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**COMMAND AND STAFF TRAINING INSTITUTE
BANGLADESH AIR FORCE**



Individual Staff Studies Programme (ISSP)

Legal Studies-2
Part-II: Phase-15

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LEGAL STUDIES - 2
PART-II : PHASE -15

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PART-II, PHASE-15
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INTRODUCTION TO THE PHASE

This Phase Note is made for the officers of the BAF. 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 legal matters. Study of this Phase note will put you in convenient position in such cases. This Phase Note comprised topic-1 to 5. (Comparatively simpler topics have been allotted to Part-I candidates and harder topics have been allotted to Part-II students). Judicious study of the Note will make you well conversant on legal matters. You are advised to study also Board of Inquiry, Board of Officers and Formal Investigation, Summary of Evidence, Court-Martial, Committee of Adjustment and Charge & Charge-Sheet from Manual of the Air Force Law.

TOPIC-1

**BOARD OF INQUIRY, BOARD OF OFFICERS
& FORMAL INVESTIGATION**

Assembly of BOI

1. a. A Board of Inquiry (BOI) is an assembly, ordered by competent authority, of Officers or Officers and MWOs/SWos/WOs directed to collect evidence, and if so required, to report with regard to my matter which may be referred to them.

 b. A Formal Investigation (FI) is an investigation carried out by one officer, normally a commissioned officer but in certain cases a MOW/WO may be detailed.
2. Except that a single investigating officer may not take evidence on oath, both types of inquiry referred to above, proceed in an identical manner. The words "Board" or "Board of Inquiry", are to be interpreted as including "investigation" or "investigating officer" unless stated otherwise. FI and BOI can be distinguished from an informal investigation whereby the investigation is to be conducted in an informal manner and the proceedings are recorded on plain sheets of paper.
3. The type of inquiry to be ordered is left to the discretion of the assembling authority who will be guided by the circumstances in each case.

Who can order a Board of Inquiry (BOI)

4. Subject to any orders issued from time to time, a BOI may be assembled by the officer in command of any unit or body of the Air Force or any superior authority.
5. The basic regulations for conducting a board of inquiry are given in AF Act Rules 191 to 192. In a BOI the rules of procedure as for a court of law need not be observed. The rules of evidence need not also be strictly followed. All the facts of the case must however, be examined. Rules of natural justice will also be relevant in connection with questions as to whether sufficient opportunity was or was not given to an individual to explain his conduct.
6. A BOI is assembled to help a CO or superior authority to reach a correct conclusion on any matter upon which it may be expedient for him to be informed. It is an administrative procedure by which any unusual occurrence is investigated. The purpose is merely to help the authorities to come to a definite conclusion regarding any matter requiring investigation. The board is appointed merely to find facts and it is not its concern as to what penalty or punishment to a person blamed, the facts will lead to. The board is appointed merely to find facts and it is not its concern as to what penalty or punishment to a person blamed, the facts will lead to. The authority may or may not accept the board's conclusions on facts found by him on the evidence produced before him. A BOI is not a "Court of Law."

7. **Composition of a BOI**

- a. **Number of Officers.** The Board shall be composed of two or more officers of any rank, or one or more officers together with one or more MWO/Wos. The members of the board may belong to any branch or department of the service according to the nature of the investigation.
- b. **President.** The assembling authority is to detail an officer, of the Air Force by name to act as President, and one or more officers junior to him or MWO/Wos as members. The President shall not be of a rank less than that of a Flight Lieutenant unless in the opinion of the assembling authority, an officer of the rank is not, having due regard to the public services, available. When the board is directed to express an opinion which may bear upon the conduct, character or professional reputation of an officer, the President shall not be junior in rank or seniority to that officer.
- c. **Military, Naval or Civilian Gazetted Officer.** Where the officer who assembles the board deems it expedient to do so he may appoint one or more Military, Naval, or Civilian Gazetted officers as member/members of the board but such an officer shall not act as a President of the board.
- d. **MES Representative.** Where the inquiry concerns any matter in which the MES stores and fire etc, a gazetted officer of the MES should invariably be appointed as member.
- e. **MWO/SWO/WO Members.** The assembling authority will exercise its discretion as to a member of a board. A MWO/WO will not be appointed on a board the main business of which is to report on the conduct, character, or professional reputation of a commissioned officer.

Separate Boards

8. When a Board of Inquiry is assembled to investigate any given occurrence, a separate board need not be held to investigate any other matter arising out of that occurrence. Where, however, the assembling authority considers that the two subjects cannot be conveniently dealt with by the same board, he will convene two boards. If one board is held, the assembling authority will specify all the matters to be investigated in the terms of reference.

Delay Inadvisable

9. Delay in assembling a board of inquiry often defeats its own purpose. When facts are forgotten and material evidence is no longer available, the assembling of a board of inquiry will hardly serve any useful purpose. No time should therefore be long in assembling a BOI immediately the need arises. The proceedings should also be completed expeditiously.

Is BOI a must?

10. The holding of a BOI is not a must in all cases. Where the facts and circumstances of an incident sufficiently indicate the probability of complicity or culpability of a person in the commission of an offence after investigating the charges under AF Rule 41, the commanding officer may order the recording of a summary of evidence in accordance with Rule 42, as may be applicable without having re-course to holding of a BOI.

11. A Board of Inquiry should be assembled :

- a. When a prolonged examination of witnesses or documents is required, or
- b. When identity of the involved person(s) is to be established or
- c. When lengthy investigations are required which cannot be conveniently done by the CO, or
- d. Where it is required by existing orders, or
- e. Where it is considered desirable by the assembling authority.

12. The following cases shall be investigated by a Board of Inquiry :

- a. Absence without leave exceeding 30 days.
- b. Loss of a weapon or part of a weapon.
- c. Fatal or grievous injuries.
- d. Cases of financial irregularities.
- e. Loss in stores.
- f. Assaults and affray between persons subject to the Air Force Act and to other services acts (whether on duty or on leave) or with civilians.
- g. Breaches of discipline.
 - (1) Collective insubordination.
 - (2) MT accidents resulting in death or serious injury.
 - (3) Suicide, attempted or suspected suicide.
 - (4) Murder, rape and culpable homicide not amounting to murder, only when the offence has been committed against a person subject to the Air Force Act, 1953, Naval Ordinance, 1961, Army Act, 1952 or in any of the circumstances mentioned in clauses (a), (b) and (c) of section 72.
- h. Loss of secret documents.
- j. On prisoners of war.
- k. On explosions and accidents on ranges.
- l. Out-break of fire.

Procedure to Conduct a BOI/FI

13. **Terms of Reference.** It is essential that assembling authorities should indicate the purpose for which the board is assembled by providing the board with suitable terms of reference pointing out in detail the exact aspects of the case on which findings and recommendations, if any, are required. The terms of reference should clearly state if the evidence is to be taken on oath. Standard terms of reference in respect of some of the common occurrences should be issued by Air Headquarters. Officers ordering board of inquiry must consult such terms of reference before publishing assembly orders.

14. **Collecting of Evidence**

a. The board shall be guided by the terms of reference issued by the authority assembling the board. These terms of reference shall be full and specific, and shall state the general character of the information required.

b. **Examination of Witness.** The board should patiently, but firmly, keep witness to the point or points on which their knowledge touches the terms of reference, and prove such knowledge by questions until they are sure that the witness knows nothing more which is material to the case.

c. **Relevant Evidence.** A board of inquiry, as it is not a judicial tribunal, may receive such evidence as it may think fit, whether oral or written the sole test being that it is relevant to the issue.

d. **Oral Evidence.** A board will always endeavour to obtain the oral evidence of a witness as to disputed facts. Boards, however, cannot compel the attendance of civilian witnesses. If after being invited to attend a civilian witness declines, the board will invite him to make a statement in writing.

e. **Questions by Board.** A board will ask such questions of any witness as it may think necessary for ascertaining the facts or the truth and accuracy of his evidence; but a witness cannot be ordered to answer a question where the answer might incriminate him,

f. **Duty of Board.** It is the duty of a board to secure evidence and to examine it carefully with a view to :

- (1) Finding out exactly what happened, so that action may, if desirable, be taken to prevent a similar occurrence in the future,
- (2) Bringing out facts indicating negligence or lack of discipline, and
- (3) Safeguarding public property.

