The procedure is to be repeated until all witnesses against the accused have given their statements.

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(6) In case of documents, where the originator thereof is not readily available to appear as a witness^ his attendance may be dispensed with the consent of the accused. The document may then be produced by a witness who has received the same in his official capacity. The fact should be mentioned in the remarks column of Form 281 or 160.

(7) The accused should then be asked whether he desires to make any statement, not on oath. The accused is at liberty to make an oral or hand written statement. In case he gives a written statement, it should be attached to the charge sheet and the fact recorded in the 'remarks' column of Form 281/160. The law gives full liberty to the accused in making his defence. No action, therefore, lies against him even if he makes a false statement in his defence.

(8) After the statement of the accused, if any, he shall be asked whether he wishes to call any witness in his defence. In case he does so, the witnesses will be marched in/called in, as appropriate; one by one_s in the order in which the accused wishes to call them. Witnesses will give their statements in the same manner as provided for those appearing against him, except that the accused will not be allowed to cross-examine them.

e. If, however, the accused pleads guilty to the charge and does not wish to produce any witness in mitigation, the attendance of witnesses may be dispensed with. It is, however, the duty of the officer disposing of the charge to satisfy himself that the accused understands the implications of the plea of guilty in accordance with the procedure laid down in the Air Force Act Rule 86(2). In case the accused pleads guilty under a misconception or if the officer dealing with the charge otherwise considers it desirable, witnesses should be examined in the manner as if the accused had not pleaded guilty.

f. **Courses Open to the Commanding Officer.** When all the defence witnesses are over, the commanding officer will take one of the actions listed hereunder:

(1) If the commanding officer is not fully satisfied as to the guilt of the accused he shall dismiss the charge. (From the morale and disciplinary point of view, there are few things that do more harm than the conviction of an innocent man, the effect of which is to turn a contented airman into a disgruntled airman, who is continually airing his grievances)-

(2) He may award suitable punishment as authorised by the Air Force Act and Rules.

(3) Incase he thinks that the charge deserves more severe punishment than the one he is authorised to award under the Air Force Act and Rules, the commanding officer will remand the accused to proper superior air force authority. In doing so, he should refrain from expressing any opinion as to the guilty of the accused.

(4) The commanding officer may adjourn the case and order a summary of evidence to be taken.

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g. **Punishments.** If the accused is found guilty the commanding officer is to ask the adjutant for the accused's service documents and is to consider punishment in the light of the accused's record. The commanding officer is not, on any account, to examine the accused's service documents until after he has decided that the accused is 'guilty'. The punishment should be announced and formally recorded on Form 281 or Form 160, as applicable. The commanding officer is then to sign and write his name; rank and appointment in the appropriate column of Form 281/160. The award once announced and the accused having left the presence of the commanding officer, is not to be changed afterwards.

Action Subsequent to Investigation of Charges

8. Form 281 is to be submitted to the superior air force authority in accordance with AFO 111—31. The following instructions are to be complied with in this respect:

a. Form 281 is required to be submitted only when some punishment is awarded to an airman. No report is required to be submitted when the charge is dismissed

b. A consolidated report of punishments awarded during a week is to be submitted on every Thursday. But in case any of the following punishments is awarded, the report is to be submitted to the superior Air force authority on the very day of the award:

(1) Detention

(2) Confinement to Camp.

c. Nil returns are not required to be sent.

d. Original copy of Form 281, on which the charge is disposed of, is to be retained by originating unit/base. Only a copy is to be dispatched to superior Air force authority.

e. Particulars of the witnesses examined and of documents produced in evidence are to be written in the "Witnesses" and "Documents" columns respectively.

Amendment of the Air Force Forms 281 and 160

9. A new foot note shall be inserted in existing Form 281 and Form 160 to the following effect:

"In case of documents when the originator thereof is not readily available to appear as a witness, the attendance of such a witness may be dispensed with the consent of the accused. The document may then be produced by a witness who has received the same in his official capacity".

