THE ARMY ACT, 1950

(Act XLVI of 1950)

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Army Act, 1950.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

NOTE

The AA came into force on 22 July 1950. See Government of India. Notification S.R.O. 120 dated 22 July 50 (Reproduced in Part IV).

2. Persons subject to this Act.—(1) The following persons shall be subject to this Act wherever they may be, namely**:—**

(a) officers, junior commissioned officers and warrant officers of the regular Army;

(b) persons enrolled under this Act ;

(c) persons belonging to the Indian Reserve Forces;

(d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;

(e) officers of the Territorial Army, when doing duty as such officers and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under sub-section (1) of section 9 of the Territoria1 Army Act, 1948 (LVI of 1948);

(f) Persons holding commissions in the Army in India Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;

(g) officers appointed to the Indian Regular Reserve of Officers, when ordered on any duty or service for which they are liable as members of such Reserve forces;

(h) (Omitted).[1]

(i) persons not otherwise subject to military law, who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular Army.

(2) Every person subject to this Act under clauses (a) to (g)[2], sub-section (1) shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service.

NOTES

1. sub-sec. (1).—"Wherever they may be"; The AA which is a special law has extra-territorial application in as much as a person subject to it continues to be so subject at all times irrespective of the place where he is serving e.g. whether he is in India or otherwise. His liability to punishment under the Act therefore remains unaffected by the place where he commits the offence.

---

[1] Omitted by adaptation of Laws (No. 3) Order, 1956.

[2] Substituted by adaptation of Laws (No. 3) Order, 1956

2. Clause (a).—For the definition of 'officer', 'JCO', 'WO', and 'Regular Army' see AA s. 3(xviii), (xii), (xxiv) and (xxi) respectively.

3. Clause (b).—"Persons enrolled" see AA. ss. 13, 14 and 15.

4. Clause (c).—(The Indian Reserve forces consist of the Regular Reserve and the Supplementary Reserve). Persons belonging to the Indian Reserve forces are subject to the AA at all times until duly discharged or dismissed. S. 5 of the Indian Reserve Forces Act 1888 and rule 3B of Indian Reserve Forces Rules, 1925 refer.

5. Clause (d).—Indian Supplementary Reserve Force is no more in existence and there is no class of persons who are subject to the AA under this clause.

6. Clause (e).—The term 'Officers of the Territorial Army' includes JCOs of that Army as well: S. 2(b) of T. A. Act, 1948.

For the 'adaptations and modifications' made to AA, see rule 24 of the T.A. Act Rules, 1948 and Schedules II and IIA thereto (Reproduced in Part III).

7. Clause (f).—Army in India Reserve of Officers force is no more in existence and there is no class of officers subject to the AA under this clause.

8. Clause (g).—Personnel mentioned in this clause are subject to the AA only when ordered on duty or service for which they are liable as members of such reserve forces. Officers of the regular Army who retire on pension or gratuity have a liability to serve in the Reserve until they reach the specified age limits.

9. Clause (i).—Persons commonly known as 'followers' are not ordinarily subject to AA unless they have been enrolled under it, but in the interest of discipline and security it is obviously necessary that they and other civilians who accompany any portion of the regular Army should be subject to military discipline on active service and in certain other circumstances. This clause provides for such subjection.

All persons, including civilian officers and subordinates, who are subject to AA under this clause are deemed to be of a rank inferior to that of a non-commissioned officer, unless the Central Government have under AA. s. 6 (1) issued a notification regarding the manner in which such persons shall be so subject: see AA. s. 6. and Government of lndia Notification S.R.O. 325 of 1975 (reproduced in part IV) under which civilian Government servants are classified as Officers, JCOs. WOs and NCOs according to their total monthly emoluments; the status so conferred is personal, and does not give them power of command over others nor does it make them 'superior officers' within the meaning off the AA.

Further subjection of civilians in Government service to AA under this clause does not preclude their being dealt with departmentally under their civil, disciplinary regulations but if they are dealt with under military law, the procedure must be in accordance with the AA and AR.

10. "Active service": see AA. s. 3(i).

Regular Army: see AA. s. 3(xxi).

11. Sub-sec. (2)—A person subject to the AA cannot terminate his subjection unilaterally : cessation of such subjection must take place in one of the ways mentioned in this sub-sec.

12. 'Duly retired', 'discharged' etc.—-See chapter IV of the AA and ARs 13 to 18. For cashiering and dismissal as a court-martial sentence see AA. s 71 and AR 168. If a sentence of dismissal is combined with a suspended sentence of imprisonment, the dismissal does not take effect until so ordered by the authority or officer specified in AA. s. 182, Also see AA, s 190(1).

3. Definitions.—In this Act, unless the context otherwise requires,

(i) "active service", as applied to a person subject to this Act, means the time during which such person—

(a) is attached to, or forms part of, a force, which is engaged in operations against an enemy, or

(b) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or

(c) is attached to or forms part of a force which is in military occupation of a foreign country;

(ii) "civil offence" means an offence which is triable by a criminal court;

(iii) "civil prison" means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894 (IX of 1894), or under any other law for the time being in force;

(iv) ("Chief of the Army Staff" means the officer commanding the regular Army;) [1]

(v) "commanding officer", when used in any provision of this Act, with reference to any separate portion of the regular Army or to any department thereof, means the officer whose duty it is under the regulations of the regular Army, or in the absence of any such regulations, by the custom of the service to discharge with respect to that portion of the regular Army or that department as the case may be, the functions of a commanding officer in regard to matters of the description referred to in that provision;

(vi) "corps" means any separate body of persons subject to this Act, which is prescribed as a corps for the purposes of all or any of the provisions of this Act;

(vii) "court-martial" means a court-martial held under this Act;

(viii) "criminal court" means a court of ordinary criminal justice in any part of India; ( )[2]

(ix) "department" includes any division or branch of a department ;

(x) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to military law to act;

(xi) "the Forces" means the regular Army, Navy and Air Force or any part of any one or more of them;

(xii) "junior commissioned officer" means a person commissioned, gazetted or in pay as a junior commissioned officer in the regular Army or the Indian Reserve Forces, and includes a person holding a junior commission in the' Indian supplementary Reserve Forces, or the Territorial Army ( )[3] who is for the time being subject to this Act;

(xiii) "military custody" means the arrest or confinement of a person according to the usages of the service and includes naval or air force custody;

(xiv) "military reward" includes any gratuity or annuity for long service or good conduct good service pay or pension and any other military pecuniary reward;

(xv) "non-commissioned officer" means a person holding a non-commissioned rank or an acting non-commissioned rank in the regular Army or the Indian Reserve Forces and includes a non-commissioned officer or acting non-commissioned officer of the Indian supplementary Reserve Forces or the Territorial Army ( )[3] who is for the time being subject to the Act;

(xvi) "notification" means a notification published in the Official Gazette;

(xvii) "offence" means any act or omission punishable under this Act and includes a civil offence as here-in-before defined,

(xviii) "officer" means a person commissioned, gazetted or in pay as an officer in the regular Army, and includes—

(a) an officer of the Indian Reserve Forces;

(b) an officer holding a commission in the Territorial Army granted by the President with designation of rank corresponding to that of an officer of the regular Army who is for the time being subject to this Act ;

---

[1] Substituted by Act No. 19 of 1955.
[2] Omitted by Act No. 13 of 1975.
[3] Omitted by Adaptation of Laws (No. 3) Order, 1956.

(c) an officer of the Army in India Reserve of Officers who is for the time being subject to this Act ;

(d) an officer of the India Regular Reserve of Officers who is for the time being subject to this Act ;

(e) (Omitted)[1];

(f) in relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of the Navy or Air Force ;

but does not include a junior commissioned officer, warrant officer, petty officer or non-commissioned officer;

(xix) "prescribed" means prescribed by rules made under this Act ;

(xx) "provost-marshal" means person appointed as such under section 107 and includes, any of his deputies or assistants or any other person legally exercising authority under him or on his behalf;

(xxi) "regular Army" means officers, junior commissioned officers, warrant officers, non-commissioned officers and other enrolled persons who, by their commission, warrant, terms of enrolment or otherwise, are liable to render continuously for a term military service to the Union in any part of the world, including persons belonging to the Reserve Forces and the Territorial Army when called out on permanent service;

(xxii) "regulation" includes a regulation made under this Act ;

(xxiii) "superior officer", when used in relation to a person subject to this Act, includes a junior commissioned officer, warrant officer and a non-commissioned officer; and, as regards persons placed under his orders, an officer, warrant officer, petty officer and non-commissioned officer of the Navy or Air Force;

(xxiv) "warrant officer" means a person appointed, gazetted or in pay as a warrant officer of the regular Army or of the Indian Reserve Forces, and includes a warrant officer of the Indian Supplementary Reserve Forces or of the Territorial Army (....)[1] who is for the time being subject to this Act;

(xxv) all words (except the word India)[2] and expressions used but not defined in this Act and defined in the Indian Penal Code (Act XLV of 1860) shall be deemed to have the meanings assigned to them in that Code.

NOTES

1. *Clause (i): Enemy*.—See clause (x).

2. Persons subject to the AA may be on active service even before embarkation for the seat of operations if the circumstances are such that they can reasonably be held to be attached to or form part of such a force as is specified in this clause or to be on the line of march to a country or place wholly or partly occupied by enemy.

A person is on the line of march from the time he parades for the original march until he arrives at his ultimate destination.

3. Termination of a state of war between the Union and an occupied enemy country would not *ipso facto* prevent troops occupying that country from being on active service for the purposes of this clause provided they are in fact occupying that foreign country. In order to ascertain whether such troops are 'on active service' or not, regard must be had to all the circumstances involved. Where there is any doubt as to whether or not troops are on active service for the purposes of this clause, a declaration should be made under AA. s. 9.

4. *Clause (ii): Offence.*—See clause (xvii).

Criminal court: see clause (viii).

5. *Clause (iii)*.—See notes to AA. s. 24.

---

[1] Omitted by the Adaptation of Laws (No. 3) Order, 1956.
[2] Added by Act 13 of 1975

6. Criminal prisoner means any prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction or by order of a court-martial: [The Prisons Act 1894, s. 3(2)].

7. *Clause (iv).*—The term 'Commander in Chief' was replaced by the term 'Chief of the Army Staff' w.e.f. 7 May 55; see The Commanders-in-Chief (change of Designation) Act, 1955 (No. 19 of 1955) and Govt. of India, Ministry of Defence Notification SRO 2/E dated 7 May 55.

Regular Army.—See clause (xxi).

8. *Clause (v).*—An officer as defined in clause (xviii) can be a Commanding Officer within the meaning of this clause.

It has been left to the Regs. or in their absence to the custom of the service to specify the officer whose duty it is to discharge the functions of a commanding officer in regard to any particular provisions; see Regs Army and notes to AA. s. 116.

9. *Clause* (vi): *Prescribed.*—See AR 187,

10. Clause (vii).—See notes to AA. s. 60.

11. *Clause (viii): India.*—See Art. (I) of the Constitution. See also notes to clause (ii) above.

12. *Clause (x).*—The term "enemy" would include a soldier 'running amok' see Regs Army para 351.

13. *Clause (xi).*—The term 'the Forces' means the Armed Forces of the Union referred to in Art 72(2) of the Constitution.

14. *Clause (xii).*—Regular Army: see clause (xxi).

"Commissioned, Gazetted or in pay" : existence of any one of these conditions makes him subject to the AA as a JCO.

15. *Clause (xiii).*—As to arrest and confinement and release therefrom, see Regs for the Army paras 391 to 397.

16. 'Confinement' would include confinement in the unit quarterguard or detention in barracks while undergoing a sentence of imprisonment under AA. s. 80 or 169(3) or detention under AA. s. 80.

17. *Clause (xiv).*—A war gratuity is thus a military reward but a medal or decoration is not.

18. A military reward can be forfeited in the circumstances specified in the rules governing it but not as a court-martial sentence.

19. *Clause (xv).*—As an acting NCO is legally a NCO within the meaning of this clause, the punishments specified in clauses (a), (b), (c) or (j) of AA. s. 80 cannot be awarded to him but he can be awarded a severe reprimand or reprimand under clause (g) of the said section or under clause (i) of AA. s. 71. But see note 14 to AA. s. 71.

Only attested persons are eligible for non-commissioned ranks: AA. s. 16.

20. *Clause (xvii)*—Every civil offence is deemed to be an offence against the AA. See AA. s. 69.

21. *Clause (xviii).*—-An officer holds a commission from the date notified in the official gazette and not from the date on which the commission is issued to him.

For conditions prescribed under sub-clause (f) see AR 188.

The term 'officer' unlike the T A Act 1948, does not include a JCO.

22. *Clause (xxi).*—The distinction between the regular Army and other forces is that persons belonging to the regular Army are liable to serve continuously for a term in any part of the world. Reservists or TA personnel become a part of the regular Army only when called on permanent service under the circumstances provided in sub-sec. (d) and (e) of AA. s. 2 (1).

23. *Clause (xxii).*— The term 'regulation', would appear to include a non-statutory regulation.

24. *Clause (xxiii).*—-Although an officer of the Navy or Air Force cannot exercise command in general over persons subject to the AA or be subject to command by such persons unless such officer is serving under prescribed conditions (clause (xviii); (f), an officer, WO etc. of the Navy or Air Force is a 'superior officer' as regards person placed under his command.

25. *Clause (xxiv).*—Indian supplementary Reserve Forces: see Note 5 to AA s. 2.

CHAPTER II

SPECIAL PROVISIONS FOR THE APPLICATION OF ACT TO CERTAIN CASES

4. Application of Act to certain forces under Central Government.—(1) The Central Government may by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in India under the authority of that Government (**)[1] and suspend the operation of any other enactment for the time being applicable to the said force.

(2) The provisions of this Act so applied shall have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to this Act holding in the regular Army the same or equivalent rank, as the aforesaid persons hold for the time being in the said force.

(3) The provisions of this Act so applied shall also have effect in respect of persons who are employed by or are in the service of or are followers of or accompany any portion of the said force as they have effect in respect of persons subject to this Act under clause (i) of sub-section (1) of Section 2.

(4) While any of the provisions of this Act apply to the said force, the Central Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of the said force.

NOTES

1. AA has sbeen applied to the following forces :—

S. No.	Force	Gazette Notification No. and date	With or without modification
(i)	Assam Rifles	SRO 117 of 28 Mar 60 and 318 of 6 Dec. 62 as amended by SRO 325 of 31 Aug 77.	With modifications.
(ii)	Civil General Transport Companies	SRO 122 of 22 Jul 50 as amended by SRO 282 of 17 Aug 60.	With modifications.
(iii)	General Reserve Engineer Force	SROs 329 and 330 of 23 Sep 60	Without modifications
(iv)	Rashtriya Rifles	SRO 151 of 30 Jul 91	Without modifications

2. The equivalent ranks of these forces viz-a-viz regular Army are given in the SROs shown below:-

S. No.	Force	Gazette Notification No. and date
(i)	Assam Rifles	SRO 325 of 29 Sep 75.
(ii)	Civil General Transport Companies	SRO 1255 of 07 Nov 53 as amended by SRO 126 of 11 Apr 61.
(iii)	General Reserve Engineer Force	SROs 1001 of 20 May 61 as amended by SRO 993 of 04 May 62.