15. **Action when Evidence Appears to be Inaccurate or Conflicting**

a. **Accuracy and Detail.** Meticulous thoroughness and scrupulous accuracy are essential. The board should bear in mind the necessity for strict attention to detail, to the production of all relevant evidence; and to the elucidation, where possible, of discrepancies or inaccuracies in evidence given before a board.

b. **Times, Dates, Numbers etc.** Times, dates, numbers, distance etc, often form very important factors in cases brought before boards of inquiry, and these are particularly important when serious accidents are involved. For example, witnesses may vary as to the time at which a certain event occurred but it is the duty of the board to question them with the object of eliciting accurate evidence. When witnesses are uncertain as to a fact, it is much better that they qualify their evidence with a statement to the effect, rather than leave the board and the reviewing authorities in a state of doubt.

c. **Clarification of Material Points.** It may not always be possible to form accurate opinions where there are variations in evidence. When witnesses disagree on any material point, they should be closely questioned in order to clarify the matter. It is then the duty of the board and any reviewing authority, in recording, their conclusions to explain and comment upon any variations or inaccuracies and to make it clear which evidence they accept, and which they reject, giving reasons.

d. **Presentation of Facts.** It is essential that the board should not only sift the evidence of the case thoroughly, but should set out the material obtained in evidence in such a manner, and in such order, that higher authority may be thoroughly and intelligently acquainted with all the facts, thus being in a position to come to a definite conclusion, though having no previous knowledge of the occurrence or the circumstances.

e. **Local Knowledge.** The fact that the President and members of a board of inquiry may have knowledge of local circumstances and conditions, with which higher authority may be totally unacquainted, must not be lost sight of, so that material information from the latter's point of view may not be omitted through the assumption that it is common knowledge. The Board should, therefore, put themselves in the position of one who is to adjudicate solely from the information contained in the proceedings.

Recording of Evidence

16. a. **Evidence in First Person.** The evidence of witnesses in examination and cross-examination will be recorded in the first person in narrative form and NOT in the form of questions and answers unless the board thinks fit to record any particular question and answer.

b. **Description of Witness.** The statement of a witness will be prefaced by a description of the witness by rank (or official number, rank and trade), and full name, and his employment, it will then continue with a statement of the date and circumstances in which the witness became associated with the matter under investigation.

c. **Numbering of Evidence.** The evidence of each witness is to be numbered ie 1st witness, 2nd witness, and is to be recorded by hand, or typewritten. A fresh page is to be commenced for each witness, Typing is to be in single spacing. The pages of these sheets, after being signed as described below, are to be consecutively numbered.

d. **Signature of Witness.** Each witness will sign at the end of every page of the original copy of the proceedings, upon which the evidence appears and as close to the last line as possible.

e. **Logical Order of Evidence.** The evidence is to be arranged in logical and chronological order. To achieve this, witness is should as far as possible, be called in a sequence which will enable the facts to be presented in that order.

f. **Exhibits.** The board will attach, as exhibits to the original proceedings, all relevant documents provided, including maps, plans sketches copies of any standing orders police or other reports. All exhibits should be marked alphabetically (as opposed to the pages of evidence which dare marked numerically) and attached to the proceedings (in original) after the evidence of the last witness copies being made for attachments to the copies of the proceedings. Where books or documents are concerned, a copy of the relevant portion should be made. In the case of other exhibits eg pieces of airframe engine, etc photographs should be taken and attached to the proceedings. Each exhibit should be produced before the board by a competent witness.

g. **Evidence when to be taken on oath/Affirmation.** The evidence at a board of inquiry shall not be recorded an oath/Affirmation save as under :

- (1) When inquiring into absence without leave under section 106 BAF Act.
- (2) When held on a prisoner of War (vide R. 191 (12)).
- (3) When specifically directed by the assembling authority (vide Rule 191 (12)).

h. **Visits and Examination by the Board.** If the board visits the place of occurrence or examines any object, it should record such visit or examination and the relevant information gained there from as their observation in the proceedings.

The Findings

17. a. **Recording of Findings.** The board will, in every case where it is so required record its finding on the proceedings, and will be careful to ensure that such findings are supported by evidence and over the points upon which it is required by the terms of reference, or by regulations to report. It will note any particular point on which it is unable to record a complete finding and the reasons for the omission.

b. **Culpable Negligence.** Boards of Inquiry should endeavour in their findings to differentiate between incidents caused by error of judgement not involving disregard of orders, etc and incidents due to disregard or other causes directly within the control of the person involved. The board should not regard itself as debarred from making the required differentiation even if it is impossible on account of the death of the person involved or from any other cause to obtain evidence of a statement in defence.

c. **Responsibility for Loss.** In determining the degree of responsibility of any person for loss, damage, etc the board will endeavour to determine :

- (1) Whether the person was directly or indirectly to blame.
- (2) Whether the loss, damage etc was due to culpable negligence or to irregularly on the part of that person.

d. **Irregularity.** The board will draw attention to any irregularity disclosed in the course of the investigation even though, in its opinion, it was not a contributing factor to the incident under investigation and is outside its terms of reference.

e. **Compensation.** When the board is of the opinion that compensation should be paid by any person or persons deemed to be responsible, it will state the amount that it considers should be paid by such person or persons but any recommendations made by it will be considered as being made without prejudice to any action that may be taken by higher authority.

f. **Signing of Proceedings.** The finding will be signed by the president and all the members of the board, but any member of the board may, if he thinks that he should do so, sign subject to any reservations which he desires to make or may express his dissent from any finding or fact or recommendations arrived at by the other members.

Action to be taken when the character of a person is affected.

18. a. **Rights of Personnel.** If it appears that the enquiry affects the character or professional reputation of an officer or airman, or that an officer or airman is to blame, full opportunity must be given to him to be present throughout the inquiry from the time at which it appears that he may be so affected and to make any statement or give any evidence which he may desire or to cross examine any witness whose evidence in his opinion affects him adversely and to tender the evidence of any witness in his defence. The fact that an officer or airman to whom this clause applies is or is not present will be recorded in the proceedings.

b. **Duties of Board.** If after hearing the evidence the Board is of the opinion that blame attaches to any air force personnel, the board will inform each person so affected accordingly and draw his attention to the particular evidence on which such opinion is based and will then ask him if he desires any further evidence to be taken or has any further statement to make. Any such further statement or evidence will be taken down and any new points brought to light will be fully brought to light will be fully investigated. The Board will then finally consider all the facts and make its report as may be required by its terms of reference.

c. **If blame is finally attributed.** If the board finally attributes blame to any officer or airman the assembling authority will forward a copy of the proceedings to the person concerned, and obtain from him a statement (which would be attached to the proceedings) giving any reasons why he should not be found to blame. This statement is to be obtained from the person concerned after the proceedings are finalised by the board and prior to the endorsement of remarks by the assembling authority. Compliance with the above rule is obligatory in view of the provisions of Rule 191(15) (c).

NOTE

When a person NOT subject to the Air Force Act is to blame the procedure outlined in para 10 above is to followed and the person concerned is to be afforded every opportunity to clarify his position, without making any reference to the Air Force Act Rules in the proceedings.

Remarks by the Commanding Officers

19. Remarks of the Officer Commanding should include :

a. A general expression, agreement or otherwise with the findings and recommendations considered point by point, if necessary.

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- b. An opinion on any relevant point brought out in the evidence but not covered in the findings.
- c. Recommendations as to disciplinary action, write off etc.