Dealing With Offences Committed by Airmen While on Attachment, Under Posting Orders, Temporary Duty or Leave.

10. The following instructions shall be complied with by all concerned while dealing with offences committed by airmen while on attachment, under posting orders, temporary duty or leave :

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a. **Attachment and Posting.** The commanding officer is to ensure that every charge in respect of an airman who is either on attachment to the unit, or has been posted out but has not left the unit, is disposed of before the airman leaves the unit.

b. **Temporary Duty.** An airman on temporary duty to a unit does not automatically come under the disciplinary power of the local commanding officer. If such an airman is charged with an offence the following procedure is to be adopted:

(1) The accused is to be informed that he has been put on charge. He may also be placed under open or close arrest depending upon the circumstances of the case.

(2) The commanding officer will immediately request the Record Office for attachment of the accused to the unit till disposal of the charge, under intimation to the parent unit of the accused.

(3) Record Office will then issue orders for the attachment of the accused to the unit concerned for disposal of the charge.

(4) On receiving attachment orders from Record Office, the commanding officer will ensure that the charge including the summary of evidence if one is ordered, is disposed of as expeditiously as possible.

(5) Immediately after the disposal of the charge, the accused is to be dispatched to his parent unit under intimation to Record Office.

(6) Form 281 in respect of the charge is to be submitted for review, to the authority which would normally review the punishment awarded by the commanding officer of the unit, to which the accused is attached. A copy of the same is to be sent to the parent unit of the accused for information.

(7) The commanding officer is to ensure that the instructions outlined above are complied with by all concerned and in no circumstances is the accused to be dispatched to his parent unit without disposal of his charge.

c. **Leave.** The following procedure shall be followed for disposal of offences committed by an airman, away from his parent unit, while on leave :

(1) The Provost NCO or other superior officer taking cognizance of the offence is to first ascertain the identity of the accused, his parent unit, the duration of leave, and the leave address. The complete particulars of the witnesses, if any, must be noted down. He is also to inform the airman that he has been put on charge and that he should immediately report to the nearest unit for the disposal of the charge. The person taking cognizance of the offence is then to submit a report in writing, within 24 hours, to the commanding officer of the nearest unit, to which the accused has been directed to report, stating all the necessary facts of the case and particulars of the witnesses. For the purpose of this sub-sub-paragraph the term "Provost NCO" means, a Provost NCO, either legally exercising authority under or on behalf of the Provost Marshals or senior in rank to that of the accused.

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(2) The commanding officer of the unit, to which the accused has reported under the preceding sub-sub-paragraph will immediately obtain, telephonically if necessary, instructions from the Record Office for the attachment of the accused, and of the witnesses if necessary. The parent unit of the accused is also to be intimated about his attachment to the unit concerned. The airman will be permitted to resume leave, if any is still outstanding, after disposal of the charge. No extension of leave will however be given because of the period consumed during investigation and disposal of the charge.

(3) Record Office will attach the airman concerned, if a request is received from any unit in accordance with the preceding sub-sub-paragraph, and later regularize if, with intimation to all concerned.

(4) Further action by the unit concerned shall be the same as laid down in paragraph 10(b), (4), (5), (6) and (7).

11. When an airman reports or is attached to a unit for the disposal of a charge, he is to be employed on the duties of his trade till the charge is finally disposed of.

12. Commanding officers are to ensure that the instructions laid down in paragraphs 10 and 11 are explained to all concerned.

13. Attention of all the airmen should also be drawn to para 17 of AFM 800—2, which requires them to possess uniform while proceeding on leave for use in the event of being detailed for duty, while on leave.

BY ORDER OF THE CHIEF OF THE AIR STAFF, BANGLADESH AIR FORCE :

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AFO NO 111-38 Dt 02 April 1990

LEGAL SERVICES

**PROMOTION PROCEDURE - PERSONNEL INVOLVED IN BOARD
OF INQUIRY, ETC**

1. Cases have come to the notice of Air Headquarters where persons accused of offences or those involved in proceedings of boards of inquiry etc, have been promoted to the *next* higher rank, without awaiting the disposal of the case. Such promotions do not appear consistent with future disciplinary or administrative action which the merits of the case might make necessary.