3. The above SROs have been reproduced in part IV of the manual.

5. (Omitted)[1]

[1] Omitted by the Adaptation of Laws (No. 2) Order, 1956.

6. Special provision as to rank in certain cases.—(1) The Central Government may by notification, direct that any person or class of persons subject to this Act under the [clause (i) of sub-section (1) of section 2][1] shall be so subject as officers, junior commissioned officers, warrant officers or non-commissioned officers and may authorise any officer to give a like direction and to cancel such direction.

(2) All persons subject to this Act other than officers, junior commissioned officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

NOTES

1. See notes to AA. s. 2(1)(i).

2. See SRO 325 of 29 Sep 75 reproduced in part IV.

7. Commanding officer of persons subject to military law under clause (i) of sub-section (1) of section 2.—(1) Every person subject to this Act under [clause (i) of sub-section (1) of section 2][1] shall, for the purposes of this Act be deemed to be under the commanding officer of the corps department or detachment, if any, to which he is attached, and, if he is not so attached, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person for the time being is serving, or any other prescribed officer or if, no such officer is named or prescribed under the command of the said officer commanding the force.

(2) An officer commanding a force shall not place a person subject to this Act under [clause (i) of sub-section (1) of section 2] under the command of an officer of rank inferior to that of such person, if there is present at the place where such person is any officer of a higher rank under whose command he can be placed.

NOTES

1. Sub-sec. (1) has reference to the powers of a CO e.g. investigation by the CO, trial by SCM, summary proceedings under AA s. 80 and 85 etc.

2. For prescribed officer, see AR 189.

8. Officers exercising powers in certain cases.—(1) Whenever persons subject to this Act are serving under an officer commanding any military organisation not in this section specifically named and being in the opinion of the Central Government, not less than a brigade, that Government may prescribe the officer by whom the powers, which under this Act may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised.

(2) The Central Government may confer such powers, either absolutely or subject to such restrictions, reservations, exceptions and conditions as it may think fit.

9. Power to declare persons to be on active service—Notwithstanding any thing contained in clause (i) of section 3, the Central Government may, by notification, declare that any person or class of persons subject to this act shall, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, be deemed to be on active service within the meaning of this Act.

NOTES

Relevant SROs are reproduced in part IV.

---

[1] Substituted by Act 56 of 1974.

CHAPTER III

COMMISSION, APPOINTMENT AND ENROLMENT

10. Commission and appointment.—The President may grant to such person as he thinks fit, a commission as an officer, or as junior commissioned officer or appoint any person as a warrant officer of the regular Army.

NOTES

1. 'Such persons as he thinks fit': even an alien or a female may be granted a commission as an officer or JCO or appointed as a WO.

2. A commission or appointment is strictly speaking not a contract as its grant or termination/ withdrawal is not legally dependent on the consent of the grantee.

11. Ineligibility of aliens for enrolment.,— No person who is not a citizen of India shall except with the consent of the Central Government signified in writing, be enrolled in the regular Army :

Provided that nothing contained in this section shall bar the enrolment of the subjects of Nepal in the regular Army.

NOTES

1. Regular Army see AA. s. 3(xxi).

2. The following persons can be enrolled.

(a) A citizen of India (see Arts 5-11 of the Constitution and Citizenship Act. 1955);

(b) A subject of Nepal;

(c) An alien, with the written consent of the Central Government;

(d) A female, though a citizen of India, a subject of Nepal or an alien who has obtained the written consent of the Central Government is only eligible for enrolment or employment in such corps., department etc., of or any service auxiliary to the regular Army as specified in AA. s. 12.

3. A non-eligible person can however be deemed to be duly enrolled under AA. s 15 if he satisfies the conditions set out therein.

4. **Enrolment Boys**: Being enrolled, the boys are subject to all the provisions of the AA and may legally be tried and punished by a court-martial or summarily. They may also be awarded minor punishments specified for boys. (see Regs Army para 443 (c) and item VI of the table annexed thereto).

The boys cannot be punished under AA for offences committed before enrolment.

12. Ineligibility of females for enrolment or employment.—No female shall be eligible for enrolment or employment in the regular Army, except in such corps, department, branch or other body forming part of or attached to any portion of, the regular Army as the Central Government, may, by notification in the Official Gazette, specify in this behalf:

Provided that nothing contained in this section shall affect the provisions of any law for the time being in force providing for the raising and maintenance of any service auxiliary to the regular Army or any branch thereof in which females are eligible for enrolment or employment.

NOTES

1. This section has been enacted under the provisions of Art 16(3) of the constitution.

2. Department: see AA. s. 3(ix).

3. Regular Army: see AA. s. 3(xxi).

4. Law would seem to mean any law, ordinance, order, byelaw, rule or regulation passed or made by Parliament, any authority or person having power to make such a law, ordinance, order, byelaw, rule ,or regulation. 'See Military Nursing Services (India) Ordinance (No. xxx) of 1943, under which Military Nursing Service has been raised and maintained as an auxiliary to the regular Army.

13. Procedure before enrolling officer.—Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled and shall put to him the questions set forth in the prescribed form of enrolment and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

NOTES

1. Prescribed enrolling officer: see AR 7.

2. Prescribed forms of enrolment: see Appx I to ARs.

The conditions of service, in these forms, are embodied in the questions which are put to the person to be enrolled and his acceptance of these conditions is duly recorded therein.

3. A person enrolled into one corps or department can, in the circumstances specified in AR 10, be transferred from that corps/department to another corps/department without his consent.

4. A false answer to any question set forth in the prescribed form of enrolment is punishable under AA. s. 44.

14. Mode of enrolment.—If, after complying with the provisions of section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if such officer perceives no impediment he shall sign and shall also cause such person to sign the enrolment paper, and such person shall thereupon be deemed to be enrolled.

15. Validity of enrolment.—Every person who has for the space of three months been in receipt of pay as a person enrolled under this Act and been borne on the rolls of any corps or department shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other ground whatsoever; and if any person, in receipt of such pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrolment, no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim affect his position as an enrolled person under this Act or invalidate any proceeding, act or thing taken or done prior to his discharge.

NOTES

1. The effect of this section is that if a person including the one ineligible for enrolment receives pay for three months or more as an enrolled person and has been borne on the rolls of any corps or department, without having been enrolled in accordance with the provisions of AA. ss. 13 and 14, he may be treated for all purposes as duly enrolled and subject to the AA. except that such a person can claim his discharge before the expiry of three months on any ground e.g. illegality or irregularity but that does not affect his being subject to the AA for the period he is so in receipt of pay and borne on the rolls as aforesaid, until his discharge. After the expiry of three months he cannot claim discharge on grounds of illegality or irregularity of enrolment.

2. Corps: see AR 187(i).

Department: see AA s. 3(ix).

16. Persons to be attested.— The following persons shall be attested namely :—

(a) all persons enrolled as combatants;

(b) all persons selected to hold a non-commissioned rank; and

(c) all other persons subject to this Act as may be prescribed by the Central Government.

NOTE

Attestation involves no further liabilities beyond those assumed at enrolment but confers upon the attested person certain privileges. The discharge of an attested person can, as a rule, only be authorised by higher military authorities, while that of an enrolled person who has not been attested e.g. recruits and followers can be authorised by his CO. Only attested persons are eligible for non-commissioned rank see AR 8.

17. Mode of attestation.—(1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department, as may be present, or by any other prescribed person.

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will bear true allegiance to the Constitution of India as by law established, and that he will serve in the regular Army and go wherever he is ordered by land, sea or air and that he will obey all commands of any officer set over him, even to the peril of his life.

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper and authenticated by the signature of the officer administering the oath or affirmation.

NOTES

1. For the prescribed form of oath or affirmation to be administered on attestation see AR 9(1) and for its translation in vernacular languages see notes to AR 9.

2. The proper authority to attest a person subject to the Act is generally his immediate CO who should do so in the ceremonial manner here indicated. For list of other "attesting officers" see AR 9(2).

CHAPTER IV

CONDITIONS OF SERVICE

18. Tenure of service under the Act.—Every person subject to this Act shall hold office during the pleasure of the President.

NOTE

This section merely reiterates the constitutional position set out in Art-310(1) of the Constitution. The President's powers to terminate the service by way of dismissal, removal or otherwise, of any person subject to the AA under the said Art are unqualified and unfettered and no show cause notice is necessary.

19. Termination of service by Central Government.— Subject to the provisions of this Act and the rules and regulations made thereunder, the Central Government may dismiss or remove from the service, any person subject to this Act.

NOTES

1. The section empowers the Central Government to dismiss or remove from service any person subject to the AA but only in accordance with the provisions of the AA or of any rules or regulations made thereunder; the only legal restrictions are contained in ARs 13-A 14 and 15 which require a show cause notice to be served upon an officer before his service is terminated on grounds of his failure to qualify at an examination or course, misconduct or inefficiency. Such show cause notice may be dispensed with by the Central Govt. when it considers it inexpedient or impracticable to do so or when the officer is already convicted by a criminal court for the misconduct. AR 15-A provides for the release of an officer on medical grounds, which is to be carried out on the recommendations of a Medical Board.

2. Dismissal under this section, AA. s. 18 or 20 is not a punishment as under AA. s. 71 but merely amounts to termination of a person's commission/service without his consent. Removal is a less grave form of dismissal.

3. For the date an order of dismissal or removal under this section takes effect, see AR 18 and for the date a sentence of cashiering or dismissal awarded by a court-martial takes effect, see AR 168.

4. The competent authority cannot make the dismissal/removal under this section or discharge under AR 13 retrospective nor can such valid dismissal etc., be cancelled without the person's consent.

5. An officer or JCO holding a substantive rank cannot be reduced to a lower substantive rank though he can be dismissed or removed under this section.

6. As to furnishing a JCO, WO or OR who is dismissed or removed with a discharge certificate, see A.A. s. 23 and AR 12. See also Regs for the Army para 169.

20. Dismissal, removal or reduction by the (Chief of the Army Staff)[1] and by other officers.—(1) The (Chief of the Army Staff)[1] may dismiss or remove from the service any person subject to this Act other than an officer.

(2) The (Chief of the Army Staff)[1] may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.

(3) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer.

(4) Any such officer as is mentioned in sub-section (3) may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer under his command.

(5) A warrant officer reduced to the ranks under this section shall not, however, be required to serve in the ranks as a sepoy.

(6) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.

(7) The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder.

---

[1]Substituted by Act No. 19 of 1955

NOTES

1. For the date an order of dismissal or removal under this section takes effect, see AR 18, and for the date a sentence of dismissal awarded by a court-martial takes effect, see AR 168.

2. The difference between dismissal and discharge is that the former does, while the latter does not, imply culpability. (Further dismissal involves the forfeiture of claim to any pension or gratuity which may have been earned. Discharge does not involve such forfeiture. See Regs Pension Part II Regs 14 and. 195).

3. All persons sentenced to imprisonment (except persons sentenced by court-martial whose sentences are suspended) and such persons sentenced to imprisonment, as it is not desired to retain in the service will, if not dismissed by the sentence of a court-martial be dismissed under this section or under AA. s. 19; see Regs Army paras 167 and 423 also. COs will use their discretion in applying for, the dismissal and the higher authorities their discretion in ordering it. Such a dismissal should not be applied for, or at any rate should not be put into effect, until the convict or prisoner sentenced by court-martial has been committed to a civil prison (AR 168). In the case of a sentence passed by a civil court, the application should, if the dismissal is desired, be made as soon as possible after the sentence has been passed by the civil court. In special cases, a prisoner whom it is not desired to retain in the service may be discharged instead of being dismissed.

4. As to furnishing a JCO, WO or OR who is dismissed with a discharge certificate, see AA. s. 23 and AR 12 and Regs Army para 169.

5. A WO or NCO can be reduced in rank under sub-sec (4), but if the ground is some misconduct which is an offence against the Act, he should, as a rule, be brought to trial by a court-martial.

6. For ranks see Regs Army para, 131. Lance and acting rank is a matter to be dealt with by the CO.

7. When an acting NCO has been punished by court-martial for an offence, and such punishment does not involve reduction or reversion, his CO can revert him to his permanent grade, not as further punishment, but because the proceedings show him to be unfit to hold his appointment.

8. For CO see AA. s. 3 (v).

21. Power to modify certain fundamental rights in their application to persons subject to this act.—Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act—

(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations;

(b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes;

(c) to communicate with the press or to publish or cause to be published any book, letter or other document.

NOTES

This section has been enacted under the authority of Article 33 of the Constitution which empowers Parliament to restrict or abrogate the fundamental rights conferred by the Constitution in their application to 'the Armed Forces'. It gives the Central Government power to make rules restricting the three of the fundamental rights conferred by Art 19 of the Constitution. The restrictions imposed by the Government under this rule making power will be found in ARs 19, 20 and 21.

Other instances where fundamental rights have been modified in pursuance of Art 33 are:—

(a) Protection from double jeopardy: Art 20(2) of the Constitution has been abrogated by AA. s. 127[1].

(b) The right to be defended by legal practitioner of his choice provided vide Art 22(1) of the Constitution has been restricted by ARs 96 and 129.

22. Retirement, release or discharge.— 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.

---

[1]Omittted by Act No. 37 of 1992

NOTES

1. A person subject to the AA continues to be so subject until he is duly retired, released, removed, discharged, dismissed or cashiered from the service: AA. s. 2(2).

2. For cashiering, dismissal and removal, see AA. ss. 19, 20 and 71(d), (e) and notes thereto.

3. As to retirement and resignation of commission of officers, see ARs 14, 15 and 18(1) and Regs Army para 103.

4. Though regulations may prescribe age limits for compulsory retirement in respect of different ranks, every person subject to the AA holds office during the pleasure of the President and has thus no right to be kept in service till he reaches such age limit.

5. 'Released' : see AR 16.

6. For authorities competent to authorised discharge see AR 13 and table annexed thereto. The discharge of a person who is under the conditions of his enrolment entitled to be discharged must be authorised and completed with all convenient speed (AR 11) by the proper authorities (AR 13) unless the Central Government has by notification suspended the said entitlement (AR 11).

7. A valid discharge cannot be cancelled without the consent of the discharged person [AR 11(2)] and as such cancellation in effect amounts to re-enrolment.

8. Applications for discharge will be made on IAFY-1948.

9. As to furnishing a person who is discharged with a discharge certificate (IAFY-1949) see AA.s. 23. AR 12 and Regs for the Army para 169.

10. For the date discharge takes effect see AR 18(2).

23. Certificate on termination of service.—Every junior commissioned officer, warrant officer, or enrolled person who is dismissed, removed, discharged, retired or released from the service shall be furnished by his commanding officer with a certificate, in the language which is the mother tongue of such person and also in the English language setting forth—

(a) the authority terminating his service;

(b) the cause for such termination; and

(c) the full period of his service in the regular Army.

NOTES

1. See AR 12 and Regs for the Army para 169.

2. An officer is not entitled to be furnished with a discharge certificate on termination of his commission.

24. Discharge or dismissal when out of India.—(1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India, with all convenient speed.

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed.

(3) When any such person as is mentioned in sub-section (2) is sentenced to dismissal combined with any other punishment, such other punishment, or, in the case of a sentence of imprisonment for life or imprisonment, a portion of such sentence may be inflicted before he is sent to India.

(4) For the purposes of this section, the word "discharge" shall include release, and the word "dismissal" shall include removal.