Disciplinary Action

- 20. a. Action on the proceedings of a BOI is not to be taken unless the final endorsement is made thereon. Where the proceedings are forwarded to Air Headquarters, disciplinary or other corrective action is to be withheld pending a decision at Air Headquarters. Once the orders on the proceedings are received, they are to be implemented within the minimum period.
- b. The proceedings of BOI shall not be admissible as evidence against a person subject to the AF Act except upon his trial for wilfully giving false evidence before that Board of Inquiry.

Diary of Action

- 21. Diary of action showing day to day progress of BOI from the day of the assembly till its completion is to be maintained by the Board and to be invariably attached to the proceedings. Brief reason of the delay, if any, are to be given in the diary.

Narrative of Events

- 22. A narrative of events, giving in brief the full picture of the case, is to be attached along with the proceedings to enable the assembling or other higher authority to grasp the case at a glance.

23. Preparation and Transmission of Proceedings

- a. **Form 2 and Form 412.** proceedings of a board of inquiry, except an inquiry relating to a flying accident will be recorded on Form 2, Proceedings of an inquiry relating to a flying accident will be recorded on form 412.
- b. **Channel of Transmission.** The proceedings duly completed will be submitted to the assembling authority, who as may be required, will transmit them to higher authority.
- c. **Number of copies required.** Each transmitting authority will scrutinise the proceedings and record thereon an opinion upon the matter investigated. Proceedings submitted to Air Headquarters will be in triplicate (Original and two copies). But in the case of MT accidents proceedings will be in quadruplicate (One original and typed copies).
- d. **Copies of Proceedings.** Copies of the proceedings are to be endorsed in red ink at the top of the first page "certified true copy", and the endorsement is to be signed by a responsible officer of the unit making the copies.

24. Board of Inquiry as to illegal Absence Under Section 106 of the Act

- a. A BOI under section 106 of the Act shall, when assembled, require the attendance of such witness as they think sufficient to prove the absence and other facts specified as matters of inquiry in that Section.

- b. They shall take down the evidence given before them in writing, and the end of the proceedings shall make a declaration of the conclusions at which they have arrived in respect of the facts they were assembled to inquire into.
- c. The BOI shall examine all witnesses who may be desirous of coming forward on behalf of the absentee and shall put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given and otherwise for eliciting the truth and the board in their declaration shall give due weight to the evidence of all such witnesses.
- d. The BOI shall administer the same oath of affirmation to the witnesses as if the board were a court-martial, but the members of such board shall not themselves be sworn or affirmed.
- e. The commanding officer of the unit to which the absent person belongs shall enter in the court-martial book of the unit a record of the declaration of the board, and the original proceedings shall be destroyed.
- f. Any person, the subject of the inquiry, shall be entitled to a copy of the declaration of the board, to be supplied free of charge, by the person having custody of the court-martial book.

Procedure of B of Officers (BOO)

25. A BOO is an assembly of officers and MWOs/SWOs/WOs. Which may also include civilian officers directed to assemble and report with regard to any matter which may be referred to them. Boards are not court of inquiry constituted under the BAF. Act and as such the swearing and cross-examination of witnesses is not within their jurisdiction. Therefore, in cases where matters to be investigated have disciplinary implication affecting Bangladesh Air Force personnel or civilian employees. A BOI or formal investigation is ordered and not a board of officers.

26. **Assembling Authorities.** A BOO may be assembled by the officer in command of any unit or portion of the Bangladesh Air Force.

27. **Purpose of Boards.** BOO are normally assembled for one of the following purposes :

- a. **Racce Board.** These boards are convened to choose a suitable site for a particular Bangladesh Air Force installation.
- b. **Siting Board.** These boards are convened to choose a suitable site for a particular Bangladesh Air Force installation.
- c. **Invigilating Board.** These boards are convened to invigilate service examinations.
- d. **Audit Board of Non-public Funds.** These boards are assembled at all Bases at four monthly intervals to audit the non-public accounts.
- e. Boards are also convened for the audit of service libraries, service laboratories or for the disposal of old files.

28. **Rules and Procedure.** BOO are normally governed by the regulations governing board of inquiry, but they are not bound down by those regulations. Proceedings of boards of officers are always recorded on F-2 and are submitted to higher authorities in the same manner as the proceedings of boards of inquiry.

Audit Board of Non-Public Funds

29. a. The Accounts of all non-public funds at Bangladesh Air Force Bases are audited every four months, up to and including 30th April, 31st August and 31st December each year by a board which is assembled on the first working day following the above-mentioned times.
- b. The board consists of not less than two officers, with a senior officer, if available, (normally a Squadron Leader) as president. One of the members of the board as far as possible, is an officer of the Accounts Branch.
- c. The names of the officers constituting the boards are promulgated in Base Routine Orders prior to the end of each period and the president details a member to check the cash and bank balances of all non-public funds on the first working day of the ensuing period before any transaction for the period takes place. A certificate to this effect is endorsed on the Cash Book by the checking officer. The officer carrying on the duties of the audit board are to study themselves that :
- (1) The accounts are arithmetically correct and have been kept in accordance with the rules.
 - (2) All receipts and disbursements are supported by vouchers and the disbursements, having due regard to the object of each fund, are generally speaking legitimate and reasonable. Any disbursement which is excessive extravagant is to be brought to notice.
 - (3) All authorised or fixed contributions to the various funds have been duly credited in whole to those funds.
 - (4) Liabilities are not omitted from the balance sheets.
 - (5) Assets are not over valued and funds are invested in strict accordance with rules.
 - (6) The balances of all non-public funds are correct. The President and the members of the board are to endorse the certificate required under rules, on the balance sheet of each account examined.
- d. The proceedings of the Audit Board are recorded on BAF F-2 in three copies. A certificate is incorporated to the proceedings by the board to the effect that all the requirements of existing rules governing audit of non-public funds have been observed. Any action necessary with reference to the findings and recommendations of the board is taken under orders of the Commanding Officer who will indicate the same in his remarks, along with a certificate that all non-public funds accounts have been audited and that a balance sheet for each account has been included in the Audit Board Proceedings.
- e. The original and duplicate copies of the proceedings with replies to the objections and observations raised by the Audit Board are forwarded to Air Headquarters, who will retain one copy and return the original copy of proceedings duly approved to the Base for record.

TOPIC-2

PRACTICAL ASPECTS ON RECORDING OF SUMMARY OF EVIDENCE

General Aspect of Summary of Evidence (S of E)

1. A S of E is a written of the evidence against the accused and, if he so desires, of the evidence in his favour.

Purpose of Recording S of E

2. The main purposes of a S of E are :
 - a. To assist the Commanding Officer and Superior authority in determining whether the case shall go for trial by Court-Martial, and if so, upon what charges, or it shall be disposed of summarily or it shall be dismissed.
 - b. To enable the accused, to know what is alleged against him, and by whom, so as to enable to prepare his defence.
 - c. To supply a prosecutor's brief from which he may examine his witness and, if necessary, make his opening address.
 - d. To inform the president of the court-martial, of the nature of the case, which he and the rest of the court are to try.
 - e. To assist the court in deciding whether they ought to accept a plea of guilty, if offered, and if accepted, in determining the proper sentences.
 - f. To assist the confirming authority in ascertaining if the plea of guilty has been appropriately accepted, and the sentence awarded is proper in the circumstances of the case.

Preliminaries to be Observed before Recording S of E

3.
 - a. A S of E can be ordered only by the Commanding Officer (CO) of the accused.
 - b. Where the charge (s) is an offence on which the ordering of a S of E appears to be likely, the Commanding Officer should, if possible, detail an officer to be present during his hearing of the case in which he may subsequently be detailed to record the S of E. The officer detailed for the S of E should be an uninterested and impartial person who is not likely to be called as a witness in the case.
 - c. The charge against the accused person must be heard in the presence of the CO.
 - d. After hearing the charge (s) the CO, if he is of the opinion, that the charge(s) ought to be proceeded with, will order a Summary of Evidence.