2. It is to be noted for future that on receipt of orders of promotion of an individual against whom a charge is pending or who has been or is likely to be blamed by a board of inquiry, the Air Secretary in the case of officers or the Record Office in the case of airmen, are to be immediately informed of the facts. The orders for the promotion of the person concerned are to be kept in abeyance in the meantime.

BY ORDER OF THE CHIEF OF THE AIR STAFF, BANGLADESH AIR FORCE:

RESTRICTED

AFO NO 111-39 Dt 02 April 1990

LEGAL SERVICES

**REPORTING THEFT OF AIR FORCE EQUIPMENT AND FOODSTUFFS
TO THE CIVIL POLICE**

1. Cases of theft of Government property have occurred in the past where the loss was not reported to the civil police and the culprits remained untraced.
2. All future losses where theft is suspected, and when such a course of action is warranted are to be reported to the civil police.
3. The proceedings of the ensuring board of inquiry are to contain details of the report made to civil police including the result of their investigation.

BY ORDER OF THE CHIEF OF THE AIR STAFF, BANGLADESH AIR FORCE:

RESTRICTED

AFO NO 111-40 Dt 02 April 1990

LEGAL SERVICES

PUNISHMENT UNDER SECTION 82 (dd)

1. Whenever preliminary investigation of a charge reveals the case to be such a serious nature as to merit punishment under Section 82(dd) of the Air Force Act, a summary of evidence is invariably to be ordered by the commanding officer.
2. If the punishment under Section 82(dd) is ultimately awarded, its report on Form 281 is to be forwarded to Air Headquarters along with the summary of evidence for review.

BY ORDER OF THE CHIEF OF THE Air STAFF, BANGLADESH AIR FORCE:

LEGAL SERVICES

FIELD GENERAL COURT-MARTIAL

Introduction

1. This order sets out general instructions in respect of Field General Court-Martial,
2. The object of a Field General Court-Martial is to provide speedy trial of offences committed on active service. Every effort is, therefore, to be made to expedite the case at every stage until its final disposal. (As a rule, a Field General Court-Martial is not convened in peace time unless it to convene a General Court-Martial).
3. **Officers Empowered by the Chief of the Air Staff to Convene a Field General Court-Martial.** In pursuance of Section 112 (a) of the Air Force Act, the Chief of the Air Staff has been pleased to empower to the Assistant Chief of the Air Staff' (Administration) and all Base Commanders not under the rank of Group Captain to convene a Field General Court-Martial in respect of any person subject to the Act, and persons placed under their command or orders respectively.

Preliminaries

4. **Preliminary Investigation.** As soon as he takes cognizance of an offence, a commanding officer is to ensure that he brings the offender to justice without delay. He is, there fore, either to dispose of the case summarily, if it is within his power, or refer it to proper superior air force authority or apply for a Field General Court-Martial, if he is not competent to convene on himself. In case, he decides to apply for a Field General Court-Martial, a summary of evidence is to be invariably ordered.
5. **Charges.** Although the Air Force Act Rule 166 provides that the statement of the offence may be made briefly in any language sufficient to describe or disclose an offence under the Act in practice it is to follow the wording of the Act. Brief particulars of the offence are also to be given to the act or omission etc. A formal charge-sheet is not essential, but it is desirable to have one signed by the commanding officer of the accused and endorsed by the convening authority, on the lines of illustration of charge given in Fourth Appendix to the Air Force Act Rules. The words 'when on active service ' are to be prefixed to the statement as well as to the particulars of the offence, if required.
6. **Summary of Evidence.** The summary of evidence is to be recorded in the usual form and manner as provided for in the Air Force Act Rule 42, technicalities, are not to be permitted to stand in the way of a speedy finalization of the summary. It may however, not be necessary to summon a witness from a distance, for the purpose of summary, provided that the substance of his evidence, preferably signed by him, is attached to the summary of evidence.