NOTES

1. When an enrolled person's entitlement to be discharged or released accrues when he is out of India, he must, if he so requests, be sent to India for being discharged or released; in other words, the discharge/release must then be carried out in India. An enrolled person can however, be dismissed or removed from the service when serving out of India.

2. Sub-sec. (3) is permissive and must be read with AA. ss. 168-169 and 171 which provide for the infliction of sentences of imprisonment passed by courts-martial. The result is that, unless the sentence is one of imprisonment which is to be undergone in military custody or a military prison under AA. s. 169 or in regard to which an order for its infliction or partial infliction in local civil custody has been made under AA. s. 171. A prisoner cannot legally be kept abroad to undergo his imprisonment, but must be sent to a civil prison in India where it can be inflicted in accordance with this Act. Persons sentenced to imprisonment, which is to be undergone in a civil prison and where no order has been made under AA. s. 171 may be kept temporarily in military custody, military prison or other fit place under AA. s. 170.

3. On active service, however, a sentence of imprisonment may be carried out in such place as the officer commanding, the forces in the field may from time to time appoint: AA. s. 169(4).

4. Persons sentenced to dismissal and imprisonment can legally be retained in such a place to undergo the whole or any part of their terms of imprisonment before being sent to India under sub-see (3).

CHAPTER V

SERVICE PRIVILEGES

25. Authorised deductions only to be made from pay.—The pay of every person subject to this Act due to him as such under any regulation for the time being in force shall be paid without any deduction other than the deductions authorised by or under this or any other act.

NOTES

1. The term 'pay' means the rate of pay with increases, if any, for length of service, to which a person subject to the AA. is entitled by reason of his rank, appointment, trade group or trade classification, and includes additional remuneration such as qualification pay, proficiency pay and the various forms of additional pay. All other emoluments are "allowances", which, as the word itself suggests, are purely discretionary and may be withdrawn at any time.

2. It is illegal to make deductions which are not authorised and the unlawful detention of pay is an offence under AA. s.61.

3. 'Due to him as such', means earned by but not paid to him.

4. Under any regulation for the time being in force, such a regulation need not be a statutory one; (see AA.s.3(xxii).

5. For deductions authorised by or under the Act: See AA. ss. 90-91 and AR 205.

6. Instances of deductions authorised by or under any other Act are to be found in the Income Tax Act or the rules made by the Central Government in pursuance of AA. s. 4 of the Indian Reserve Forces Act, 1888 under which a reservist who fails to appear for training etc., or takes his discharge between trainings may be deprived of any arrears of pay and allowances due to him.

26. Remedy of aggrieved persons other than officers.—(1) Any person subject to this Act other than an officer who deems himself wronged by any superior or other officer may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under, sub-section (1), be preferred, the aggrieved person may complain to such officer's next superior officer.

(3) Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complainant; or, when necessary, refer the complaint to superior authority.

(4) Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority.

(5) The Central Government may revise any decision by the (Chief of the Army Staff)[1] under sub-section (2), but, subject thereto, the decision of the (Chief of the Army Staff)[1] shall be final.

NOTES

1. For further information regarding complaints and petitions generally, see Regs for the Army Para 364.

2. To come within this section or AA. s. 27, the complaint must be that the complainant has been denied or deprived of something to which he has a military right. A non-regular officer applicant for a permanent regular commission has a right to have his application fairly considered but has no right to be granted such a commission, consequently he cannot complain under AA. s. 27 if his application is refused unless he can produce some evidence that his application was not properly considered. Similarly a JCO or OR who is refused compassionate leave or a compassionate posting has no right of complaint under this section unless he can produce some evidence of improper motive for the refusal of leave, etc.

3. Complaints may be made respecting such matter, but can be made by an individual only. The combined complaint of several can never be permissible, but should not, if well founded, be treated as mutinous, where it is plain that the only object of those making the complaint is to procure redress of the matter by which they think themselves wronged.

---

[1]Substituted by Act No. 19 of 1955

4. A person can only complain once under this section in respect of any such matter.

5. A complaint cannot legitimately be preferred to a superior officer except in the regular course defined by this section. The channels through which complaints must be preferred are specified in Regs for the Army para 364, and it is only where the immediate superior refuses or unnecessarily delays to redress or forward the complaint that direct application can be made to higher authority. The officer in question ought to be informed of the application being made to his superior. For definition of 'officer' and 'superior officer' see AA. s. 3(xviii) and (xxiii) respectively.

6. The authority competent to dispose finally of the matter, complained of is the officer who, in pursuance of regulations or the custom of the service, is authorised to dispose of that matter. As a rule, he is the next superior officer to the officer against whom the complaint is made. If however, a person thinks himself wronged by his commanding officer in respect of his complaint not being redressed, it has been held that he may complain to the brigade commander.

7. A false accusation or false statement made in preferring a complaint under this section or AA. s. 27 is punishable under AA. s. 56(b); but the mere fact that a complaint appears to be baseless, or even frivolous, does not render the maker liable to punishment. As to the repetition of baseless complaints, or the submission of complaints in disrespectful language, see notes to AA. s. 63.

8. The persons to whom this section applies have no right to petition to the Central Government on matters arising out of their military service.

9. For petition against order, finding or sentence of court-martial: see AA. s. 164 and notes thereto.

27. Remedy of aggrieved officers.— Any officer who deems himself wronged by his commanding officer or any superior officer and who on due application made to his commanding officer does not receive the redress to which he considers himself entitled, may complain to the Central Government in such manner as may from time to time be specified by the proper authority.

NOTES

I. It is the custom of the service to forward every complaint through the CO of the unit, and an officer would not be justified in deviating from this course, unless the CO should refuse, or unreasonably delay, to forward it. In such a case, an officer, on addressing himself directly to higher authority, should apprise his CO of his doing so, and should observe in the channel of approach to the Central Government each intermediate gradation of command in so far as he is concerned.

2. CO: see AA. s. 3(v);

Superior Officer: see AA. s. 3 (xxiii).

3. Deems himself wronged: see note 2 to AA. S. 26.

4. This sec is not available to officers seconded for service with a civil department of a State, in respect of matters arising in the course of seconded employment.

5. Although the complaint is to the Central Government an intermediate authority is not debarred from expressing his own view of the case, and such an expression of opinion may even in some cases suffice to render further steps unnecessary.

6. See also notes 7 and 9 to AA. s. 26.

28. Immunity from attachment.—Neither the arms, clothes, equipment, accoutrements or necessaries of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue officer in satisfaction of any decree or order enforceable against him.

NOTES

1. The words "civil or revenue court" in this section do not include a criminal court. The section does not afford protection against a distress warrant issued under s. 421 of Cr PC: but the amount in respect of which the distress warrant is issued should be paid by the competent authority ordering deductions from the individual's pay and allowances under AA. ss. 90(f) or 91(h) as the case may be.

2. As to action to have an order of attachment set aside; see Regs Army para 532.

29. Immunity from arrest for debt.—(1) No person subject to this Act shall, so long as he belongs to the Forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue officer.

(2) The judge of any such court or the said officer may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no court-fee shall be payable by the complainant.

NOTE

The privilege is from arrest on civil or revenue process. There is no privilege from arrest on any criminal process except as provided in ss. 45 and 475 of the Cr PC. The remedy for an improper arrest is to apply to the court on whose process the arrest took place or to apply for a writ of habeas corpus.

30. Immunity of persons attending courts-martial from arrest.—(1) No presiding officer or member of a court-martial, no judge-advocate, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial shall, while proceeding to, attending, or returning from, a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

31. Privileges of reservists.—Every person belonging to the Indian Reserve Forces shall, when called out for or engaged in or returning from, training or service, be entitled to all the privileges accorded by sections 28 and 29 to a person subject to this Act.

NOTE

It would appear that persons belonging to the Indian Reserve Forces, though subject to the AA at all times would not enjoy the privileges conferred by AA. ss. 28 and 29 except in the circumstances mentioned in this section.

32. Priority in respect of army personnel's litigation.—(1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate from the proper military authority of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or of any application by or on behalf of any such person for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for its inability to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall at once be referred by the court to an officer having power not less than a brigade or equivalent commander whose decision shall be final.

NOTES

1. For orders as to the speedy disposal of suits by or against officers or soldiers who have obtained leave of absence for the purposes of the suit see Regs for the Army para 536.

2. The Indian Soldiers Litigation Act, 1925 (Act IV of 1925), (reproduced in part IV) provides, among other things, for the postponement, when necessary in the interest of justice, of proceedings pending before a Civil or Revenue Court in India to which any person subject to AA serving under "special conditions" (see s. 3 of the Indian Soldiers Litigation Act) is a party when such person is unable to appear in person or is not represented by any person duly authorised to appear, plead or act on his behalf. This concession, however, does not necessarily extend to pre-emption cases or to cases where the soldier's interests are identical with those of any other party to the proceedings and are adequately represented by such other party or are merely of a formal nature.

3. Govt. of India, Ministry of Home Affairs while listing out the service privileges (AA. ss. 28-32) have issued instructions to the State Govts. to accord priority in respect of Army personnel's litigation. See Regs Army para 536 and appendix 'R' to Regs for the Army.

4. For form of appointment of attorney, see Regs for the Army para 534.

5. A power of attorney to institute or defend a suit executed by a person subject to the AA is not chargeable with any court fee. See Regs for the Army para 535.

6. If the case cannot be disposed of within the period of leave granted, the civil officer concerned may extend leave for such period as will admit of the receipt of a reply to an application to the OC unit for the necessary extension of leave. The civil officer will report to the OC unit any grant of leave sanctioned by him. See Regs for the Army para 537.

33. Saving of rights and privileges under other laws.—The rights and privileges specified in the preceding sections of this Chapter shall be in addition to, and not in derogation of, any other rights and privileges conferred on persons subject to this Act or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force.

NOTES

1.The privileges specified in AA. ss. 25-32 are in addition to certain others which have been conferred on members of 'the Forces' by other Acts. A few examples of such privileges are:

(a) All Govt. pensions (including military pensions) are immune from attachment in the execution of the decrees of civil courts; s. 11 of pensions Act 1871, proviso (g) to s. 60 of Code of Civil Procedure 1908.

(b) Receipts for pay or allowances of NCOs, or Sepoys when serving in such capacity need not be stamped; Indian Stamp Act, schedule I.

(c) All officers, JCOs, WOs and OR of the regular Army on duty or on the march as well as their authorised followers, families, horses, baggage and transport are exempt from all tolls except certain tolls for the transit of barges etc., along canals: s. 3 of Indian Tolls (Army and Air Force) Act, 1901.

CHAPTER VI

OFFENCES

34. Offences in relation to the enemy and punishable with death.—Any person subject to this Act who commits any of the following offences; that is to say,—

(a) shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to commit any of the said acts; or

(b) intentionally uses any means to compel or induce any person subject to military, naval or air force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy; or

(c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or

(d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or

(e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies ; or

(f) treacherously or through cowardice sends a flag of truce to the enemy; or

(g) in time of war or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency; or

(h) in time of action leaves his commanding officer or his post, guard, picquet, patrol or party without being regularly relieved or without leave; or

(i) having been made a prisoner of war, voluntarily serves with, or aids the enemy; or

(j) knowingly harbours or protects an enemy not being a prisoner; or

(k) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated; or

(1) knowingly does any act calculated to imperil the success of the military, naval or air forces of India or any forces co-operating therewith or any part of such forces;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

NOTES

1. Offences under this section should not be dealt with summarily under AA. ss. 80, 83, 84 or 85; also see Regs Army para 451.

Because the maximum punishment for offences under this section is death.

(a) a summary of evidence must be taken.

(b) a plea of guilty cannot be accepted [AR 52(4)].

(c) the trial should not take place before a DCM/SCM

2. 'Subject to this Act': see AA. s. 2.

3. Clause (a): '*Shamefully abandons', etc*.—(a) This offence can only be committed by the person in charge of the garrison, post, etc., and not by the subordinates under his command. The surrender of a place by an officer charged with its defence can only be justified by superior's orders or the utmost necessity, such as want of provisions or water the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place with its garrison, their arms and ammunition, falling into the hands of the enemy.

(b) It must be proved that the accused had no necessity to surrender or abandon the post before a conviction can be obtained. Particulars of a charge under this clause must detail some circumstances which make abandonment in a military sense shameful. 'Shameful' means a positive and disgraceful dereliction of duty and not merely negligence or misapprehension or error of judgment.

(c) 'Post' includes any point or position (whether fortified or not) which a detachment may be ordered to hold; and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in clauses (h) and (k) or AA.s. 36 (c) or (d), where it has reference to the position of an individual.

4. *Clause (b) : 'intentionally'*.—As a state of mind (e.g. intention, knowledge) is not capable of positive proof, the court may infer intention from the circumstances proved in evidence. As a general rule, a person is presumed in law to have intended the natural and probable consequences of his act. A court may also presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of events and human conduct. See lEA. s. 114.

5. *Enemy*—See AA. s. 3 (x).

6. *Clause (c)*: 'Shamefully'.—(a) The particulars of the charge must show the circumstances which make the act in a military sense shameful; see note 3(b) above.

(b) The presence of the enemy must be near at hand and a soldier not in the forward area could not be convicted of an offence if, for example, he casts away his arms during an air raid.

(c) *Enemy :* see AA. s. 3 (x). The term includes any person in arms against whom it is the duty of a person subject to military law to act. A person subject to the AA, therefore, who, when a comrade 'runs amok', shows cowardice by refraining from acting against him is liable to trial under this clause. See also Regs Army para 348.

7. '*Misbehaves'*.—(a) This means that the accused, from an unsoldier-like regard for his personal safety, in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well-understood custom of the service, or by the requirements of the case, as applicable to the position in which he was placed at the time. Misbehaviour of any kind not evidencing cowardice cannot be charged under the last sentence of this clause.

(b) Where there is evidence that an accused has committed some other offence which is specifically mentioned in the Act as under clause (a) or (b) or AA. s. 38(1) such an offence should be charged in preference to a charge under this clause.

8. *Clause (d)* : 'Treacherously'.—(a) see note 9(a) and (b) below.

(b) If there is no evidence of treachery, the charge should be laid under AA. s. 35(b).

(c) In a charge under this clause, it must be proved that the intelligence did in fact reach the enemy.

9. *Clause (f)* : '*Treacherously' or 'through cowardice'*.—(a) Treacherously implies an intention to assist the enemy and must be carefully distinguished from 'through cowardice' which occur in this clause. The intention to help the enemy is an essential ingredient of the offence of treachery and must be proved before a conviction can be sustained.

(b) The particulars of the charge must show the circumstances which indicate the treachery or cowardice. If there is no treachery or cowardice, the charge should be laid under AA. s. 35(c).

(c) *Enemy* : see AA. s. 3(x).

10. *Clause (g)* : *Intentionally*.—See note 4 above.

11. *'Occasions a false alarm'*.— The particulars of the charge must set out briefly the means whereby the alarm was caused.