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- e. If a S of E has been ordered, a formal charge-sheet should be drafted and signed by the Commanding Officer.
- f. The S of E should, as far as possible, be taken on the same day as the investigation by the CO is held.

Two or More Accused

- 4. If two or more persons are suspected in an offence, a separate S of E may, if so desired, be recorded against each.

Oath/Affirmation

- 5. The summary should be taken on oath or affirmation. The forms of oath or affirmation would be the same as for witness in a court-martial, with the necessary variations.
- 6. The officer detailed to record the S of E, should note the following points before recording the summary of evidence.
 - a. Find out whether Air Force Rule 41 has been complied with before summary of evidence was ordered, if not invite the attention of the Commanding Officer to this aspect before recording the S of E.
 - b. He should acquaint himself with all the circumstances of the case and the evidence available.
 - c. He should consider the offence and its ingredients.
 - d. He should consider what facts are required to be proved to establish each ingredient and what admissible evidence must be produced to prove each of such fact.
 - e. He should interview the witnesses and find out what they know of the case and consider the relevancy of their evidence with reference to the offence charged.
 - f. He should study correspondence and other documents, which might be available and admissible and decide as to who are the persons competent to appear as witnesses for the production and proof of such documents.
 - g. He should ensure the presence of all witnesses and the documents at the time of the Summary of Evidence is to be recorded.
 - h. He should arrange a room for the purpose and ensure, as far as practicable, that the accused is placed under arrest during the recording of summary of evidence. The escort should not be a person from BAF Police/provost person.

Procedure of Recording S of E

7. Before recording the evidence caution the accused in the following terms :
- a. That a S of E in his case is about to be taken.
 - b. That the amount the charge against him is(read the charge).
 - c. That after the S of E has been considered by his CO and superior authority, the charge may be dismissed, altered or charges preferred.
 - d. That the Summary of Evidence is to recorded on oath.
 - e. That at the Summary, the accused will not be represented by a counsel. Defending officer or a friend.
 - f. That the accused has a right to cross-examine any of the witnesses who given evidence against him.
 - g. That the accused is not required to make a statement or give evidence himself, but after the witnesses for prosecution have given their evidence, he will be cautioned and he may then make a statement or give evidence.
 - h. That he will be at liberty to call any witnesses in his defence.

Production of Documents

8. No witness is allowed to give evidence as to the contents of any document unless that document is produced and proved. Very often it is noticed that the contents of a document are stated by a witness without the document being produced and proved. If a witness wishes to refer to the contents of any document he should first produce and prove it.

9. The correct way of taking a document on record is as follows :

“I produce the Order for Guards. They have been issued by Sqn Ldr Officer commanding (Unit) under his signature and against the date I am familiar with the signature of Sqn Ldr and as such identify the same. Sgt whom I identify as the accused present here, has also signed the same as having read and understood the same. I am familiar with the signature of the accused and as such, identify the same”.
Orders for the guards have now been duly proved and they can now be taken on record as an exhibit letter. The exhibit letter should also be stated in the margin. The endorsement should read :

“The Orders for Guards’ produced by the witness are read, marked Exh (the letter in alphabetical order) signed by the officer recording the Summary of Evidence and attached to the Summary”.

10. Very often it may not be possible for the witness to part with the original documents as it may be in use during the day to day administration at the Unit . If this be the officer recording the summary of evidence, should prepare a copy, compare it with the original and certify it to be true. The certified true copy can then be taken on record and the original returned to the witness . The endorsement should read :

“The original ‘Orders for the Guards’ are required for unit purpose. The Office recording the summary of evidence prepares a copy thereof, compares it with the original and certifies it to be true. The copy is read, marked Exh..... Signed by the officer recording the Summary of Evidence and attached to the summary. The original is returned to the witness”.

11. **Apprehension of Deserters or their Surrender to the Civil Police or to the Air Force Authorities.** If the accused has been apprehended or surrendered himself to a police officer, not below the rank of an officer in charge or a police station, a certificate signed by such officer stating the fact of apprehension or surrender and the manner in which the accused was dressed, shall be the evidence of the matter so stated. The same principle apply when the accused has been apprehended by or surrendered himself to the Air Force authorities. The person by whom the accused has been apprehended or surrendered need not be present personally to give evidence. The apprehension/surrender certificate must be signed by the Police Officer or the Commanding Officer of the Unit or detachment to which the person belongs . The certificate can be produced by the adjutant and his evidence as to the production of the certificate recorded.

“I produce a certificate or apprehension/surrender received from in respect of the accused. The certificate purports to be signed byOfficer-in-Charge. Police Station The accused is the certificate”.

Or

“I produce a certificate of apprehension/surrender received fromin respect of the accused. The certificate has been signed by Wg Cdr OC BAF Base The accused is the person mentioned in the certificate”.

Exhibit. The certificate is read, marked Exh signed by the officer recording the summary of evidence and attached to the summary.

12. An apprehension or surrender certificate made out in the form given at AFO 125 will be admissible in evidence to show the fact, date and place of such surrender or apprehension and the manner in which the accused was dressed at the time of such surrender or apprehension.

13. Very often the certificates are made out in a cyclostyled or pointed form. In which the terms “Surrendered to / apprehended by” are printed as such, it must be ensured that one of above two terms, not applicable, has been crossed out.

Recording

14. A S of E is recorded on plain foolscap sheets of paper.

Evidence

15. The evidence taken in a S of E is subject to the rules of evidence contained in the Bangladesh Evidence Act and certain special provisions made in the AF Act.
16. Evidence should be recorded in plain legible handwriting. There is no objection if the evidence is typed, provided that the typed evidence is read out and signed by each witnesses in the presence of the accused.
17. All the sheets containing evidence are to be consecutively numbered.
18. The evidence of every witness should commence by stating his present occupation/profession and the period for which he is holding such occupation profession/appointment. He should then state his occupation/profession/appointment at that time when the incident about which he is giving evidence occurred. Thereafter all relevant facts within the knowledge should be written in a simple easily understandable English arranged chronologically. Where a witness does not know English, his evidence will be interpreted through an impartial interpreter. Witness will normally be allowed to narrate the facts in his own words, but if there is any vagueness, questions may be put by the officer recording the summary.
19. Vague expressions such as “Used obscene language” “adopted a threatening attitude”, admitted his guilt should not be used, but the conversation or action, if material, should be described in detail.
20. If the witness is entitled to express an opinion and does so he must given reasons for such opinion. This generally arises in cases of drunkenness or expert witnesses.
21. Leading questions should not be put to witnesses when matters which may be in dispute, or being dealt with.
22. All documents should so far as possible be produced in original. When it is not possible to be so, the witness producing a certified true copy should give an explanation as to the non-availability of the original and this explanation shall be recorded. All documents or other materials must be produced through a witness.
23. When a locally prepared plan or sketch would be of assistance, it should be produced as an exhibit.
24. The description of the place, situation or scene of accident should be brought out clearly as would enable a person who has not seen it to appreciate it.
25. Only admissible evidence, is to be recorded. Irrelevant and hearsay evidence is to be excluded.
26. Where a confession, whether verbal or in writing made by the accused is proved by a witness, it is to be ensured that the confession was made by the accused voluntarily and without any inducement, threat or promise. A confession made to a Police Officer (Including BAF Police/provost personnel) will not be admissible.