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7. **Arrest.** Except on action service, an accused under close arrest is not to be allowed to bear arms except in grave emergency nor he is to be called upon to perform any duty other than those of essential nature. During action operations, confinement is inappropriate unless the circumstances call for physical restraint.

8. **Application for Field General Court-Martial.** The following documents are to be forwarded by the unit concerned to the convening officer:

- a. Form 116 (Form of application for a court-martial, original and a copy).
- b. Summary of evidence (original and two copies)
- c. Proposed charges, whether in the form of a charge-sheet or otherwise (original and two copies).
- d. Certified true copy of conduct sheet (F 296 or F 731), if readily available (two copies)
- e. Accused's choice of defending officer, in case he wishes to have the services of an officer to assist him at the trial (four names with full particulars of the officers—two copies).

9. **Pre-trial Advice.** Unless the case is very simple and straight forward, or is extremely urgent nature, the convening officer, as soon as the application for a Field General Court-Martial is received, is to refer the case to JAG Branch, Air Headquarters for obtaining pre-trial advice. While submitting the case, original and a copy of the summary and a copy of the other documents mentioned at paragraph 8 are also to be forwarded.

Convening a Field General Court-Martial

10. **Convening Order.** In the case of a Field General Court-Martial the convening order is to be issued on Form P—7 "Form for Assembly and Proceedings of Field General Court-Martial". The convening order is to be signed personally by the convening officer and not by anybody for him. All alterations whether on page 1 or page 2 of the Form are to be initialed by him. Specimen of the Air Force Form P-7 is given in Fifth Appendix to the Air Force Act Rules 1957.

11. **Composition of the Court.** A Field General Court-Martial consists of not less than three officers, who should have held commission for not less than one year. More senior officers are however, to be appointed, if readily available. Waiting members may also be detailed. In the convening order the members and waiting members, if any are to be appointed by name or by ranks and units. In the latter event, the rank, names etc of the members of the court, as constituted, are to be recorded in the proceedings.

12. **Defence of the Accused.** The following privileges are to be afforded to the accused for his defence, as far as practicable:

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a. He is to be given proper facility for preparing his defence and services of an officer to assist him at the trial are to be placed at his disposal, if he so desires. If assistance in his defence has been offered to the accused and declined, that fact is to be notified to the court and stated in the proceedings. The accused is also allowed to engage a counsel to represent him at the trial at his own expense.

b. The accused is to be notified of the date of the trial and a copy of the summary of evidence and charge-sheet given to him in sufficient time to consult his defending officer or counsel, c. The accused is to be warned in terms of the Air Force Act Rule 74. He is to be asked for names of any witnesses he may wish to call, and steps are to be taken, at an early stage of the investigation, to secure their attendance at the trial. Before Air Headquarters are requested to procure the attendance of witnesses from a distance, care is to be taken to ascertain that their evidence is really material.

13. **Prosecutor.** The convening officer is to appoint a suitable officer as prosecutor whose name is not required to be mentioned in the convening order. It is illegal for the court itself to conduct the prosecution. The person who recorded the summary is normally to be detailed as prosecutor but in a complicated case he is to be appointed after consulting JAG Branch, Air Headquarters.

14. **Judge Advocate.** A Judge Advocate is invariably to be appointed in the convening order, in consultation with Judge Advocate General.

Procedure at Trial

15. A Field General Court-Martial is subject to exceptional rules (Air Force Act Rule 163 to 181) in which the procedure is or can be of a more summary character than of a District or General Court-Martial. All concerned are, therefore, to familiarize themselves with these rules. Provision has also been made whereby large number of rules which are applicable to District and General Court-Martial are to be applied to a Field General Court-Martial so far as is practicable (see Air Force Act Rule 181).