12. *'Spreads reports'*.— The particulars of the charge must detail the reports alleged to have been spread, and should indicate how they were calculated to create alarm or despondency. It is not necessary to aver or prove that the reports were false indeed the truth may increase the offence; nor is it necessary to

show that any effect was actually produced by the reports spread; it would, however, seldom be expedient to try an officer or soldier under this section for reports which could not be shown to have had some effect. The offence may be committed either with reference to the troops with whom the offender is serving, or with reference to the inhabitants of the country. When the false alarm is occasioned or such reports are spread otherwise than in time of war or during any military operation, the charge should be framed under AA. s. 36(e) which makes punishable such spreading of reports etc., even though through neglect.

13. *Camp*.—Includes a bivouac and any quarters, shelter or other place where troops are temporarily located.

14. *Clause (h)* : Commanding Officer.—See AA. s. 3 (v).

15. *'Post'*.—(a) When used with respect to an individual as in this clause and clause (k), means the position or place in which it may be the duty of a person subject to the AA to be, especially-when under arms. In determining what, in any particular case is " a post" , the court will use their military knowledge (AA. s. 134). The place in which the person was posted is material and should be stated in the charge.

(b) When a person is charged with leaving his post, it is always necessary to prove that he had been regularly posted.

(c) This offence can be committed by any member of the guard, picquet etc., even the guard etc., commander but a joint charge cannot be preferred.

16. *Without being regularly relieved or without leave*.—These words are in the nature of an exception, and the principle laid down in section 105 of IEA applies. Therefore, though the charge must aver the absence of regular relief or leave, this need not be proved, and the fact of the accused person having quitted his guard, etc., being established it will be for him to show that he was regularly relieved or had leave to quit his guard; nevertheless, any evidence bearing on this point which is known to the prosecutor should be adduced.

17. *Clause (i): 'Voluntarily'*.—The term as defined in s. 39 of the IPC relates to the causation of effects and not to the doing of acts from which those effects result. However, here it has been used more in its ordinary meaning e.g. of his own free will rather than in its technical sense i.e. it means merely that the accused was willing to do the act charged; it is not necessary to show that he volunteered to do it, or even that he wished to do it. In the absence of any evidence that compulsion was applied the court may find that the accused acted voluntarily; but if from the whole of the evidence given the court think that the accused's will may have been overborne by fear they should acquit him. The test is whether the particular accused was in fact so frightened as to have lost control of his will, not whether the methods used by his captors were such as would cause a reasonably brave man to lose control. Coercion will, therefore, be a defence to such a charge.

18. *Clause (j): 'Knowingly'*.—Evidence should, if possible, be given that the accused knew the person harboured or protected to be an enemy who is not a prisoner but if the fact of the harbouring or protecting is proved, the court may infer knowledge from the circumstances.

19. '*Harbouring*'.—The word 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance or the assisting of a person by any means, whether of the above kinds or not to evade apprehension: IPC section 52A.

20. *Enemy*.—See AA. s. 3 (x).

21. *Clause (k): 'Post*;—(a) As used with respect to an individual in this and other clauses the term refers to the position or place in which it may be the duty of a person subject to this Act to be, especially when under arms. With respect, in particular, to a sentry, it applies (i) to the spot where the sentry is left to the observance of his duties by the officer, JCO or NCO posting him, or (ii) to any limits specially pointed out as his beat. The fact that a sentry has not been regularly posted is immaterial if he is charged with an offence committed while on his post provided evidence is given to prove that he adopted the duty of sentry.

(b) In determining what, in any particular case, is a post the court will use their military knowledge: AA. s. 134.

(c) A sentry found sleeping even a short distance from his 'post' should be charged with leaving his post under clause (h) or AA. s. 36 (d); he cannot be charged with sleeping on his post under this clause. However, where a sentry is found intoxicated, he could be charged under this clause though he is so found at a short distance away from his post as the place where he is found intoxicated is immaterial not being ingredient of the offence.

(d) A policeman on gate duty is not a sentry.

(e) Two or more accused .cannot be tried jointly with committing an offence under this clause.

(f) The same offence when committed by a sentry in circumstances which do not fall under this clause is triable under clause (c) of AA. s. 36.

22. *Clause (l)*.: 'Knowingly'.—See notes 4 and 18 above.

A charge under this clause should particularise the actual acts alleged. The act or acts must be shown to have been deliberately done by the accused with the intention of imperilling the success of the said forces. Such intention may be proved in evidence or may be inferred from the circumstances

35. Offences in relation to the enemy and not punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner, fails to rejoin his service when able to do so; or

(b) without due authority holds correspondence with or communicates intelligence to the enemy or having come by the knowledge, of any such correspondence or communication, wilfully omits to discover it immediately to his commanding or other superior officer; or

(c) without due authority sends a flag of truce to the enemy;

shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

NOTES

1. Offences under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.

2. *Clause (a)* : Where the conduct of any person subject to the AA. when being taken prisoner by or while in the hands of the enemy is to be inquired into, the COAS may order a court of inquiry to be held for this purpose and on the basis of the finding of the said court, the pay and allowances of such person may be forfeited by order of the Central Govt.; see AA. ss. 90(h) and 96. Such a court of inquiry held in the absence of the said person is provisional and as such has no effect except on the pay and allowances of that person.

3. *Clause (b)* : This offence is less grave in form than the one under AA. s. 34(d).

4. (a) '*Communicates intelligence to'*.—A man must be taken to intend the natural consequences of his acts, and this clause appears to be wide enough to cover the case of intelligence reaching the enemy through the capture or the re-publication (e.g., by relatives or newspapers) of letters, sketches, photographs, etc. Everyone connected with the forces should recognise the grave danger of assisting the enemy by gossip, whether verbal or written, as to plans, prospects, operations, numbers, etc. as to unauthorised publication of official documents see Regs Army para 319 and Official Secrets Act, 1923 (reproduced in part III).

(b) In a charge under this clause however, it must be proved that the intelligence did in fact reach the enemy.

5. Clause (c): The offence under this clause is less grave in form than the one under AA. s. 34(f).

36. Offences punishable more severely on active service than at other times.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) forces a safeguard, or forces or uses criminal force to a sentry; or

(b) breaks into any house or other place in search of plunder; or

(c) being a sentry sleeps upon his post, or is intoxicated; or

(d) without orders from his superior officer leaves his guard, picquet patrol or post; or

(e) intentionally or through neglect occasions a false alarm in camp, garrison, or quarters or spreads reports calculated to create unnecessary alarm or despondency; or.

(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;

shall, on conviction by court-martial,

if he commits any such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

NOTES

1. Offences under this section when on active service should not be dealt with summarily under AA. ss. 80, 83, 84 or 85.

2. Clause (a): 'Safeguard'.—A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, house, or other property. A single sentry posted from such party is still part of the safeguard, and it is as criminal to force him by breaking into the house or other property under his special care as to force the whole party. A man posted solely to control traffic is not a "safeguard" for the purposes of this provision.

3. '*Forces*.—:.Does not necessarily mean use of physical force. Passing the sentry when warned by him not to do so will amount to this offence.

4. '*Uses criminal force'*.—For definition of criminal force see IPC. ss. 349 and 350.

5. '*Sentry*'.—(a) A sentry is posted for protecting some place, property or person and any forcible interference with such protection amounts to an offence under this clause provided the accused was aware that the sentry was in fact acting as such.

(b) An accused charged under this clause for using criminal force to a sentry can be found guilty of attempting to use such criminal force under AA. s. 139 (8) or of assaulting the sentry under AA. s. 139(3). Similarly, if the charge is laid under AA. s. 69 for using criminal force to a sentry, the accused can be convicted of attempting to use such criminal force to or assaulting him under AA. s. 139(6).

(c) See also note 21 to AA. s. 34, as to duties of sentries.

(d) A policeman on gate duty is not a sentry.

6. *Clause (b)*: (a) The 'other place' should be specified in the charge.

(b) This clause, having regard to special military significance of the term plunder, is applicable only to offences committed on active service.

(c) For definition of 'house-breaking' see IPC. s. 445. A house indicates some structure intended for affording some sort of protection to the person dwelling inside it or for the property placed there for custody. What is a house must always be a question of degree and circumstances.

7. *Clause (c) :* 'Sentry'.—For definition see note 21 to AA. s. 34 and note 5 above. A sentry found asleep even a short distance from his post should be charged with leaving his post under clause (d), he cannot properly be charged with being asleep on his post, though he may be charged under AA. s. 63 with being asleep when on sentry duty. However the words 'upon his post' do not qualify the words 'is intoxicated'. It is therefore enough to constitute the offence if a .person subject to the AA acting as a sentry is found intoxicated on his post or elsewhere during his tenure of duty as a sentry.

8. *Clause (d)* : Superior officer.—For definition see AA. s. 3(xxiii).

9. *'Post'.*—(a) See notes 15 and 21 to AA. s. 34. When a person is charged with leaving his post it is always necessary to prove that he had been regularly posted or had undertaken the duty on that post although he has not been regularly posted. Where a member of a guard or picquet furnishing a sentry for a post receives orders that he will relieve the sentry on the post at a fixed hour, and in due course does so, he will have been regularly posted although the officer, JCO or NCO in charge was not present himself at that time.

(b) This offence can be committed by any member of the guard picquet or patrol, even the guard, etc., commander but a joint charge cannot be preferred.

10. *Clause (e)* : See notes to AA. s. 34(g).

11. '*Through neglect* : See note 3(b) to AA. s. 63.

12. *Clause (f):* (a) The particulars of the charge must aver that the accused made known the watchward etc., to a person and that person was not entitled to receive the watchward etc.

(b) '*knowingly'*.—-see note 18 to AA. s. 34 above.

37. Mutiny..—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) begins, incites, causes, or conspires with any other persons to cause any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or

(e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

NOTES

1. Offences under this section should not be dealt with summarily under AA. s. 80, 83, 84 or 85.

2. (a) The limitation of time for the commencement of trial (three years) prescribed by AA. s. 122 does not apply to the offence of mutiny.

(b) As the maximum punishment for offences under this section is death :—

(i) a summary of evidence must be taken.

(ii) a plea of guilty cannot be accepted [AR 52(4)].

(iii) the trial should not take place before a summary or district court-martial.

3. (a) Mutiny implies collective insubordination, or a combination of two or more persons to resist, or to induce others to resist, lawful military authority.

(b) Words in the plural include the singular (s. 13 General Clauses Act, 1897). Therefore a person can be charged under clause (a) with conspiracy with one other person to cause a mutiny.

(c) A person cannot be charged generally with mutiny, or with an act of mutiny, but only with some one or more of the specified offences laid down in this section. If he has not brought himself within the terms of the section, his offence, however much it may tend towards mutiny, must be dealt with as insubordination and the provisions of AA. s. 40 or 41 will usually afford ample powers for the purpose. Thus, where there is an actual mutiny or a conspiracy to mutiny, all concerned in the mutiny or conspiracy can be tried under this section for causing or conspiring to cause, or joining in, the mutiny, as the case may be. If no mutiny or conspiracy exists, a person can only be tried under this section if the charge is one of being present at a mutiny not using his utmost endeavour to suppress the same or of failing to inform his commanding or other superior officer of an intent to cause mutiny or such conspiracy or of endeavouring to seduce any person in the forces from his duty or allegiance to the Union.

(d) In framing a charge under this section the specific act or acts which are alleged to have constituted the offence must always be averred; and the offence is so grave that a charge for it should only be brought on very clear evidence. Cases of insubordination, even on the part of two or more persons, should unless there appears to be a combined design on their part to resist authority, be charged jointly under AA. s. 40(a) with using criminal force, assaulting, or separately under AA. s. 40(b) or (c) with using threatening or insubordinate language, or under AA. s. 41, or, if these sections are inapplicable jointly or separately under AA. s. 63. Provocation by a superior or the existence of grievances, is no justification for mutiny or insubordination though such circumstances would be given due weight in considering the question of punishment.

(e) Collective petitions/representations or the submission of a petition through the medium of any association in respect of military matters are forbidden on this ground.

4. If there is evidence that a person caused, or conspired with others to cause a mutiny, but a doubt exists as to whether he took such an active part as to have actually joined, in the mutiny, he may be charged under clause (b) with an alternative charge under clause (a). On the other hand, doubts may arise whether the persons who appear to be taking an active part are actually acting in combination, and in such cases it is desirable to prefer separate charges in the alternative under AA. s. 40 or AA. s. 41 as appropriate.

5. Persons present on parade or present accidentally or induced by false pretences to attend a meeting where a mutiny is being contrived may still be guilty of an offence under clause (c) although they took no active part in the proceedings.

6. (a) Not using his utmost endeavour in clause (c) does not necessarily mean the utmost of which a person is capable, but such endeavours as person might reasonably and fairly be expected to make, and every person in a squad not marching or not coming from their barrack room when duly ordered, is guilty of mutiny.

(b) In clause (d), it will be noticed that the person who comes to know of an existing or intended mutiny will have performed his duty under this clause if he gives information without delay either to his CO or any other superior officer. Such information would naturally be given to the immediate superior of the person, who would, in his turn, be bound to transmit it to higher authority.

(c) Commanding officer: *see* AA. s. 3(v).

Superior officer: *see* AA. s. 3(xxiii)

7. Endeavours to seduce etc. the attempt itself is punishable. It is immaterial whether the attempt succeeds or not.

38. Desertion and aiding desertion.—(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial,

if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and

if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who, knowingly harbours any such deserter shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(3) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other, superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction, by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

NOTES

1. *General.*—(a) An offence under sub-section (1) of this section when on active service or under orders for active service should not be, dealt with summarily under AA. ss. 80, 83, 84 or 85.

(b) When a superior officer directs the case of an offender against whom a charge for desertion has been preferred to be summarily disposed of, he should order the offence to be disposed of as one of absence without leave. See notes to AA. s. 39. See generally AA ss. 104 and 105 and Regs Army paras 376 to 381.

(c) Under AA. s. 120(3), a CO can try by SCM a NCO or sepoy under his command, for an offence under this section. As a rule a NCO or OR cannot be attached to another unit for purposes of his trial by SCM; but see Regs for the Army para 381 for the circumstances when a CO other than the CO of the unit to which a NCO OR properly belongs, can try him by SCM for an offence of desertion or absence without leave.

2. *Sub sec.*— (1) Desertion is distinguished from absence without leave under AA. s. 39; in that desertion or attempt to desert the service implies an intention on the part of the accused either (a) never to return to the service or (b) to avoid some important military duty (commonly known as constructive desertion) e.g., service in a forward area, embarkation for foreign service or service in aid of the civil power and not merely some routine duty or duty only applicable to the accused like a fire picquet duty. A charge under this section cannot lie unless it appears from the evidence that one or other such intention existed; further, it is sufficient if the intention in (a) above was formed at the time during the period of absence and not necessarily at the time when the accused first absented himself from unit/ duty station.

3. A person may be a deserter although he re-enrols himself, or although in the first instance his absence was legal (e.g. authorised by leave), the criterion being the same, viz., whether the intention required for desertion can properly be inferred from the evidence available (the surrounding facts and the circumstances of the case).

4. Intention to desert may be inferred from a long absence, wearing of disguise, distance from the duty station and the manner of termination of absence e.g., apprehension but such facts though relevant are only prima facie, and not conclusive, evidence of such intention. Similarly the fact that an accused has been declared an absentee under AA. s. 106 is not by itself a deciding factor if other evidence suggests the contrary.