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27. Evidence should be recorded not only as to the offences charged with but also for any mitigating or aggravating circumstances involved in the case.
28. Evidence of every witness when complete (including cross-examination if any) will be read out and where necessary interpreted to the witness. Any alternations of corrections suggested by him will be made either in the body of the evidence or recorded at the end as may be appropriate.
29. Every witness will be required to sign at the bottom of each page on which his evidence is contained and also at the end of the evidence in acknowledgement of its accuracy and alternations and additions, if any.
30. Where evidence has been interpreted by an interpreter the fact should be stated. And a certificate to that fact by the interpreter must be attached.
31. Accused must be present throughout recording the evidence.
32. All witnesses who can identify the accused will be asked to do so and this fact will be recorded as a part of their evidence.
33. The following order will be adhered to, while recording the evidence of witnesses:
 - a. Prosecution witnesses will be examined first. Then the accused will be given an opportunity to cross-examine the witnesses and the questions an answer will be recorded.
 - b. After the evidence of all prosecution witnesses is over the accused must be cautioned as shown below, preferably in the presence of an independent officer, whose name shall be recorded in the proceedings. "Do you wish to make a statement ? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence".
 - c. If the accused is making a statement, it shall be recorded. But if the accused declines that fact will be recorded.
 - d. The accused thereafter be asked whether he wishes to produce any defence witness. His answer will be recorded.
 - e. If the accused wishes to call any witnesses in defence they will be called one by one and allowed to make statement. At the end of the statement by each witness, his statement will be read out and signed by him as in the case of prosecution witnesses.

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f. After all evidence is complete the officer recording the Summary of Evidence will append a certificate in the following terms :

“There being no (or no future) witnesses for the defence the Summary of Evidence is concluded ”.

“ Certified that foregoing Summary of Evidence consisting ofpages was taken down by me at(Unit/Section, on(date) (or from..... date todate) in the presence of the accused and that provisions of Rule 42 of the Air Force Act Rules, 1957 have been complied with”.

Place

Date

(Name in block letters)

Rank

Officer recording Summary of Evidence.

Making Up the Papers

34. Before handing over the completed S of E the officer recording must ensure that :

a. All pages containing the evidence as recorded are properly numbered and secured and that all pages containing the evidence are duly signed by witnesses and that all certificate have been properly entered.

b. That all exhibits produced have been given an identification letter that their production has been properly entered, that the identification letter has been entered in the margin, wherever appropriate, and that all exhibits have been attached to the proceedings in the order of their production.

c. All questions and answers throughout the summary have been numbered consecutively.

d. If there has been undue delay in the commencement/completion of the Summary of Evidence, explanation for such delay will be submitted separately, together with the completed Summary of Evidence.

Action after Completion of S of E

35. When the summary is completed the papers are made up by the officer taking the summary. In making up the papers the evidence of witnesses should be arranged in chronological order as far as possible. Witnesses for the prosecution are numbered consecutively and defence witnesses dealt with similarly.

36. Evidence should be recorded in the narrative form. As far as possible cross-examination should also be in the narrative form.

37. Each page must be numbered and the summary to be marked confidential. It is then submitted to CO.

Action by Commanding Officer (CO) (Rule 43)

38. The CO may take one of the following three courses of action :
- a. When the CO considers that the case should go forward for trial by court-martial he will submit an application for trial by court-martial. Or
 - b. Refer the case to the proper superior air force authority or
 - c. If the CO considers that there is a prima facie case, but he does not think it necessary to apply for trial by court-martial he may :
 - (1) Punish within his powers of punishment.
 - (2) Apply to higher authority for permission to deal with it under section 82 of the Act.
 - (3) Submit the case to be dealt with summarily under section 86 of the Act. Base Commanders (Group Captain and above) are authorised to dispose of cases under this section.

Additional Evidence

39. When the CO or any superior authority considers that additional evidence is required an additional S of E may be taken by the officer responsible for the original summary. This is in effect another summary, the same procedure as hitherto being used. The only difference lies in the fact that witnesses are given their original number and the words. "Being re-called" added to the introduction to their statements.

TOPIC-3

SALIENT FEATURES ON COURT-MARTIAL

Court-Martial

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

Types of Court-Martial

2. For the purposes of the Act there are three kinds of Court-Martial, that is to say:

- 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.

Convening auth of different Court-Martial

4. Every court-martial depends for its jurisdiction upon the order which calls it into being namely the convening order issued by a person authorised under the Act to convene it.

5. A general court-martial may be convened by the Chief of Air Staff or by an officer holding a warrant to convene such courts from the Chief of Air Staff.

6. A district court-martial may be convened by an officer authorised to convene a general court-martial or by an officer who has received from such officer a warrant authorising him to convene district court-martial.

Composition, Jurisdiction & Powers of different Court-Martial

7. **Composition.** A general court-martial 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). 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.

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

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9. Officers composing a general court-martial or district court-martial shall as far as possible, be drawn from different units or stations and in no case shall it consist exclusively of officer of the same unit as the accused.

10. A field general court-martial shall have at least three officers.

11. **Jurisdiction.** A general court-martial 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.

12. A district court-martial can try any person subject to the 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.

13. 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 (S 121).

14. **Powers.** A general court-martial can award any punishment authorised by the Act including death.

15. A district court-martial can award any punishment authorised by the Act other than death or imprisonment for a period higher than two years.

Procedure at Trial

16. **Assembly of Court**
(as a closed court)

Convening order
Charge Sheet and summary of
evidence laid before the court

First duty of the court is to satisfy themselves that the court is legally constituted is convened in accordance with the Act and the Rules (R-76).

Inquiry by court as to amenability of accused and validity of charge, ie the accused is amenable to Air Force Act and to the jurisdiction of the court and each charge discloses an offence under the Act and is framed in accordance with these rules (R 77).

Court Opens (Caps on)

- Prosecuting officer & defending officer appears. Accused and escort marched in. Witnesses and members of the public take their seats. Shorthand writer takes his seat.

Challenge of members of
court as required section
128 of Act (R 79)

No right to object to the prosecutor or
the judge advocate.

Swearing of members (R 80)

Swearing of Judge Advocate,

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officers under instruction &
shorthand writer/
Interpreter (R-81)

Arraignment of accused. Reading of the charges to the accused and requiring him to plead separately to each charge. (R 82). Objection to the charge by the accused (R 83).

- Special plea to the jurisdiction of the Court (R 85).
- General plea of 'Guilty or Not Guilty' (R 86)
- Plea in bar :
 - a. Previously convicted or acquitted of the offence.
 - b. Pardoned or condoned.
 - c. More than three years elapsed since the commission of the offence.

Plea of Guilty (R 88)	Plea of Not Guilty (R 90)
<ul style="list-style-type: none">- If the accused pleads guilty of the charge(s), the provisions of rule 86(2) are to be complied with.- The court having been re-opened, the accused is to be brought before it and the charge(s) to which he pleaded guilty is (are) to be read to him again.- Finding of guilty is to be announced.- Summary of evidence (if any) is to be read by the Prosecutor and to be attached to the proceedings.- The accused to be asked whether he wishes to make any statement in mitigation of punishment.- BAF Form 296 or Form 731 is to be produced by a competent witness.- Court closed for sentence- Sentence announced in the open court.- Any recommendation for mercy- Proceedings signed by President and dated. Court Adjourned sine die	<ul style="list-style-type: none">- If the accused pleads not guilty of the charge(s), the provisions of rule 90 are to be complied with.- The accused is to be asked whether he wishes to apply for an adjournment on the ground that any of the rules relating to the procedure before trial have not been complied with for that the accused have been prejudiced or on the ground that the accused did not get sufficient opportunity to prepare his defence.- The prosecutor will make his opening address.-The prosecutor will proceed to call prosecution witness (s).- Recording of prosecution evidence (Examination-in-Chief)- Cross-examination by the defending officer.- Re-examination by the prosecutor.- Questioned by the court- Questioned by the prosecutor (if any) through the court.- Questioned by the defending officer (if any) through the court.- Prosecution case closed

	<ul style="list-style-type: none">- Accused is to be asked whether he wishes to make a statement.- Accused is to be asked whether he intends to call any witness to the fact of the case or as to character.- If any witness is(are) called, the defending officer is to make an opening address and the witness(s) is (are) to be examined in the same manner as followed for prosecution.-If any witness is (are) called, the defending officer will make closing address first.- When no witness for defence is (are) called:- Statement of Accused- Closing address by prosecutor- Reply by Defending Officer- Summing up by Judge Advocate if any- Court closed for finding- Finding is announced in the open court.- BAF Form 296 or Form 731 is to be produced by a competent witness.- Court closed for sentence- Sentence announced in the open court.- Any recommendation for mercy- Proceedings signed by President and dated. Court Adjourned sine die
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TOPIC-4

COMMITTEE OF ADJUSTMENT AND BOARD OF OFFICERS UNDER SECTION 189

Appointment of Committee of Adjustment (COA)

1. A COA shall be appointed to deal with the public and private effect of an officer or warrant officer in any of the following circumstances:
 - a. When he dies.
 - b. When he deserts or after an absence of thirty days is declared by a board of inquiry assembled under section 106 of the Act to be illegally absent.
 - c. When he is ascertained to be insane; or
 - d. Being on active service, is officially reported missing.
2. **Officers Authorised to Appoint a COA.** The Committee shall be appointed by the Commanding Officer of the unit or detachment to which the officer or warrant officer belonged or was attached at the time of his death, desertion, illegal absence or insanity.