16. The procedure for examining, prosecution and defence witnesses is to conform as closely as possible to that of a District or a General Court-Martial. The same procedure is also to be followed whenever there is any doubt as to the procedure for calling or recalling or questioning any witness, or their order of examination and of making addresses in accordance with the Air Force Act Rule 175.

17. The record of evidence is, however, to be briefed as laid down in the Air Force Act Rule 174. The convening officer, by a direction in the convening order, may direct that the trial is to be carried on without any such brief record. Such direction would, however, hardly be necessary. If there is one, the exigencies or other circumstances which appear to him to justify such directions, are to be stated in the convening order. Failure to record evidence will invalidate the conviction, unless such direction is given.

18. A Field General Court-Martial has the same powers and jurisdiction which a General Court-Martial has (Section 117 of the Air Force Act).

Confirmation

19. The proceedings duly completed are to be signed by the President and the Judge Advocate, and transmitted to the Judge Advocate General without delay for post-trial advice.

20. The finding and sentence of a Field General Court-Martial shall be valid only in so far as they are confirmed by the proper authority. In any case where a sentence of death is passed, the convening officer is to reserve confirmation of the sentence by an authority superior to him. The convening officer is not, however, required to reserve confirmation by an authority superior to him if on confirming the sentence, he commutes the punishment for any punishment lower in the scale laid down in Section 73 of the Act.

Field General Court-Martial in Time of Peace

21. A court of this character is not suited to peace conditions, but it may sometimes be necessary to convene such a court at a remote Base where sufficient number of officers to constitute a General Court-Martial is not readily available.

22. The power to convene a Field General Court-Martial in time of peace is restricted to officers empowered by the Government or the Chief of the Air Staff under Section 112(a) of the Air Force Act, and the officers convening the court are to direct that the evidence and the statement of the accused in defence is to be recorded in full, instead of in the abbreviated form allowed the Air Force Act Rule 174 ; the proceedings being thus assimilated, so far as circumstances permit, to those of a District or General Court-Martial.

BY ORDER OF CHIEF OF THE AIR STAFF, BANGLADESH AIR FORCE:

LEGAL SERVICES

**DECLARATION OF ACTIVE SERVICE IN RESPECT OF CIVILIANS AND ITS
EFFECT FOR LEGAL PURPOSES**

1. **Introduction.** This order sets out general instructions for disposal, under the Air Force Act and Rules, of the disciplinary cases against civilians who have become subject to Air Force Law.
2. **Active Service.** A copy of Gazette Notification No 1963/65 dated 8th October, 1965, placing all persons subject to the Air Force Act on active service, and No 1964/65, dated 8th October, 1965, making special provisions as to rank in respect of civilians, who have become subject to the Air Force Law, are reproduced as Annexure A and B to this order respectively.
3. **Effect of Notifications.** The effect of these notifications is as under:
 - a. All civilians who are not otherwise subject to the Air Force law but are employed by or are in the service of, or are followers of, or accompany any portion of the Bangladesh Air Force shall, on active service, become subject to the Air Force Act as officers, master warrant officers, warrant officers and non-commissioned officers according to their relevant status given in the notification reproduced as Annex 'B' to this order. All other civilian employees etc, subject to the Act, who do not fall in the categories enumerated above, shall be deemed to be of a rank inferior to that of a non-commissioned officer. The status conferred under Section 6 of the Act is personal and does not give any power of command or punishment. Thus, a civilian classified as an officer, master warrant officer, or warrant officer, is not the superior, within the meaning of the Act, on a NCO. Nor does relative status entitle a civilian to assume any specific Air Force rank or wear badges of rank.
 - b. A civilian who takes cognizance of an offence committed by his subordinate/junior airman or civilian may make a complaint to his own commanding officer about the same for necessary action.
 - c. A civilian who deems himself wronged by any person subject to the Act, superior to him in rank, may complain about the same to his commanding officer to receive redress.
 - d. The words "portion of the Air Force" used in Section 2(d) of the Act includes personnel of Air Headquarters and of all Bases and Units of the Air Force. The commanding officers of the units where such civilians are employed, or are serving etc, will also be their commanding officers within the meanings of Section 4(xiv) and Rule 4 of the Air Force Act and Rules. Their cases will be disposed of under the same procedure and by the same authorities who are competent to deal with cases of persons who are normally subject to the Air Force Act. For instance summary disposal of charges of civilians of the rank of NCO and below will be made under the normal Orderly Room procedure; the instructions laid down in AFO 111—37 shall be followed, mutatis mutandis, except that the accused or civilian witnesses will not be marched in or out of the presence of the commanding officer. At Air Headquarters, the officer commanding Air Headquarters (Unit) will be the commanding officer of all civilians serving there.