5. A person subject to the AA charged with desertion may be found guilty of an attempt to desert or of absence without leave, and such a person charged with attempting to desert may be found guilty of being absent without leave provided evidence was available to prove the absence; see AA. s. 139(1) and (2). When the absence began more than 3 years before the date of trial, the provisions of AA. s. 122 must be borne in mind and complied with. For instance where an accused person is charged with desertion commencing on a date more than three years before the date of trial, he cannot be found guilty under AA. s. 139(1) of absence without leave from that date but such absence must be restricted to a period not exceeding three years immediately prior to the commencement of trial; where such a finding and sentence has been wrongly confirmed, the competent authority under AA. s. 163 may substitute a valid finding and pass a sentence for the offence specified or involved in such finding.

6. When a person subject to AA has been absent from his duty without authority for a period of thirty days, a court of inquiry is mandatory under AA. s. 106 but even after such a court of inquiry has been held, the case can still be disposed of summarily under AA. s. 80, 83, 84 or 85 but the charge should be laid for absence without leave under AA. s. 39. As to inquiring into absence see AR 183 also.

7. AA. s. 122 which prescribes the limitation of time for the trial of offences expressly excludes desertion; but where a person other than an officer has subsequently to the commission of the offence served continuously in an exemplary manner for not less than three years, he cannot be tried for such offence of desertion which was committed before the commencement of such three years other than desertion on active service. For 'exemplary service' see Regs Army para 466.

8. Two or more persons cannot be tried jointly with committing the offence of desertion under this sub-sec.

9. AA. ss. 90(a) and 91(a) read with P and A Regs provide for automatic forfeiture of pay and allowances for every day a person subject to AA is absent on desertion or without leave.

10. As to forfeiture of service for pension or gratuity, which follows upon desertion, and restoration of service so forfeited, see Regs pension (Part I) Reg 123. The period between desertion and apprehension/ surrender does not, under the prescribed conditions of enrolment; reckon as service towards discharge. Service rendered previous to desertion, though forfeited for purposes of pension or gratuity, reckons as service towards discharge.

As to a person who absents himself from his corps or department and enrols again, see AA. s. 43 and notes thereto.

11. (a) While framing charges of desertion or absence without leave care must be taken to ensure that the particulars allege and the prosecution prove, both the date when the absence began, and the date when it ended (by return, surrender, apprehension or re-enrolment). It is not sufficient to allege and prove absence ''on or about'' a certain date, or ''from some date subsequent to.....''

(b) Commencement of absence under this section or AA. s. 39 may be proved in the following ways:

(i) orally by a witness who found the accused absent, or

(ii) by production by a witness on Oath, who can identify the accused as the person named in :

(aa) the declaration of a court of inquiry held under AA s.106 as entered in the court-martial book; or

(bb) a certified true copy of the above declaration on lAFD-918; or

} Provided AA.s. 106 and AR 183 have been complied with.

(cc) an entry in a Part II Order; provided the entry is one that is made in Regimental orders/books in pursuance of military duty and the orders purported to be signed by the CO or by the officer whose duty it is to make such record AA. s. 142(3). Such an entry should only be used as evidence where no direct evidence and no declaration of a court of inquiry is available and even then it is only prima facie evidence and may be rebutted; or

(dd) a copy of such an order purporting to be certified to be a true copy by the officer having custody of such order; see AA. s. 142(4);

(c) Termination of absence may be proved in the following ways:—

(i) by oral evidence of a witness who apprehended the accused or to whom the accused surrendered; or

(ii) by production by a witness on oath, who can identify the accused as the person named in :

(aa) a certificate on IAFD-910 stating the fact, date and place of surrender or apprehension and the manner in which the accused was dressed and signed by a police officer not below the rank of an officer in charge of a police station to whom the accused surrendered or by whom he was apprehended AA. s. 142(6); or

(bb) where the surrender was made to an officer or other person subject to AA or any portion of the regular Army or where the accused was apprehended by an officer or other person subject to AA, a similar certificate signed by the 'proper' officer: AA. s. 142(5) (Also see Regs Army para 378); or

(cc) a Part II Order showing the taking on strength properly signed in accordance with AA. s. 142(3); or

(dd) a certified true copy of such order in accordance with AA. s. 142(4); or

(ee) where the absence terminated by fraudulent enrolment in the regular Army, the enrolment paper or certified true copy thereof. AA. s. 141(2).

12. The commencement of an absence cannot be proved by production of an absence report as this is not a regimental book under Regs Army para 610.

13. Attempt to desert.—To establish an attempt to desert, some act which, if completed, would constitute desertion must be proved, e.g., a soldier is arrested in the act of leaving his unit lines without authority, dressed in plain clothes and carrying his personal kit, when the circumstances indicate that he intends to desert. The test is whether the act, or series of acts, in the course of which the offender is apprehended or surrenders, would, if completed, amount to desertion. A mere preparation to desert, if unaccompanied by any such act which if completed would amount to desertion, does not constitute an offence of attempting to desert. But if there is evidence that the offender actually absented himself from the place where his duty required him to be and that he intended to desert, the offence is complete and charge for desertion, not for an attempt to desert should be framed.

Attempt to desert is itself made a substantive offence, and a charge for the same should be preferred under this sub sec and not under AA. s. 65.

14. For definition of active service; see AA. s. 3(i).

15. Abetment of desertion of a person subject to the AA can be charged under AA. s. 66.

16. *Sub sec* (2): *Knowingly*.- see note 18 to AA. s. 34.

17. Harbours: see Note 19 to AA. S 34.

18. *Any such deserter.*—A charge under this sub sec can lie when the offence of desertion has already been committed.

19. *Sub sec*. (3).—To substantiate a charge the particulars must specify the precise steps which, it is alleged by the prosecution, were within the power of the accused to take to cause the deserter or intending deserter to be apprehended. The times at which the accused became aware of the desertion or attempt to desert and gave notice to a superior officer, are material and should be disclosed in the charge.

20. Superior officer means the 'Superior Officer' in relation to the offender, not to the deserter or intending deserter.

39. Absence without leave.— Any person subject to this Act who commits any of the following offences, that is to say,—

(a) absents himself without leave; or

(b) without sufficient cause overstays leave granted to him; or

(c) being on leave of absence and having received information from proper authority that any corps, or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or

(d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or

(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; or

(f) when in camp or garrison 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; or

(g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

NOTES

1. Two or more accused should not be jointly charged with an offence under this section.

2. *Clause (a):* The criterion between desertion and absence without leave is intention. Where all the ingredients of the offence of desertion are present except an intention not to return to the service or to avoid some important military duty, the offence will be one of absence without leave or any other offence of this genus *e.g.*, failure to appear at the time fixed at the parade.

3. (a) Absence without leave must not be involuntary absence *e.g.*, due to illness or being taken into civil or military custody, whether on surrender or apprehension. However, the mere reporting by an, absentee to a provost officer or M.C.O. or the fact that such provost officer or M.C.O. orders the absentee to return to his unit will not terminate the voluntary absence; which will continue to run until the absentee rejoins his unit.

(b) To render an absence involuntary there must be some physical impracticability, outside the control of the offender, that prevents his return, to his unit. Inability to return to his unit through intoxication which is an offence under AA. s. 48 will not make such absence involuntary nor would an inability which arises through lack of money or loss of his railway or other ticket. Further, where the absence without leave was originally voluntary and has by change of circumstances, subsequently become involuntary the offender may be convicted of absence for the whole period. Similarly, an absence that was originally involuntary becomes voluntary, if the offender fails to return to his unit at the earliest practicable moment *e.g.*, failure to return on release from a civil prison.

(c) Where the prosecution proves that the accused was absent and that he had not been granted leave, the court may, in the absence of any satisfactory explanation by the accused, infer that the absence was voluntary.

4. (a) A court considering a charge under this section should consider "was the accused at the place where his duty required him to be?"

(b) An offence under this section is one of absence without leave, and not merely absence. Leave of absence must be notified to the applicant for such leave. A person who has applied for leave, and departs from his unit before it is actually granted, commits the offence of being absent without leave, even though the leave had been granted but not notified to him.

(c) When evidence has been given of the accused's absence, or failure to appear at the place required, and that evidence is sufficient to raise an inference that he had no leave of absence, then the court may look to the accused to provide evidence, by way of defence, for his "leave", "sufficient cause" or "due cause" as the case may be.

5. (a) For proof of commencement and termination of absence *see* note 11 to AA. s. 38.

(b) The particulars of a charge of absence without leave should state the date when the absence began and terminated. Where the exact hour of the absence is material for the purpose of proving a whole day's absence, as it may be under the provisions of AA. s. 92, the hour of the offender's departure and return should also be stated in the particulars of the charge.

(c) Where, for some reason, it is not possible to prove the exact dates of commencement and termination of the absence, but it is possible to show that an absentee was at some place other than his place of duty, a charge under AA. s. 63 alleging that he was improperly at one place; whereas his duty required him to be elsewhere may be preferred.

6. Under AA. s. 90(a), read with P & A Regs (Officers), an officer automatically forfeits all pay and allowances due to him for every day he absents himself without leave or overstays the period of his leave unless a satisfactory explanation has been given to his CO and has been approved by the Central Govt.

AA. s. 91(a) read with P & A Regs (OR), makes such deductions also automatic in the case of persons subject to AA other than officers; the CO of such absentee can, however, remit such penal deduction if the absence does not exceed five days; AR 195(b). The penal deductions under AA ss. 90(a) and 91(a) may be made without the absentee being convicted by court-martial or dealt with summarily under AA. ss. 80, 83, 84 or 85.

7. Under AA. s. 139(1) and (2), a person subject to AA and charged with desertion or attempted desertion may be found guilty of absence without leave but not *vice versa*. Also *see* note 5 to AA. s. 38.

8. When a person has been absent without leave for 30 clear days or has overstayed his leave without sufficient cause for that period, a court of inquiry will be assembled under AA. s. 106. Also *see* AR 183.

9. Under AA. s. 120(3), a CO can try by SCM a NCO or a sepoy under his command for an offence under this clause. For the circumstances when a CO other than a CO of the unit to which a NCO or OR properly belongs, can try an offence under this clause *see* note 1(c) to AA. s. 38.

10. If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the accused states in his defence any sufficient or reasonable cause for his absence and refers in support to any officer in the service of the Government, it is the duty of the court to address such officer if it appears that such officer may prove or disprove the accused's statement; AA. s. 143. Failure to comply with this provision may result in annulment of the proceedings.

11. *Clause (b)*.—This offence is basically the same as in clause (a); except that the absence becomes illegal only after the expiry of his authorised leave; whereas under clause (a) the absence is illegal *ab-initio*.

12. If it is proved that a person subject to the AA. has overstayed his leave, it will be for him to show that he had sufficient cause (*e.g.*, sickness or the unexpected interruption of the ordinary means of transit) for doing so. If, however, any evidence as to the cause of his failure to return is known to the prosecutor, it should be adduced, leaving it to the court to decide as to the sufficiency of such cause.

13. *Clause (c)*.—Charges under clauses (c), (d), (e) or (g) should not ordinarily be preferred as any offence under those clauses must almost invariably amount to an offence under clause (a) and a charge under the latter clause is simple to prove.

14. Without sufficient cause : *see* note 13 above.

15. *Corps*.— *see* AR 187(3).

Department.— *see* AA. s. 3(ix).

Active service.— *see* AA. s. 3(i).

16. *Clause (d)*.—(a) Before a conviction can be obtained under this clause, it must be proved that the time was fixed and the place appointed by competent authority, and that the accused was aware of this fact. These facts are sometimes difficult to prove and therefore a charge of absence without leave under clause (a) is usually more practicable. See also note 13 above.

(b) A person who is late for parade commits an offence under this clause, equally with one who is altogether absent.

(c) Absence from a parade etc., through intoxication should not be charged under this section but under AA. s. 48 for intoxication. Ignorance of the order for the parade, although exposing the offender to a charge under AA. s. 63, for failing to acquaint himself with the order as required by Regs Army para 324, will not render him liable to a conviction under this clause. Where a reasonable misapprehension of the order exists, based on lack of clarity in the terms of the order itself, this may, in certain circumstances amount to a good defence to the charge.

17. *Clause (f)*.—'Camp' includes a bivouac and any quarters, shelter, or other place where troops are temporarily lodged.

18. *'General, local or other order'*.—The orders specified in this clause are standing orders or orders in writing and applicable continuously over a period of time to persons present in a certain geographical area or in a certain military formation. Ignorance of the order is no excuse if the order is one which the accused ought, in the ordinary course, to know. But a misapprehension reasonably arising from want of clarity in the order is a ground for exculpation. The existence of the order must be proved by producing it or a certified copy where so permissible under AA. s. 142(4) on oath/affirmation to the court. A written order cannot be proved by oral testimony. Evidence must also be led to show that the order was duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents.

19. (a) A charge alleging "without a pass or written leave from his superior officer" would be a good charge under this clause, since it is a single offence for him to have neither a pass nor written leave. On the other hand, a charge alleging "beyond the limits fixed by general or local orders" would be bad since it might be one offence to be beyond the limits fixed by general orders, and another offence to be beyond the limits fixed by local orders (see AR 30).

(b) *Without a pass or written leave from his superior officer.*—These words are in the nature of an exception, and on being proved that the accused was found beyond fixed limits, it will rest on him to show that he had the proper authority

20. Superior officer. See AA. s. 3 (xxiii).

40. Striking or threatening superior officers.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer;

shall on conviction by court-martial,

if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned;

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

NOTES

1. *Clause (a).*—Offences under this clause should not be dealt with summarily under AA. s. 80, 83, 84 or 85.

2. (a) For definition of 'force', using criminal force and 'assault', see IPC. ss. 349, 350 and 351 (Part III). The difference between the offence mentioned in this clause will be clear from the following examples:—

(i) A throws a stone at B. If the stone hits B, A has used criminal force, if it misses him, A has attempted to use criminal force.

(ii) A, during an altercation with B, picks up a stone in a threatening manner. If A intends, or knows it to be likely, that this will cause B to believe that A is about to throw the stone at him. A commits an assault on B.

An 'assault', is something less than the use of criminal force; the force being cut short before the blow actually falls. It seem to consist in an attempt or offer by a person having present ability, with force to do any hurt or violence to the person of another, and it is committed whenever a well founded apprehension of peril from a force partially or fully put in motion is created, *e.g.*, when a person draws a bayonet or otherwise makes a show of violence against a superior but not when he is behind the bars or at such a distance as to rule out at the moment any actual use of criminal force. An assault is thus included in every use of criminal force, and is an intermediate stage thereof.

(b) If the force be used in the exercise of the right of private defence, for instance, if it be shown that it was necessary, or that at the moment the accused had reason to believe it was necessary for his actual protection from injury, and that he used no more force than was reasonably necessary for this purpose, he is legally justified in using it, and commits no offence. See IPC. ss. 96, 97—102 (Part III).

(c) Provocation is not a ground of acquittal, but tends to mitigate the punishment; evidence of provocation, if tendered, must therefore be admitted. Also see note 6 to AR 52.

(d) As to intoxication as an excuse or defence to a charge under this section, see note 4 to AA. s. 48.

3. A joint charge under this clause can be sustained provided that the use of criminal force or assault was the result of a concerted action in furtherance of a common intent (IPC. s. 34) though in some cases such concerted use of force may amount to an offence under AA. s. 37(b) also.

4. When use of criminal force to a superior is accompanied by insubordinate language, the use of criminal force only should be charged (assuming that the evidence is satisfactory) and the language would be admissible in evidence to show the manner in which the offence was committed.