Composition of COA

3. The committee shall consist of three officers. When practicable, the president shall not be below the rank of Flight Lieutenant, or in case of an officer, below the rank of Squadron Leader.

Duties of COA

4. **Duties of COA.** The Committee shall immediately on appointment or as soon thereafter as practicable :
 - a. Collect and arrange for the safe custody of all movable property (including cash) and other effects of the deceased ;that may be found in camp or quarters.
 - b. Collect all items of service equipment, official publications or any other public property that may be found in quarters or amongst the effects of the deceased.
 - c. Ascertain and draw pay and allowances, if any, ;due to the deceased.
 - d. Ascertain if the deceased has left any money in any bank or institution receiving deposits in money.

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e. Ascertain if the deceased has left any will or other document of a testamentary nature.

f. Make out an inventory of property taken in possession in accordance with clauses (a) and (b) above and also a statement of account showing debts and credits of the deceased. The inventory and account shall be prepared in triplicate and shall be dealt with as hereafter directed.

g. The Committee shall take special care to secure and safeguard small items of intrinsic and sentimental value, such as orders, decorations and medals, watches, cameras, cigarette cases, lighters separately in the inventory.

Disposal of properties of deceased person and deserters other than Officers and JCOs under Sec189

5. **Payment of Service and Other Debts.** The Committee shall discharge all service and other debts in camp or quarters which are proved to their satisfaction and for which funds are available.

6. Expenses of his last illness and funeral shall be payable in preference to all other debts and liabilities. Other debts shall be payable in the following order :

a. Service Debts,

b. Servants' wages not exceeding two months wages to each servant,

c. Household expenses incurred within a month before the death or after the last issue of pay to the deceased whichever is the shorter period.

d. Other debts in camp and quarters.

e. The surplus left over shall be remitted to the person prescribed under sub-section (6) of section 193 of the Act.

7. **Sale of Effects.** In case the committee decides to sell all or any part of the moveable property of the deceased for the purpose of paying his service or other debts in camp or quarters, following procedure shall be followed :

a. The property shall be sold either by private sale or by fair and open auction. Such sale or auction shall be held in the presence of a member of the committee.

b. The committee shall in either case furnish a statement giving the particulars of the sale or auction together with a certificate that the sale or auction has been carried out in a manner most advantageous to the estate. Such statement shall be attached to the inventory.

c. The amount produced by sale shall be carried to the credit of the account.

d. Item of intrinsic or sentimental value such as order, decorations and medals, watches, cameras, cigarette cases, lighters rings and other such items shall not be sold.

8. **Procedure where the next of kin gives security for payment of debts under section 193(2) of the Act.** When the committee withdraws from interference in relation to the property of the deceased, inconsequent of the representative of the deceased, or his widow, or his next of kin, giving security for the payment of service and other debts in cap and quarters of the deceased, the committee shall forthwith forward together with inventory an account, a report of the facts and circumstances to Air Headquarters.

9. **Disposal of inventory and accounts.** The original and duplicate copy of the inventory and statement of account prepared in accordance with clause (f) of rule 196 above, shall be forwarded to Air Headquarters with utmost despatch. The triplicate copy shall be retained by the authority which appointed the committee.

10. **Procedure where deceased left will or any other document of testamentary nature.** When the deceased has left a will or any other document of testamentary nature a complete and authenticated copy of such document shall be attached to the inventory. The original shall be handed over to the commanding officer for self custody.

11. **Publication of notice by the prescribed person.**

a. The notice required to be published under clause (2) of Section 194 of the Act shall be in the form set out in Eight appendix to these rules with such variations as may be considered necessary.

b. The notice shall be published in the official Gazette and in two leading English dailies of the province in which the deceased ordinarily resided.

12. **COA in case of desertion or illegal absence.** In case of desertion or illegal absence of an officer or warrant officer the committee shall be composed and appointed in the like manner as in respective cases of death. The foregoing rules relating to the committee of adjustment in case of death, shall so far as they can be made applicable, apply to such cases.

13. **Application of sale proceeds for settlement of service and other debts.** The proceeds of the sale of the effects of the deserter and the pay and allowances drawn by the committee under clause (a) sub-section (I) of section 193 of the Act, shall be applied, so far as they extend, for purpose and in the order following, that is to say :

a. In payment of any debt due to the state on account of articles of public property made away with, or otherwise lost on desertion, and for any other debt that may be due to the public.

b. In payment of satisfaction of such other debt or liabilities of or claims against the deserter as the person prescribed under sub-section (7) of section 193 may think fit to allow, including any claims arising out of any criminal or wrongful act of the deserter.

14. **Repayment of residue to the deserter on surrendering or apprehension.** In case the deserter surrenders or is apprehended within three years from the date of desertion any balance left after the settlement of claims which may have been payable under rule 204 may be repaid to him.

15. **Lunatics.**

a. In cases of insanity, the committee shall be composed and appointed in the like manner as in the respective cases of death.

b. The foregoing rules relating to the respective case of death shall be applied in a case of insanity, except that whenever possible the sale of the effects shall be deferred until, in the case of an officer, he is removed from the active list, and in the case of a warrant officer until he is discharged and further that committee shall forth with remit the surplus remaining in their hands to the person prescribed under sub-section (6) of section 193 of the Act.

c. Person prescribed under sub-section (6) of section 193 of the Act shall with all convenient speed apply the surplus for the benefit of the officer or warrant officer to whom it belongs in such manner as he in his discretion thinks fit.

16. **The Manner of Ascertaining the Insanity of an Officer.**

a. The manner in which it shall be ascertained that an officer is insane shall be the finding of a board of officers composed of five officers of which two shall be officers of the medical branch and three of any other branch.

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Provided that, if five officers are not, having due regard to the exigencies of service, readily available, the board may consist of one officer of the medical branch and two officer of any other branch.

b. The finding of the Board shall be the finding of the majority of members constituting the Board.

c. The Board shall be constituted by order of the Chief of Air Staff.

17. **COA in cases of an Officer or Warrant Officer who being on active service is reported missing.** In case an officer or warrant officer who being on active service is officially reported missing, the committee shall be appointed in the like manner as in the respective cases of death. The foregoing rules relating to the committee of adjustment in cases of death shall, so far they can be made applicable, apply to such cases.

18. **The manner of ascertaining insanity of a person subject to the Act, other than an officer.**

a. The manner in which it shall be ascertained that an officer is insane shall be the finding of a board of officers composed of five officers of which two shall be officers of the medical branch and three of any other branch.

b. Provided that if five officers are not, having due regard to the exigencies of service, readily available, the board may consist of one officer of the medical branch and two officers of any other branch.

c. The finding of the Board shall be the finding of the majority of members constituting the Board.

d. The Board shall be constituted by order of the Chief of air Staff.