e. All persons subject to the Act shall be deemed to be on active service irrespective of any area in which they may be serving.

4. Calling attention of Civilian Personnel to their liabilities under the Air Force Law. It is emphasized that civilians who have become subject to Air Force Act are not, after all, soldiers, and many of them genuinely may not appreciate the gravity of purely service offences; in all cases, therefore, care should be taken to ensure that this position is made clear to them.

5. **Punishments.** Although legally subject to trial by court-martial or to summary punishment for all civil and service offences with effect from 8 October 1965, the following principles will normally be applied while dealing with the cases of the civilians:

a. The fact that civilians in Government Service have become subject to the Air Force Act under Section 2(d) thereof does not preclude their being dealt with departmentally under the regulations normally applicable to them, viz " Civilian Employees in Defence Services (Classification, Control and Appeal)

Rules 1961" and "Rules Regarding Conduct and Discipline and Disposal of Appeal and Representations in Respect of Workmen and ETE/ETA/Casual Personnel Employed in the Defence Services" etc, if the commanding officer or a Superior authority wishes to have recourse to such action. However, if it is decided to deal with them under the Air Force Law, the procedure laid down in the Air Force Act and Rules is to be followed. The punishments laid down in sub-section (d), (dd) and (e) of Section 82 of the Act however, should not, preferably, be invoked for minor cases of indiscipline, which can be adequately dealt with departmentally, unless the imposition of a fine by way of a summary punishment under Section 82 (g) is appropriate.

b. Civil offences of serious nature can, more appropriately, be dealt with by the civil courts-

c. In all serious cases of indiscipline, civilians subject to Air Force Law should be tried under the Air Force Law unless, for special reasons, it is considered desirable to leave the case to be dealt with by civil courts.

6. **Legal Advice.** In all serious cases, advice of the Judge Advocate General, Air Headquarters, should be sought before dealing with a civilian subject to Air Force Law.

7. **Important Points.** Following important provisions of the Air Force Act and Rules should be noted for guidance:

a. The Air Force Act Rules 73 and 74 can be dispensed with under Rule 72.

b. An officer who may be a material witness to the facts of the prosecution may also be appointed as prosecutor, if no other suitable officer is available.

c. On Active Service, all civil offences including those accepted under Section 72 of the Act, can be tried by a court-martial.

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d. By virtue of Section 80 of the Act, when any enrolled person is sentenced by a court-martial to dismissal, imprisonment or detention whether combined with dismissal or not the authority prescribed under the Air Force Act Rule 213 may direct that such persons be detained to serve in the ranks and such service shall be reckoned as part of his term of imprisonment or detention, if any.

8. **Field General Court-Martial.** Please see AFO 111-42.

9. **Specimen Charge-Sheets.** Specimen charge-sheets in respect of civilians subject to Air Force Law are given as Annexure 'C' to this order for guidance. It is to be noted that the words "When on Active Service" precede the statements of offences in all the charge sheets.