5. A person charged with using criminal force may be found guilty of an attempt to use criminal force, or assault [AA. s. 139(8) and (3)].

6. (a) Superior Officer.—See AA. 3(xxiii).

(b) While framing a charge under this section, the name of the superior officer must be set out in the particulars of the charge.

(c) The expression 'superior officer' in this section and in AA. s. 41 means not only a superior in rank but also a senior in the same grade where that seniority gives power of command according to the usages of the service, but one sepoy can never be the "superior officer" of another. The court should be satisfied, before conviction, that the accused knew the person, with respect to whom the offence was committed, to be a superior officer. If the superior did not wear the insignia of his rank, and was not personally known to the accused, evidence would, be necessary to show that the accused was otherwise aware of his being his superior officer, or had reason to believe him, to be his superior officer. If such evidence is not available, the accused should be charged under AA. s. 63 or 69.

(d) Where the accused is charged with an offence against a superior officer who is of the same grade, evidence must be adduced to show that the latter is senior to the accused.

(e) The lower the rank of the superior the less is the gravity of the offence. Also see Regs Army para 450.

7. (a) The offence under this clause or clauses (b) and (c) is punishable more severely if such superior officer was at the relevant time in the execution of his office or if the offence is committed on active service. Such aggravating circumstances should not be averred in the particulars unless the case warrants severe punishment and it is intended to try the accused by a GCM.

(b) It is difficult accurately to define the words 'in the execution of his office', but the military knowledge and experience of the members of a court-martial will enable them in most instances readily to determine whether the superior officer was or was not in the execution of his office. A superior officer in plain clothes may undoubtedly be in the execution of his office; but where the superior officer is in plain clothes, it becomes necessary to prove some knowledge on the part of the accused at the time of the offence that the person who was assaulted or to whom criminal force was used was a superior officer and that he was known to the accused as such, which is not the case where the superior officer is in uniform. On the other hand, there may be circumstances in which a superior officer in uniform is not in the execution of his office. It may be taken in general that using criminal force to or assaulting any superior officer by a person subject to AA over whom it is, at the relevant time, the duty of that superior officer to maintain discipline, would be using criminal force to or assaulting him in the execution of his office.

(c) When the accused is charged, with using criminal force to or assaulting his superior officer who is at the time in the execution of his office or if the accused is charged with committing the offence on active service and the court is satisfied that the offence was committed but not on active service or that the superior officer was not then in the execution of his office, he may be found guilty under AA. s. 139(7) of the same offence as having been committed in circumstances involving a less severe punishment.

8. *Clause (b).*— A joint charge of using threatening or insubordinate language to a superior officer should not be preferred.

9. Where the charge is for using threatening or insubordinate language the particulars of the charge must state the expressions or their substance, and the superior to whom they were addressed. See note 7 above.

10. Expressions, however offensive to a superior, that are used (a) in the course of a judicial inquiry, (b) by a party to that inquiry, and (c) upon a matter pertinent to and bonafide for the purposes of that inquiry, as, for instance, the credibility of a witness, are privileged, and cannot be made the subject of a criminal charge.

11. Expressions used of a superior officer and not within his hearing or which cannot be proved to be used to a superior officer, must be charged as an offence under AA. s. 63. and not under this section, but the use of threatening or otherwise insubordinate language regarding one superior to (in the sense that it is intended to be heard by) another superior constitutes an offence of using threatening or insubordinate language under this section.

12. Threatening language means language from which a person addressed may reasonably infer that criminal force may be used. This may be inferred either from the character of the words used or from the surrounding circumstances.

13. Whereas all threatening language is insubordinate the converse is not true; therefore unless there is no doubt as to his intention an accused should be charged with using insubordinate language rather than threatening. A court may, however, if satisfied in other respects that an offence under this section has been committed, make a special finding when an accused is charged with the offence of using threatening language that he was guilty of using insubordinate language. [AA. s. 139(4)].

14. *Clause (c)*.—See notes 7 to 11 and 13 above.

15 The words must be used with an insubordinate intent, that is to say, they must be, either in themselves, or in the manner or circumstances in which they are spoken, insulting or disrespectful, and—in all cases it must reasonably appear that they were intended to be heard by a superior. The words themselves need not necessarily be discourteous. If they indicate a deliberate intention to be insubordinate or resist lawful authority they may properly be regarded as disrespectful of authority, although courteously expressed. Where for instance a sepoy, having been given a lawful command which does not require immediate compliance, indicates respectfully that he does not intend to comply with it and is at once placed in arrest before being given a chance to comply, he may be charged with an offence under this section though not with an offence under AA. s. 41(2).

16. Further a sepoy may in an outburst of temper or excitement use violent language without intending to be insubordinate. Allowance should also be made for the use of coarse expressions by a person of inferior education which might often be used as mere expletives. These expressions might be insubordinate if used, by an officer, a JCO or a senior NCO but not so when used by a junior NCO or a sepoy. These points must be considered by a court before convicting an accused of an offence under this clause.

17. As to the use of coarse and abusive language by a person who is intoxicated, see note 6 to AA. s. 48.

18. The words need not necessarily be spoken. If an accused writes a letter containing insubordinate expressions and addresses it to a superior officer, intending the letter to be read by the addressee, a charge would lie under this clause.

19. The use of what is commonly known as "bad" language need not necessarily give rise to a charge either under this section or AA. s. 63.

41. Disobedience to superior officer.—(l) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally or in writing or by signal or otherwise shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who disobeys any lawful command given by his superior officer shall, on conviction by court-martial,

if he commits such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned ; and

if he commits such offence when not on active service, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

NOTES

1. Offences under this section, when on active service, should not be dealt with summarily under AA. ss. 80, 83, 84 or 85.

2. An offence under this section cannot be made the subject of a joint charge.

3. *Lawful Command.*—The command must be a specific command to and individual i.e., it must be capable of individual execution by the person to whom it is addressed, and justified by military, as well as by civil, law and usage, e.g., a command addressed by a superior officer to four persons to "dismiss" is for the purposes of this section a lawful military command to each of the four persons so addressed. The command must relate to military duty that is to say disobedience to it must tend to impede, delay, or prevent a military proceeding. The disobedience must have reference to the time at which the command is to be obeyed. If the command be a lawful command, and demands a prompt and immediate compliance, hesitation or unnecessary delay in obeying it may be sufficient to constitute an offence under this section. A person who on being ordered to do a certain thing at some time, uses words expressing an intention not to obey,

and is immediately confined, does not commit an offence under this section. He should be charged under AA. s. 40(c) or 63 according to the circumstances of the case. A neglect to carry out an order due to misapprehension, or forgetfulness, does not constitute an offence under this section though non-compliance with an order through forgetfulness or negligence would be chargeable under AA. s. 63.

4. *Sub-sec* (I).—(a) The essential ingredients of this offence are that the disobedience should show a willful defiance of authority and should be disobedience of a lawful command given personally in the execution of his office by a superior officer; in fact, it would ordinarily be such an offence as would fall under AA. s. 37 if two or more persons joined in it. In order, therefore, to convict an accused of an offence under this sub-sec., it must be shown (i) that a lawful command was given by a superior officer; (ii) that it was given personally by such officer; (iii) that it was given by such officer in the execution of his office; (iv) that the accused disobeyed it, not from any misunderstanding or slowness, but so as to show a willful defiance of his superior officer's authority.

(b) The disobedience must be willful and deliberate, and distinguished from disobedience arising from forgetfulness or misapprehension (which might, however, be punished under AA. s. 63). It is not disobedience in the sense of this section if a sepoy declines to sign his accounts on the grounds that they are incorrect; nor his failure to obey a command where obedience would be physically impossible.

(c) Religious scruples, however, bona fide, afford no justification for disobedience of commands which are clearly lawful.

(d) Disobedience to an order of a general nature, as for instance to a regimental order or a para of regulations, is not chargeable under this section but under AA.s. 42(e) or 63.

5. (a) Superior officer; see AA. s. 3(xxiii).—A 'superior officer' whose command has been restricted, either by the terms of his commission or by regulations, cannot give a lawful command to a person who is, by the terms of such restrictions, placed outside his control.

(b) Disobedience of a lawful order given by a person who is not a superior officer within the meaning of AA.s. 3 (xxiii) may be punishable under AA. s. 63 if the disobedience was prejudicial to good order and military discipline; for instance, a civilian cannot give a "lawful command" under this section to a soldier employed under him; but it may well be the soldier's duty as such to do the act indicated, and, if so, he may be punished for not doing it under AA.s. 63. The particulars of the charge should clearly show that the disobedience was prejudicial to good order and military discipline because the soldier had been placed under the orders of the civilian by a superior military authority.

(c) The particulars of the charge must set out the name of the superior officer and a charge for disobeying an order given by two different superior officers would be bad for duplicity. AR 30 (1).

6. In the execution of his office; see note 7 to AA. s. 40.

7. A court trying an accused for an offence under this sub-sec could, if it was not satisfied that the order was given in the execution of the superior's office, find the accused guilty of an offence under sub sec (2) provided that in all other respects an offence under this section had been committed [AA.s. 139(7)].

8. *Sub-sec*. (2).—The offence under this sub-sec is a less grave offence when not committed on active service and consists of disobedience of any lawful command given by a superior officer but not accompanied by the essential elements of the graver offence under sub-sec (1).

9. The particulars of the charge must specify the command, the name of the superior officer giving it, the fact of disobedience and if the charge is laid under sub sec (1) also that it was given personally by superior officer in the execution of his office specifying the nature of the offence and the manner in which the disobedience showed a willful defiance of authority.

42. Insubordination and obstruction.—Any person subject to this Act who commits any of the following offences, that is to say,

(a) being concerned in any quarrel, affray, or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or

(b) uses criminal force to or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or

(c) resists an escort whose duty it is to apprehend him or to have him in charge; or

(d) breaks out of barracks, camp or quarters; or

(e) neglects to obey any general, local or other order; or

(f) impedes the provost-marshal or any person lawfully acting on his behalf or when called upon, refuses to assist in the execution of his duty a provost-marshal or any person lawfully acting on his behalf; or

(g) uses criminal force to or assaults, any person bringing provisions or supplies to the forces:

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clauses (d) and (e) to two years, and in the case of the offences specified in the other clauses to ten years, or such less punishment as is in this Act mentioned.

NOTES

1. *Clause (a)*.—For definitions of affray, criminal force and assault, see IPC.ss. 159 and 349-351 (reproduced in Part III).

An affray differs from assault in that the former cannot be committed in a private place whereas the latter may take place anywhere; further an affray is an offence against the public peace while an assault is an offence against the person of an individual.

2. A person may be charged under this clause whether the officer who ordered him into arrest was of inferior or superior rank, but where the officer was of superior rank, the offender may be charged under AA.s. 40 or 41. Only officers should be charged under this clause.

3. An accused charged under this clause with using criminal force could be found guilty under AA.s. 139 of an attempt to use criminal force or assault.

4. As to intoxication as a defence to a charge see note 4 to AA.s. 48.

5. *Clause (b)*.— A charge may be laid under this clause for assaulting a civil policeman, if the person committing the assault is subject to military law, and has been lawfully placed in the policeman's custody.

6. *Clause (c)*.— Resistance may be direct violence but threatening words and a threatening attitude might amount to resisting an escort, if the threats were sufficient to deter the escort from arresting the accused. Resistance may also be passive, e.g. a person lying down and refusing to move, if physically able to move, could be said to resist. The particulars of the charge should specify the nature of the resistance. The court will use their military knowledge to determine whether it was the duty of the escort to apprehend the accused or to have him in charge.

7. *Clause (d)*.— (a) This offence consists of a person quitting barracks, etc., at a time when he had no right to do so, either because he was on duty or under punishment, or because of some regulation or order; and it is immaterial whether the offence was managed by violence, stratagem, disguise, or simply by walking past a sentry unnoticed. The mode in which the act was effected will, however, assist a CO in determining whether a charge be preferred under this clause, or under AA.s. 38(1). The particulars of the charge must show that the absence from barracks etc., was without permission, or otherwise unlawful, and also if the accused was in any way confined to barracks that fact must be alleged in the charge.

(b) In a charge for breaking out of barracks, it must be proved that the accused left the confines of the barracks, as charged. A charge of breaking out of quarters would hold good in the case of a person quartered in one part of a barrack and improperly leaving that part for another part where he had no right to be.

8. Clause (e).— (a) The orders specified in this clause mean standing orders or orders having a continuous operation or applicable continuously over a period of time to all officers, JCOs, WOs and OR present in a certain geographical area, such as Command, Area, Sub Area or Station or in a certain military formation such as Army, Corps Division or Brigade. Disobedience of a specific order in the nature of a command should be dealt with under AA.s. 41 and non-compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under AA.s. 63.

(b) Ignorance of the order is no excuse, if the order is one which the accused ought in the ordinary course to know. But a misapprehension reasonably arising from want of clarity in the order is a ground for

exculpation. The existence of the orders and the fact of the neglect must be proved. The order contravened, or a certified copy where such copy is admissible under AA.s. 142(4) must be produced on oath to the court and the court will make a record in the proceedings of its having been so produced. A written order cannot be proved by oral testimony. Evidence must also be given to show that the order was duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents. Disobedience of a regulation may be punished under AA.s. 63 but if the regulation is published as a regimental order, it acquires the character of a general, local or other order, and disobedience to it may be punished under this clause.

(c) Concealment of venereal disease is to be dealt with under this clause if standing orders to the effect have been published that a person subject to AA who is suffering from VD must report sick without delay. Also see Regs for the Army para 354.

9. *Clause (f).*— As to the definition, appointment and duties of provost-marshals see AA.ss. 3(xx) and 107.

Under AA. s. 107(4) a provost-marshal includes a provost-marshal appointed under any law for the time being in force relating to the governance of the Navy or Air Force and any person legally exercising authority under him or on his behalf.

10. The court may exercise their military knowledge as to whether a person was a provost-marshal, or a person legally exercising authority under or on behalf of the provost-marshal; but it will be open to the accused to show that the person he is charged with impending was not properly appointed provost-marshal or was not lawfully acting on his behalf.

11. It is frequently of the highest importance to conciliate the inhabitants of the country where the troops happen to be, and to induce them to bring provisions and supplies. From this point of view an offence, which in other circumstances would be trivial, may require severe punishment.

43. Fraudulent enrolment.—Any person subject to this Act who commits any of the following offences, that is to say,—

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

(b) is concerned in the enrolment in any part of the Forces of any person when he knows or has reason to believe such person to be so circumstanced that by enrolling he commits an offence against this Act;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

NOTES

1. An offence under this section should not be dealt with summarily under AA. s. 80, 83, 84 or 85.

2. Fraudulent enrolment like desertion is an offence, trial in respect of which is not barred by AA.s. 122 except in the case of a person, other than an officer, who has subsequently to the commission of the offence served continuously in an exemplary manner for not less than three years with any portion of the regular Army; for exemplary manner, see Regs for the Army para 466.

3. *Clause (a).*— For definition of 'corps' see AR 187(1).