19. **disposal of medals and decorations.** The orders, decorations and medals of an officer, or warrant officer, or airmen dying in the service, whether issued before or after his death, shall be disposed of as follows :

a. If there is a will they shall be sent to the person in the opinion of the commanding officer, in case of airman, and the committee of adjustment, in case of officers and warrant officers, is named in the will as being intended to receive them, or is a general or residuary legatee of the estate.

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b. In default of subject to any such testamentary disposition, they shall be sent to the next of kin in the following order of relationship:

- (1) Widow,
- (2) Eldest surviving son,
- (3) Eldest surviving daughter,
- (4) Father,
- (5) Mother,
- (6) Eldest surviving brother,
- (7) Eldest surviving sister,
- (8) Eldest surviving half-brother,
- (9) Eldest surviving half-sister,
- (10) Or any relative or interested party who in the opinion of the COAS will preserve with due care as a memorial of the deceased.

TOPIC-5

CHARGE & CHARGE-SHEET AND ORDERLY ROOM PROCEDURE

Definition of Charge & Charge-Sheet

1. A charge means an accusation contained in a charge sheet that a person subject to the act has been guilty of an offence. A charge – Sheet shall contain the whole issue or issues to be tried by a court martial at one time. A charge sheet may contain one charge or several charges. It is a detailed written statement of offence and an accusation that a person subject to Air Force Act is guilty of an offence
2. The charge sheet is usually prepared by the commanding officer or adjutant of the accused unit but in case of trial by general or district court martial rule 66 makes the convening officer responsible for its correctness. It must be signed by the officer in actual command of the unit to which the accused belongs on the day on which he is remanded for trial. If trial is ordered the order must be added at the foot and signed by or by a staff officer for the convening officer.

Commencement and Contents of Charge-Sheet

3. It is necessary that a formal charge-sheet is framed against the accused before a summary of evidence is ordered. The term “informal charge” refers to a charge drawn up on Form 252. “Formal charge-sheets” is the one made out according to the rules and in the form provided in Air Force Act Rules.
4. A formal charge-sheet consists of four parts:
 - a. **Commencement of the charge-sheet.** Every charge-sheet shall begin with the name and description of the person charged and state in the case of an officer, his rank, name and unit and in the case of a Warrant Officer, or other enrolled person, his number, rank, name and unit. That he belongs to the regular Air Force will also be stated. When the accused does not belong to the regular Forces the charge-sheet will show by the description of him or directly by an express averment that he is subject to the Air Force Act in respect of the offence charged. If the accused person has been attached to another unit for the purposes of the trial, the description should show the fact by stating it. The description of the accused shows firstly that he is subject to the Air Force Act and is thus tribal by a court-martial and, secondly, that the officer signing the charge-sheet is his Commanding Officer. Any omission in the description on the above two points will have the effect of making the charge-sheet had in law.
 - b. **Contents of charge.** Each charge shall state one offence only and in no case should an offence be described in the alternative in the same charge. Each charge shall be divided into two parts:
 - (1) **Statement of the offence.** The particulars shall state such circumstances respecting the alleged offence as well enable the assused to know what act, neglect or omission is intended to be proved against him as constituting the offence. The particulars in one charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part

of the first mentioned charge as well as of the other charge. In any case, statement of particulars should include sufficient circumstances to cover all ingredients of the offence.

and

(2) **Statement of the particulars of the offence.** The offence is to be stated, if not a civil offence, in the words of the Air Force Act, and, if a civil offence, in such words as sufficiently describe the offence, but not necessarily in technical words. This is to show what offence exactly has been alleged against the accused according to the Air Force Act or the laws of the land. Any mistake in putting down the offence may vitiate the charge-sheet, if what is stated does not describe any offence under any statute or describe one of the offences not punishable by a court-martial.

c. **Signature and designation of the Officer Commanding (OC).** The charge-sheets must be signed by the OC of the accused personally and not 'for' him. When attached, unit of the accused will be read as, for example, "Air Force Base, Tikatali attached to Air Force Base Madhulhali" and the charge-sheet will be signed by the OC/AOC, Air Force Base Madhukhali and not by OC/AOC, Air Force Base, Takatali.

d. **Date and place of signature.** Date and place of signature must be stated. Date must not be the date on which the trial commences, for it will show that the accused was not given sufficient warning before the trial.

Avoid Multiplicity of Charge

5. It is undesirable and unfair to the accused to record in his documents conviction for offences which, in reality, form part of one transaction, or conviction for minor offences which accompany the commission of a serious offence. Preferring of several charges in the hope that conviction on some will result shows insufficient investigation and lack of confidence in the evidence. Frame charges in respect of comparatively serious offences and give up minor ones.

Beware of Duplicity

6. If two separate and distinct offences even of the same kind are included in one charge, the charge may be bad in law. Neither the statement of offence nor the statement of particulars should show more than one offence. The following are examples of duplicity:

- a. Using criminal force and assaulting his superior officer (Section 40(a)).
- b. Two distinct offences of using criminal force to the same NCO (Section 40(a)).

Beware of Vagueness and Uncertainty

7. Not only must the particulars contain averments of all the ingredients necessary to constitute the offence charged but the particulars must be such as to inform the court of the facts which it is called upon to try and the accused of the allegations which he has to meet. The statement of particulars should state shortly in ordinary language what the accused is alleged to have done. Where a state of mind (eg intention or knowledge) is an essential ingredient of an offence, such state of mind should be stated. Vague statements or incomplete statement of particulars may make the charge bad in law. But a mere technical difference in words may not quash the charge, if taken as a whole it informs the accused of the allegations he is called upon to meet, and the offence for which he is arraigned. The

following particulars are some of the examples which will necessitate the charge to be quashed for being vague or uncertain :

- a. In the statement of the offence it was mentioned, "Using threatening or insubordinate language to his superior officer".
- b. Section 42(e) "Neglecting to obey station orders, in that he, at on disobeyed Station Standing Orders, viz Orders for Guards and Sentries" Quashed on the ground that it was not averred which particular orders the accused neglected to obey.
- c. Section 65 - " Act prejudicial to good order and Air Force discipline, in that he at on did willfully make a false answer to his superior officer". Quashed on the ground that the particulars did not specify either the statement alleged to be false or the person to whom it was alleged to have been made.

Alternative Charges

8. Alternative charges may be framed if in doubt whether the offence capable of being proved by legal evidence is more accurately describe by one word or expression or by another in a particular section or sections of the Act. Each charge, being alternative to the other, will contain only one of the words or expressions which appears to be applicable to the facts as capable of proof. Alternative charges should not however, be framed as a matter of course, and are often unnecessary if the case has been properly investigated.

Other Points

9. Other points to be taken into consideration while framing charge-sheet are :

- a. If it is desired to try jointly two persons of different units, one should be attached to the unit of the other. The names of all the accused are to be mentioned in the description of the accused. It is not necessary that every one of the accused person must be charged with every offence shown, if the charge-sheet contains more than one charge. An annotation at the margin should show which of the accused are alleged to have committed the relevant offence.
- b. When there are more than one charge, they should be recorded in the order of their seriousness, the most serious charge as the first charge. Each charge is to state one offence only.
- c. Where the offence has resulted in any damage, loss or expense to the Government or other property, and such damage, loss or expense is desired to be recovered from the accused through a penal deduction to be ordered by court-martial, the extent of such damage, loss or expense must be included in the statement of the particulars giving the exempt amount.
- d. The statement of particulars of the charge should not contain the evidence by which it is intended to prove the allegation. For example, on a charge of using insubordinate language, it is not necessary to state the names of the witnesses before whom it was used. Only the words alleged to have been spoken must be stated.

- e. The charge-sheet must be framed in accordance with the form laid down in the Schedule of Air Force Rules 1957.
- f. Sufficient place is to be left in the charge-sheet below the signature of the Commanding Officer for orders by the convening officer to be endorsed where necessary.