BY ORDER OF THE CHIEF OF THE AIR STAFF, BANGLADESH AIR FORCE :

LEGAL SERVICES

SUBMISSION OF PARTICULARS OF MAIN WITNESSES IN THE COURTS-MARTIAL

1. It has been felt at Air Headquarters for some time that confirming authorities are often handicapped in assessing courts-martial findings and sentences, in their true perspective, in as much as the antecedents of important witnesses are not available to them. The parties also, generally speaking, fail to highlight those weak areas in the characters of the important prosecution and defence witnesses which would normally shake their credit or, at least, indicate on record why their evidence should be weighted critically.

2. It has accordingly been decided that the officers commanding, while forwarding summaries of evidence to Air Headquarters for advice, will also furnish the following particulars in respect of each important witness:

- a. Length of service.
- b. The number and nature of punishments awarded to him during his service.
- c. Character assessment over the three years previous to the date of appearance as a witness.
- d. Any other relevant information which may help the confirming authority in assessing the characteristics of the main witnesses.

BY ORDER OF THE CHIEF OF THE AIR STAFF, BANGLADESH AIR FORCE

AFO NO 111-45 02 April 1990

LEGAL SERVICES

**BOARD OF INQUIRY INTO CASES OF DEATH DUE TO DISEASE/INJURY—
OFFICERS AND AIRMEN**

1. The most important consideration, while deciding the grant of family/dependant's pension is whether the death is attributable to service or, in a case of sickness leading to death, whether the disease was aggravated by conditions of service, in accordance with the Government instructions on the subject reproduced as Annex 'A' to Air Force Order No 111—26. Normally, it is not difficult to determine those issues but there have been cases, especially when death followed some disease, where inadequate or belated investigation made it extremely difficult, to concede attributability.

2. It has accordingly been decided that in future a board of inquiry with the minimum rank of Squadron Leader as the President is to be assembled in all cases of death, as in cases of flying accidents, immediately the casualty is known. The board is to determine the cause of death and also if service conditions in any way aggravated the disease which immediately led to death. In addition the board is to consider whether service in a particular region or under trying climatic or other conditions contributed to or aggravated the cause of death. Whether adequate and timely medical assistance was provided to the deceased is another important factor for examination by the board.

3. The proceedings of the board of inquiry are to be completed within the shortest possible time and submitted to Air Headquarters in the usual manner.

4. Officers commanding, Bases/units are to append their remarks regarding attributability on Form 551 (revised) only on return of the proceedings from Air Headquarters. The remarks are to conform to the decision on the proceedings.

BY ORDER OF THE CHIEF OF THE AIR STAFF BANGLADESH AIR FORCE

LEGAL SERVICES

**CLASSIFICATION OF
PRISONERS**

1. There are three classes, namely A, B and C in, which prisoners who are to undergo imprisonment in civil jails are divided. While civilian convicts are governed by the rules applicable to them, the right to allocate classes to convicts from the Armed Forces has been reserved for the Services, who naturally keep in view the requirements of discipline before deciding the class in the case of each convict.

2. Besides the requirements of discipline, the following factors are also taken into consideration while determining the classes for convicts from the Services:

- a. The social status, education, habit of life or the mode of living to which a convict may have been accustomed to.
- b. Whether the convict's offence involved elements of cruelty, moral degradation or personal greed.
- c. Whether the offence involved serious or pre-meditated violence.
- d. Whether the conviction has followed a serious crime, especially in relation to property.
- e. Whether the offence involved possession and/or use of explosives, arms and ammunition with the object of causing harm to the interests of the state or committing any other offence.
- f. Abetment or incitement of the offences indicated above.

3. It has been decided, in view of but without prejudice to the generality of the guidance provided above, that the following classification would be appropriate:

- a. Officers —A Class
- b. MWO/SWO/WO and Personnel —B Class of NCO rank.
- c. Personnel below NCO rank —C Class

4 The committing authorities in future are to record in the relevant commitment warrant, the class to which the convict is to be confined. No variation in the said classification is to be allowed without the prior approval of Air Headquarters.

BY ORDER OF THE CHIEF OF THE AIR STAFF, BANGLADESH AIR FORCE :