4. Department; see AA.s.3(ix).

5. (a) A person who leaves one corps or department and enrols himself in another does not prima facie commit the offence of deserting the service, though he irregularly and improperly exchanges one branch of that service for another. If, however, at the time of leaving his first corps or department, he had no intention of re-enrolling himself, and only did so as an afterthought, or if he absented himself to avoid a particular military service, e.g., service abroad, his offence is desertion, though a conviction on a charge framed under this section would also be legal. In deciding under which section a charge should be framed, the time which elapsed between the two acts will be an important element for consideration. In doubtful cases the charge should be framed under this clause.

(b) If the offender is charged with desertion, he should be tried in his original corps or department. If he is charged with the offence specified in this clause he may be tried either in his original corps or department, or in that into which he has fraudulently enrolled himself, and if not dismissed by the court which tries him may be held to serve in either corps or department. As a rule he should be tried in that corps or department in which it is intended to retain him.

(c) It will be noticed that the offence under this clause can be committed by a person who belongs to a corps or department and enrols himself again in the same corps or department.

This clause is meant to meet the case of the larger corps and departments (e.g. the Army Service Corps) where a man might otherwise leave one portion of the corps or department and enrol himself in another with impunity.

6. The clause does not deal with the case of a sailor or airman who enrols into any corps or department of the regular Army but merely gives the converse case of a person subject to AA enrolling in the Air Force or T.A. or entering the Navy. Sailors or airmen who enrol in any corps or department of the regular Army should be dealt with under AA.s. 44. Similarly a member of the Territorial Army who enrols himself into any corps or department of the regular Army when such member is not subject to AA under AA.s. 2(1)(e) cannot be charged under this clause although he may be charged under AA.s. 44 for making a false answer if such be the case.

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

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

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

9. *Clause (b).*—'The Forces'; see AA.s. 3(xi).

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

44. False answers on enrolment.—Any person having become subject to this Act who is discovered to have made at the time of enrolment a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

NOTES

1. (a) An offence under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.

(b) '*Having become subject*'.—It will be observed that the wording of this section differs from the wording of the other penal sections. This is essential since at the time the offence is committed the person is not, actually subject to AA; as he does not become so subject until he has signed the enrolment paper (AA.s. 14).

2. A person charged with "fraudulent enrolment" under AA.s. 43(a) should not also be charged under this section with "false answer" made on the occasion of such enrolment.

3. (a) The answer must be wilfully false; thus where a person might reasonably having been mistaken as to the fact of his having "served", where, for instance, he was discharged as unfit before he had done duty or worn uniform, a conviction would not be upheld.

(b) Where the false answer is as to age, proof must be given by calling some one to prove that the accused is the person referred to in the birth-certificate or register: and a mere production of a birth certificate or register is not sufficient.

4. The falsity of the answer must be proved in accordance with the normal rules of evidence. The original enrolment paper must be produced at the trial, see AA.s. 141(1).

5. If false answers are given to two or more questions in the enrolment paper, each false answer should be included in a separate charge.

6. 'Enrolling Officer' : see AR 7.

45. Unbecoming conduct.—Any officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is a junior commissioned officer or a warrant officer, be liable to be dismissed or to suffer such less punishment as is in this Act mentioned.

NOTES

1. An offence under this section should not be dealt with summarily under AA.ss. 83, 84 or 85.

2. For behaviour to be blameworthy under this section, it must be unbecoming both the accused's position and the character expected of him as an officer /JCO/WO i.e., his refusal to be swayed by considerations other than duty to the service does not, as the word is commonly understood, admit of different degrees or standards at any rate in that class and cannot therefore vary with his position i.e., the rank or appointment held by him except when the behaviour complained of is of a social character i.e., it offends the accepted rules of social behaviour and thus is unbecoming the character from a moral view point, in which case the culpability would depend upon the position held by the accused. Where behaviour complained of is not punishable under this section. A charge may lie under AA.s. 63, if such conduct is prejudicial both to good order and military discipline.

3. The offence under this section must be distinguished from the offence of disgraceful conduct of a cruel, indecent or unnatural kind under AA.s. 46(a). As a rule a charge should not be preferred under this section where such behaviour amounts to a specific offence under any other section of AA. The conduct is not brought within the scope of this section by merely applying to it the statutory language; and a court is not warranted in convicting unless of the opinion that the conduct proved was unbecoming of the accused's position and the character expected of him as an officer etc., having regard to its nature and to the circumstances in which it took place.

4. This section is not applicable to civilians with relative rank and subject to AA under sec. 2(1)(i).

5. This section is frequently invoked in cases where an officer has given stumer cheques. Such a charge should only be preferred where it is clear from the evidence from the bank that the officer acted in such reckless manner as is tantamount to fraud.

6. There can be no attempt to commit this offence as unbecoming conduct would include the act as well as an attempt to do such act.

46. Certain forms of disgraceful conduct.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or

(b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or

(c) with intent to render himself or any other person unfit for service voluntarily causes hurt to himself or that person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

NOTES

1. Offences under this section should not be dealt with summarily under AA.s. 80, 83, 84 or 85.

2. *Clause (a).*—The particulars of a charge of disgraceful conduct under this clause must specify the details of the act or acts alleged to constitute the disgraceful conduct of the kind charged. In the case of an officer accused, the same facts may constitute an offence either of disgraceful conduct under this clause or of unbecoming conduct under AA.s. 45; but see note 3 to AA.s 45.

3. In the absence of any evidence of a definite act of indecency or attempted indecency, mere words that an indecent or unnatural act was committed are not sufficient to constitute an offence under this clause though a charge may probably lie under AA.s. 63.

4. Disgraceful conduct of an unnatural kind ordinarily implies the commission or at least the attempted commission of an offence under IPC.s. 377. Therefore, in framing charges under this clause, the charge should invariably be laid for disgraceful conduct of an indecent kind unless the evidence permits of the averment in the particulars that an unnatural offence as ordinarily understood was committed or at least attempted.

5. To allege in a charge under this clause conduct of an indecent and unnatural kind would be bad for duplicity, since they are two separate offences: AR 30.

6. *Cruel.*—Cruelty usually involves the doing .of some positive act, such as beating or killing or torturing. In most cases therefore the conduct alleged will amount to an offence under some other section of AA. But there are circumstances in which cruelty can be charged against a person who has culpably failed to do what he ought to have done e.g., where a definite duty was imposed upon a person to do something and he failed to perform that duty.

7. There can be no attempt to commit this offence. See note 7 to AA.s. 45.

8. *Clause* (b).—To 'malinger' is to pretend illness or infirmity which does not exist, in order to escape duty.

To 'feign' disease or infirmity means that the accused person exhibits appearances resembling the genuine symptoms of disease or infirmity which, to his knowledge, are not due to such disease or infirmity, but, have been produced artificially for purposes of deceit; e.g., simulating fits or mental disease.

To 'produce' disease is wilfully to cause genuine disease to develop, e.g., by the infection of microbes or poisonous drugs. The involuntary production, aggravation, or prolongation of delirium tremens by intemperate habits, or of sexually transmitted diseases by immoral conduct, does not render a person liable under this clause; but see note 7(c) to AA.s. 42 as to concealment of sexually transmitted diseases.

Similarly a person who refuses to undergo a surgical operation or to be inoculated or vaccinated does not incur any liability under this clause or AA.s. 41 as any puncturing or cutting of the skin, mucuous membranes or tissues amounts to a surgical operation nor can he be punished for refusing to allow anesthetic to be administered.

9. *'Intentionally'*.—In a case under this clause and clause (c), evidence must be given ,of the intent required therein but it would be sufficient to raise a presumption of that intention if the act in question was shown to have been done wilfully and not accidentally.

10. *Clause* (c).—Intent: see note 9 above.

It is usual to prefer an alternative charge under AA.s. 63 to a charge under this clause alleging that the accused improperly or negligently rendered himself temporarily unfit for duty.

11. For the definition; of the term 'voluntarily causing hurt': See IPC.ss. 319 and 321 (part llI).

12. 'Any other person' means any other person subject to AA and not a civilian.

13. Offences of this nature, even when committed in the presence of the enemy should be charged under this clause and not under AA.s. 34(c).

47. Ill-treating a subordinate.— Any officer, junior commissioned officer, warrant officer or non-commissioned officer who uses criminal force to or otherwise ill-treats any person subject to this Act, being his subordinate in rank or position, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

NOTES

1. (a) An offence under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.

(b) A sepoy cannot commit an offence under this section.

2. (a) For definitions of 'force' and 'criminal force': See IPC.ss. 349 and 350 (part Ill).

(b) An accused charged under this section with using criminal force may be convicted of an attempt to use criminal force or assault as a special finding under AA.s. 139 (3) and (8).

3. Using criminal force or ill-treatment provided for by this section need not necessarily be consequent on or connected with the superior status of the accused. The only essentials necessary to constitute an offence under this section are—

(a) that the accused used criminal force to or ill-treated a person subject to AA. subordinate to him in rank or position; and

(b) that the accused was acquainted with the identity of the person against whom he used criminal force or whom he ill-treated.

4. It is an offence under this section for one NCO to use criminal force or ill-treat another who is not his superior in rank or position. Where two NCOs of equal rank are concerned, evidence must be led to prove that the person against whom criminal force was used was junior to the accused. Where the two are of equal seniority or where one sepoy strikes another, the charge should be laid under AA.s. 63 or 69.

5. Where the person against whom criminal force is alleged to be used is a sentry, the charge should be preferred under AA.s. 36(a) and not under this section.

48. Intoxication.—(l) Any person subject to this 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 cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is not an officer, be liable, subject to the provisions of sub-section (2), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(2) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.

NOTES

1. Intoxication may be induced by opium or any similar drug, as well as by liquor. This section creates only one single offence, viz. intoxication, and in all cases, whether the act was committed on duty or not on duty, the charge should be "intoxication". If the offence was committed on duty or after the accused had been warned for duty, the fact that the offence was so committed and the nature of the duty should be specified in the particulars of the charge as the character of the offence, from a military point of view, and therefore its proper punishment is materially affected by the circumstance.

2. Intoxication will be regarded as having the ordinary meaning attached to it in civil life i.e., what an ordinary reasonable person would consider to be such and the fact that an offender is capable or incapable of performing his duty is not a decisive or exclusive test of drunkenness or sobriety. It is, however, one of the tests which should be applied by the court.

3. A person suspected of being intoxicated cannot be put through any drill or test for the purpose of ascertaining his condition; [Regs Army for the Army para 393(b)]. As such the best evidence in such a charge is the direct stated evidence of witness (s).

4. For instructions as to the treatment of a person in arrest for being intoxicated see Regs Army para 393(a).

5. The offence of intoxication is one which cannot be tried jointly.

6. Nothing can justify a person subject to AA using criminal force to or assaulting a superior, and great care is therefore enjoined to be taken to avoid bringing intoxicated persons in contact with their superiors. Mere abusive and violent language used by an intoxicated person, as the result of being taken into custody, should not be used as the ground for framing a charge of using threatening or insubordinate language to a superior officer under AA.s. 40(b) or (c). If a court-martial is considered necessary, the charge should be framed under this section, the language being treated as in the nature of riotous conduct only, and to that extent aggravating the offence.

49. Permitting escape of person in custody.—Any person subject to this Act who commits any of the following offences, that is to say—

(a) when in command of a guard, picquet, patrol or post, releases without proper authority, whether wilfully or without reasonable excuse, any person committed to his charge, or refuses to receive any prisoner or person so committed; or

(b) wilfully 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;

shall, on conviction by court-martial, be liable, if he has acted wilfully to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has not acted wilfully to suffer imprisonment for a term which may extend to two years or such less-punishment as is in this Act mentioned.

NOTES

1. Where the offence is wilful, the charge should not be dealt with summarily under AA.s. 80, 83, 84 or 85.

2. (a) Where a doubt exists as to the accused having acted wilfully, he should be charged with having acted without reasonable excuse.

(b) An act or omission is wilful if it is done or made by a person with the intention of allowing the escape of a person committed to his charge or whom it is his duty to guard or keep.

(c) If the charge is one of wilfully committing the offence, the court may, if it is not satisfied that the act was wilful, make a special finding under AA.s. 139(7) that the accused acted without reasonable excuse.

3. *'Without proper authority'*;—(a) These words are in the nature of an exception and it will rest on the accused to show that he had the proper authority.

(b) The court may use their military knowledge (AA.s. 134) with respect to whether any authority alleged by the accused to exist was or was not sufficient.

4. *'Any person'*.—The person improperly released or allowed to escape need not be a person subject to AA.

5. A deserter or absentee without leave who surrenders, himself and who is being conducted by a NCO to rejoin his unit, is not "committed to the charge" of the NCO conducting him within the meaning of this section, but it may well be the NCO's duty to "keep or guard him". It will be noticed that, for the purpose of clause (a), the person released must have been committed to the charge of the accused, while for the purpose of clause (b) the person allowed to escape need only have been a person whom the accused was under a duty to keep or guard. The offender under clause (a) must be in the command of the guard, piquet, patrol or post, and previously have had the released person committed to his charge; while under clause (b) the offender who allows a person to escape need not have any such command.

50. Irregularity in connection with arrest or confinement.—Any person subject to this Act who commits any of the following offences, that is to say,—

(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; or

(b) having committed a person to military 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 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;

shall on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

NOTES

1. *Clause (a)*:— In support of a charge laid under this clause for either of the offences therein created the prosecutor will have to prove the facts which either show or enable the court to infer that the accused could have brought the person under arrest or in confinement to trial or brought his case before the proper authority for investigation. If these are proved the court may infer that it was unnecessary to keep the person, in question, in custody in the absence of an explanation by the accused. As to "the proper authority", see AR 2(d). See also Regs for the Army para 408(b).

2. AR 27(3) prohibits an accused being detained in military custody which includes open arrest for longer than 2 months without the sanction of the COAS or of other authority e.g. GOC-in-C and for longer than 3 months without the approval of the Central Government.

3. *Clause (b)*:—For definition of military custody, see AA.s. 3(xiii).

4. When a guard etc., commander wilfully or without reasonable excuse refuses to receive a person committed to his charge, he commits an offence under AA.s. 49 (a) in respect of his improper refusal. The fact that no account in writing of the type required in this clause was received by the guard etc., commander from the person committing the person at the time of committal or within 48 hours thereafter would not entitle the guard commander to refuse custody or charge or to effect the subsequent release of any such person.

5. As regards powers of arrest and confinement and ancillary matters see AA.s. 101 and 107 and Regs for the Army paras 391 to 397. Also see Regs Army para 401.

51. Escape from Custody.—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 imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

NOTES

1. The term 'lawful custody' in this section means not only military custody as defined in AA.s. 3 (xiii) but any lawful custody; so that a person subject to AA may be convicted under this section when escaping or attempting to escape from a police officer who has under AA.s. 105 (2) arrested him as a suspected deserter. Similarly when a person is held by the Provost Marshal or a person legally exercising authority under him or on his behalf under AA.s. 107**,** he may be charged with an offence under this section.

2. (a) As military custody includes open arrest, a person escaping or attempting to escape while in open arrest could be charged under this section.

(b) A person undergoing field punishment is in lawful custody within the meaning of this section although he is not in arrest. Care therefore must be taken, when framing a charge under this section to ensure that the particulars alleged correspond with the statement of offence.

(c) Confinement to the lines is not lawful custody for the purposes of this section.

3. A person subject to AA, who escapes from arrest and absents himself without leave, may be charged with, and convicted of, both under this section, and of the subsequent desertion or absence without leave; under AA.s. 38(1) or 39(a).