One or More Charge-sheets

10. It is difficult to lay down any definite rules as to the placing of several charges against the same accused in one or several charge-sheets. Much will depend upon the circumstances of each particular case. But the following general principles may be followed in this respect :

- a. Alternative charges must not be placed in different charge-sheets.
- b. A series of offences forming part of one escaped should normally be placed in a single charge-sheet.
- c. Repeated instances of offences of the same or similar character should be included in a single charge-sheet, eg a series of barrack-room thefts from comrades during a short space of time.
- d. Offences of different descriptions should be entered in separate charge-sheets except where they form part of or are relevant to one transaction, or where the facts of each case are simple.

Joint Charges

11. A number of accused 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 m\similar character.

Charge-sheet for Joint Trial

12. Where two or more persons are concerned together in the commission of a crime they should be charged jointly though a separate summary of evidence may be recorded against each of the accused persons if so desired Joint charges should invariably be framed where offences such as assault burglary, indecent, mutiny, conspiracy etc, are committed jointly.

13. The following are examples of offences which cannot be tried jointly :

- a. Section 36(d) - Being sentries quitting their (separate posts. Separate offences of the same kind are committed in that one sentry leaves one post and another sentry leaves another post.

- b. Section 54(d) - Losing by neglect their arms. Essence of the offence is that each man lost his own arm. Such an offence is distinct and cannot be committed collectively.

Reference to charge to higher authority

14. A commanding officer of an accused can refer the case to the higher authority if he thinks that the offender deserves more/sever punishments which he can not inflict as per the provision of rule 49. A case can also be refer to superior auth following the provisions of rule 43 after recording a Summary of evidence. After due consideration on the summary of evidence a commanding may chose one of the following actions:

- a. remand the accused for trial by court martial or
- b. refer the case to the proper superior air force authority or
- c. if he thinks it desirable re-hear the case and dispose of it summarily.

15. When a Commanding Officer submits to higher authority a charge against an officer, JCO or airman with a view to his trial by court-martial, he is to send to the higher authority the documents relevant to the case.

Orderly Room Procedure

16. A person subject to 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 AF 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 when regard had to the merits of the case, ends of justice and discipline can be met by dealing with it summarily or when it is not likely that a Court-Martial will award a more severe punishment compared to one that can be awarded at summary disposal.

17. 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 MWO/SWO/WO and officers (up to the rank of Flight Lieutenant) wherein the formal charge is to be preferred.

18. The procedure to be followed during the investigation of the charge by a Commanding Officer or subordinate is known as the "Orderly Room Procedure". This is outlined in the following paragraphs.

- 19. a. **Preliminaries.** Immediately before the investigation the Adjutant is to satisfy himself that all is in order and that the witness are standing by.
- b. When ready the Base Legal officer/Adjutant is to report to the Commanding Officer that the charge is ready for investigation. This should be done sufficiently earlier than the time fixed for Commanding Officer's orderly Room.
- c. The Commanding Officer will wear the Peck Cap.

20. **Marching in.** The escort accused and airmen witnesses are to be marched in that order by the Base/Unit Warrant Officer and civilian witnesses, if any, should be asked to go in next. The accused is to be deprived of his cap and any other articles that he could use as missiles, before he is marched in.

Reading of Charge. The trying officer is to read out the particulars of the accused and confirm that they are correct and then read the charge eg BD/23456 AC2 ' X ' is that your correct number rank and name ? You are charged on (date at(place) with failing to report for Guard Duty etc. The accused is asked whether he understands the charge.

22. **Withdrawal of Witnesses.** When the Commanding Officer is satisfied that the accused has understood the charge all witnesses except the first to be examined are marched out. Officer, Warrant Officer and civilian witnesses are asked to retire.

23. **Hearing of Evidence.** The Procedure for hearing the evidence is :

- a. The evidence of the first witness is heard.
- b. The accused cross-examines the witness if he so desires to elicit more information to bring out the truth and to test his veracity.
- c. The witness is questioned by the Commanding Officer if any points need clarification.
- d. The witness is marched out or retires.
- e. The accused may, if he so desires, then given statement in his defence, if may be oral or in writing.
- f. The accused may, if he so desires, then give statement in his defence. If may be oral or in writing.
- g. The accused may call witnesses in his defence, if he so desires. They are called in one by one at a time and examined in the same manner as witnesses against the accused except that there will obviously be no cross-examination.

Note : The Commanding Officer trying the charge or conducting the trial will act with great fairness towards the accused. He should make the accused feel that he is being perfectly fair and should give the accused every help and consideration in enabling him to put forward his defence. It is equally important that justice should appear to be done as that it should in fact be done.

24. **Course of Action.** One of the following courses of action may be adopted by the Commanding Officer/Specified officer, when the evidence for and against the accused has been given.

a. **By Commanding Officer :**

- (1) Dismiss the case.
- (2) Award punishment within the powers conferred by Air Force Act Section 82 read with Air Force Rule 49.
- (3) Remand the case for further evidence.
- (4) Remand the case to the Commanding Officer for being heard by him.

25. **Finding of Guilty or Not Guilty**

a. **Guilty.** If the accused is found guilty, the Commanding Officer consider the punishment in the light of the accused's conduct sheet. The punishment is announced to the accused and is recorded under the punishment columns of the appropriate (Form 281 and 161 in the case of Commanding Officer and Forms (252 & 281) in the case of specified commander). Before awarding the punishments the Commanding Officer should ensure that the charge does not fall within the Section for which previous sanction of the superior authority is necessary (Air Force Act Section 83).

b. **Not Guilty.** If the accused is found not guilty, the decision is announced to the accused and the words "case dismissed" is to be written on the Form 252 or Form 161 or Form 281 as the case may be.

Note : The officer trying the charge may dismiss a charge, if he considers that the evidence is doubtful, or that the case is trivial or in the exercise of his discretion for any reason, e.g the good character of the accused.

26. **March Out.** Immediately the decision is pronounced, the BWO/UWO should march accused out.

Investigation - General Rules

27. Base Legal Officer/Adjutant is responsible for bringing the accused before Commanding Officer/Specified officer for investigation without delay. The charge should in the first instance be heard by the specified officer.

28. A definite and regular time should be fixed for hearing charges. The investigation by commander should be so fixed as to allow the case to be heard by the Commanding Officer on the same day if remanded. These timings are published in Base Standing orders.

Search

29. If it is felt a search is to be carried out it should be done in the presence of the accused and before he is brought to trial. The following rules, among other, are to be strictly observed while conducting a search :

- a. If the person to be searched is an officer, the search must be carried out by an officer.

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- b. Search of an airman or his kit must be carried out in the presence of an officer and the airman.
 - c. If the person to be searched is a civilian, the search must be conducted by or in the presence of disinterested witness.
 - d. If the person to be searched is a female, the search must be conducted by a female after securing due privacy.
30. **BAF F 252 - Charge-sheet.** Form 252 is to contain a statement of all alleged offence signed by the person preferring the charge.
31. **BAF F 161 - Guard Report.** Form 161 is used to record details of offenders held in custody or the charges summarily disposed of by the Commanding Officer. Note that there is no Guard Report in respect of those who are not kept in Guard Room while in close arrest (Sergeant and above), and those who are not placed in close arrest.
32. **BAF Form, 281 Minor Offence Report :**
- a. When a charge is heard by a specified officer, Form 281 is raised and sent to the Commanding Officer weekly to enable him to check the legality and consistency of the awards made by the subordinate commander.
 - b. A consolidated Form 281 showing all the charges disposed off by Commanding Officer is to be sent to Air Headquarters weekly for scrutiny by Air Headquarters.

Framing of Charge for Summary Disposal

33. As a rule, the charge should be preferred by the superior officer who has seen the offence being committed or to whom a report has been made in the ordinary course.
34. A charge for summary disposal should simply state the facts and not the legal implication.
35. It is rarely necessary to use the words such as 'act/omission prejudicial against good order and Air Force Discipline' in that he' and it is wholly wrong to use them as sufficient statement of offence without adding specific facts e.g negligence/neglect of duty etc.