4. A prisoner is said to 'escape' when he unlawfully goes out of sight beyond the control of the person in whose custody he is placed.

5. Attempt to escape is itself made a substantive offence and a charge for the same should be preferred under this section.

52. Offences in respect of property.—Any person subject to this Act who commits any of the following offences, that is to say,—

(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

(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), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or

(e) wilfully 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;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

NOTES

1. Offences under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85. Before trial is ordered on charges under this section, reference should be made to the Dy JAG Command/ DJAG Corps concerned: See Regs Army paras 432 and 459.

2. A person charged before a court-martial with an offence under clause (a), (b), (c) or (d) of this section may be found guilty of any other of these offences with which he might have been charged (AA.s. 139(5)).

3. *Clause (a)*: (a) For definition of theft see IPC.s. 378 in part III.

(b) 'Any property' means any moveable property.

(c) See IPC.s. 27 for the implication of the term "Possession".

4. (a) If the stolen property has been recovered, it should be produced in court and identified by its owner and by any other witnesses who mention it in their evidence. If it has not been recovered its value or approximate value should be entered in the particulars of the charge and proved in evidence so that the court, if it convicts the accused, may add an award of stoppages to its sentence.

(b) where an offender is sentenced by court-martial to be placed under stoppages in respect of any property stolen, etc., by him, due allowance must be made, in enforcing such stoppages, for money, or the value of any property found upon him and appropriated by way of restitution under AA.s. 151.

5. Captured enemy property becomes the property of the Government.

6. (a) One of the essential ingredients of the offence of theft is that the property must be taken out of the possession of another person. It is not necessary that the property should have been owned by such person. When a person has the 'physical' or 'constructive' possession of property, dishonest removal of the same from the possession of such person without his consent constitutes theft.

(b) Stealing from a person subject to military law is regarded as a particularly disgraceful military offence, considering that in the daily routine of barrack life, persons must constantly leave exposed their arms, uniform and equipment as well as their private property, such as money, watches, etc., trusting to the honour of their comrades.

7. For the presumptions which a court may draw in respect of recent possession of stolen property, see IEA.s. 114 illustration (a).

8. If the property belongs to some person or institution not included in the categories contained in this clause, the accused can only be charged under AA.s. 69 or 52(f) or dealt with by the civil power.

9. Every instance of theft should be laid as a separate charge unless they form part of the same transaction.

10. *Clause (b)*: (a) For civil offence of criminal misappropriation see IPC.s. 403 (Part III).

(b) 'Any property' means any moveable property.

(c) For definition of 'dishonestly' see IPC.s. 24. Also see IPC.s. 23.

11. (a) '*To misappropriate'* means to set apart for or to assign to the wrong person or a wrong use.

(b) '*Converts to his own use*.—There must be actual conversion of the thing appropriated to the use of some person other than the person entitled thereto. Mere retention of property would not warrant a conviction under this clause; unless there is evidence that the accused used that property; for instance when a clerk received certain sums on various dates but entered them in the accounts on each occasion some days after and it was found that the clerk was not in difficulties and did not use the amount, the mere retention by him of the money for some days would not constitute an offence under this clause.

12. *Difference between theft and criminal misappropriation*.—In theft the object of the offender always is to take property which is in the possession of a person out of that person's possession; and the offence is complete as soon as the offender has moved the property in order to dishonest taking of it. In criminal misappropriation, the offender is already in possession of the property; and is either innocently or lawfully in possession of it, because either he has found it or it is entrusted to him, or his possession, if not strictly lawful, is not punishable as an offence because he has acquired it under some mistaken notion of right in himself or of consent given by another. It is the dishonest misappropriation or conversion to his use that constitutes the offence.

13. (a) A mere error or irregularity in accounts or a mistaken mis-application of property does not constitute an offence under this clause. There must be an intent to defraud on the part of the accused either for the benefit of himself or some other person. This must be particularly remembered in the case, for example, of an NCO's accounts getting into confusion through the neglect or carelessness of his superiors. Neglect or failure to supervise that the account is maintained strictly according to service regulations frequently leads to loss of funds and property, and also exposes the subordinates to grave temptation in relation to their accounts.

(b) To secure a conviction on a charge under this clause it is not necessary for the prosecution to prove that the accused intended permanently to deprive the public or other owner of the property, provided the court is satisfied that the accused or some other person benefited and that the owner of the property suffered. In other words, a person may still be guilty of the offence, even though he has repaid the

money which he had misappropriated, provided that at the time of such misappropriation he had a dishonest intent. The term 'dishonest misappropriation' includes temporary as well as permanent misappropriation of that description. See IPC.s. 403 explanations 1.

(c) If no evidence is forthcoming as to the particular mode of misappropriation, the court may, in the absence of explanation from the accused, infer that the property was misappropriated from the fact of its not having been properly utilised or accounted for.

14. Each instance of misappropriation should be in a separate charge, unless they all form part of the same transaction.

15. The value of the property alleged to have been misappropriated should be entered in the particulars of the charge and proved in evidence so that the court, if it convicts the accused may award stoppages.

16. *Clause (c):* Criminal breach of trust; for definition, see IPC., s. 405.

17. (a) To constitute an offence under this clause, there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. There must be an entrustment which, in its most general significance, imports a handing over the possession for some purpose which may not imply the conferring of any proprietary right at all.

(b) A person is said to be entrusted with dominion over property when it remains legally in the owner's possession but he is given a limited authority to deal with it.

18. Criminal misappropriation and criminal breach of trust.—In criminal misappropriation the property comes into the possession of the offender by some casualty or otherwise, and he afterwards misappropriates it. In the case of criminal breach of trust the offender is lawfully entrusted with the property and he dishonestly misappropriates the same or wilfully suffers any other person to do so, instead of discharging the trust attached to it.

19. *Clause (d):* Dishonestly.— see IPC.s. 24. Also see IPC.s. 23.

20. The offence of dishonestly receiving property under this clause has practically the same meaning as under IPC.s. 411 except that this clause is only limited to property of the description mentioned in clause (a).

21. *Receives or retains.*— A person cannot be convicted of receiving if he had no guilty knowledge at the time of receipt. But he is guilty of 'retaining' if he subsequently knows or has reason to believe that the property was obtained by theft, criminal misappropriation or criminal breach of trust. The offence of dishonest retention may be completed without any guilty knowledge at the time of receipt. A person who is proved to have stolen etc., property cannot be convicted of retaining it.

22. *Clause (e): Wilfully destroys or injures*—A charge for destroying or injuring the property here mentioned must be laid under this clause, and not under AA.s. 69. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury was not accidental or done by some other person. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the property, or was mere carelessness. In the latter case no offence under this clause would be committed.

The pecuniary amount of damage or injury caused must be stated in the particulars of the charge and proved in evidence by calling an expert witness if necessary, to enable the court to award stoppages in case of conviction.

23. *Clause (f): 'Does any other thing'*.—An act or omission which would fall under any other clause or any other section of AA should not be made the subject matter of a charge under this clause. But in doubtful cases, the charge should be laid under this clause.

24. *(a) 'With intent to defraud'*.— A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. IPC.s. 25.

(b) The terms 'fraud' and 'defraud' are not found defined in the IPC. The word 'defraud' is of double meaning in the sense that it either may or may not imply deprivation. Whenever the words 'fraud' or

'intent to defraud' or 'fraudulently' occur in the definition of a crime two elements at least are essential to the commission of the crime; namely, first, deceit or an intention to deceive or in some cases mere secrecy; and secondly, either actual injury or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy. This intent is very seldom the only or the principal intention entertained by the fraudulent person, whose principal object in nearly every case is his own advantage. The "injurious deception" is usually intended only as a means to an end, though this does not prevent it from being intentional. A practically conclusive test as to the fraudulent character of a deception for criminal purposes is this; did the author of the deceit derive any advantage from it, which he could not have had if the truth had been known? If so, it is hardly possible that advantage should not have had an equivalent in loss, or risk of loss to some one else; and if so, there was fraud.

(c) A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, would be sufficient to support a conviction. In order to prove an intent to defraud it is not at all necessary that there should have been some person defrauded, or who might possibly have been defrauded. A person may have an intent to defraud, and yet there may not be any person who could be defrauded by his act. It should, however, be noted that an intent only to deceive is not enough.

(d) When it is material to prove an intent to defraud, evidence may be given of similar offences by the accused.:

25. *Wrongful loss or wrongful gain*: See IPC. s. 23 (part III).

26. (a) In order to constitute an offence under this clause, it is not sufficient to couple the description of an act which can bear an innocent construction with an averment of intent to defraud. The act alleged to have been committed with intent to defraud must itself appear from the particulars of the charge to be a wrong act though it need not necessarily amount to an offence under the ordinary criminal law.

(b) Mere irregularity in accounts, due to incompetence or ignorance of book-keeping, would not be sufficient under this clause, to constitute an offence as no fraudulent conduct is involved. However acts such as, with intent to defraud, presenting for signature acquaintance rolls, containing entries known to be false; or charging money for railway warrants; tickets, or vouchers, to which a person is entitled free of charge, would all amount to offences of a fraudulent nature for the purposes of this clause.

53. Extortion and Corruption.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

NOTES

1. *Clause (a)*. (a) For definition of extortion see IPC.s. 383.

(b) Extortion is distinguished from theft in that in the case of extortion, the consent is obtained by putting the person, in possession of property, in fear of injury to him or to any other, whereas in theft the offender's intention is always to take without that person's consent. Further, the property which is obtained by extortion is not limited, as in theft, to moveable property only.

2. *Clause (b)*.—Without proper authority: see note 3 to AA.s. 49.

3. Any person means a person whether subject to AA or not.

54. Making away with equipment.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes 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 ; or

(b) loses by neglect anything mentioned in clause (a); or

(c) sells, pawns, destroys or defaces any medal or decoration granted to him,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend in the case of the offences specified in clause (a) to ten years, and in the case of the offences specified in the other clauses to five years, or such less punishment as is in this Act mentioned.

NOTES

1. *Clause (a)*.— In the absence of some positive act of making away with e.g. pawning, selling etc., a charge of making away with should not be preferred under this clause. When, therefore, articles of the description in the clause are found to be merely deficient through the culpability of a soldier, it would be proper to prefer a charge under clause (b) of losing by neglect the articles in question. The particular mode of making away with should be alleged in the particulars although it does not affect the kind of offence, but only its gravity in relation to the amount of the sentence to be imposed on conviction.

2. Before an accused can be convicted under this clause, evidence must be adduced at the trial that he had been issued with the articles either by

(a) examining a witness who actually issued the articles to the accused, or

(b) by a witness on oath producing any receipt for the articles and proving the signature of the accused, or

(c) by oral evidence that on a certain date prior to the offence the accused was in possession of those articles e.g., at a kit inspection.

3. (a) A charge under clause (a) or (b) of making away with or losing etc., property not mentioned in those clauses e.g., mess property or property of a comrade would be bad though if the act amounted to theft, dishonest misappropriation or criminal breach of trust, it would, be punishable under AA.s. 52 or 69; if the facts show willful act or neglect, the person might in certain circumstances be charged with an offence under AA.s. 63.

(b) Any other thing should be ejusdem generis i.e., part of the accused's kit which he is bound to maintain or his general military equipment supplied by the Government; such 'other thing' should be specified in the statement and particulars of the charge.

4. Clothing in this clause may include hospital clothing issued to a person subject to AA, or civilian clothing issued from military sources.

5. Whenever it is desired that the offender should, on conviction of an offence under this clause or clause (b), be awarded stoppages under AA.s. 71(1) in respect of the value of the articles which need be made good to the Govt/ public, then, the value must be stated in the particulars of the charge [AR 30(6)] and proved as follows:

(a) Value of an article having an official value will be proved by calling a witness who can, on oath, estimate the value (inclusive of authorised departmental expenses) of the article at the date of the offence upon the basis of its age and/ or condition and by reference to the regulations which should be produced for fixing the value of the article at that age or in that condition.

(b) When the article has not an official value, competent evidence is required to prove the approximate value.

(c) When an article has been damaged but not rendered unserviceable, competent evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the cost of repair plus any ultimate loss of value due to the act of the accused.

6. *Clause (b)*.—This is not intended to punish a person for a deficiency in his kit occasioned by accident or mere carelessness but for loss by culpable neglect. On the other hand, the fact that a person has not got his arms, service necessaries, etc., at a time when it was his duty to have them (i.e., at a kit inspection), is *prima facie* evidence of his having lost them by neglect. The onus of proving "neglect" always remains on the prosecution. But once the loss is proved, the court is entitled to expect the accused to offer some explanation of it, and if he gives none, it is open to the court to conclude that the loss must have been due to his negligence. If he gives an explanation which may reasonably be true and which if true is inconsistent with negligence, even if the court is not convinced of its truth, he must be acquitted, since a reasonable doubt as to his negligence then remains.

7. Where a court of inquiry (as laid down in AA.s. 106) has been held and has found a person to be deficient in certain articles, then upon his trial under this clause a certified copy of the record in the regimental books on IAFD-918, showing that such articles were deficient is *prima facie* evidence that they were deficient and of their value, if stated [AA.s. 142(3) and (4)]. If no evidence, except IAFD-918 is obtainable, the prosecution would be justified in proceeding on that alone, and if no evidence is given on the part of the accused to disprove the facts stated therein, the court may convict. Where, however, the accused gives or produces evidence in contradiction of the declaration of the court of inquiry with regard to any of the articles in question, it will become necessary for the prosecution to produce other evidence in support of its case in so far as such articles are concerned—for which purpose the court might, if necessary, grant an adjournment under AR 82. If for any reasonable cause, such as lapse of time since the deficiency arose, no witnesses are available to rebut the evidence produced by the accused, the court must use its discretion as to its finding in respect of the articles in question. In all cases where IAFD-9l8 is not produced at the trial evidence must be produced to show that at some previous specified date the accused has been in possession of the articles alleged to be deficient. In cases of desertion or absence without leave the form will usually show as missing some articles which the person in fact brings back with him. The court must not, of course, convict him in respect of articles so returned if in serviceable condition or those the value of which has not to be made good to the public.

8. Losing by neglect the property of a comrade, or a decoration, is not an offence under this clause as that class of property or decoration is not mentioned therein. Also see notes 3 and 4 above.

9. As to stoppages and evidence of value of the property, see note 5 above.

55. Injury to property.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) destroys or injures any property mentioned in clause (a) of section 54 or any property belonging 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 regular Army; or

(b) commits any act which causes damage to, or destruction of, any property of the Government by fire; or

(c) kills, injures, makes away with, ill-treats or loses any animal entrusted to him;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has acted without reasonable excuse, to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

NOTES

1. *Clause (a).*—For special finding see AA.s. 139(7).

2. *"Destroys or injures".*—A charge for damaging or injuring the property here mentioned must be laid under this section and not under AA.s. 69. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the destruction or injury was wilful and not accidental. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the property, or was mere carelessness. In the latter case no offence under this section would be committed.

3. See note 5 to AA.s. 54 regarding proving the value of the property destroyed or injured.

4. *Clauses (b) and (c)*: To 'constitute an offence under either of these clauses, the act etc., must be either committed wilfully or without reasonable excuse.

56. False accusations.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes a false accusation against any person subject to this Act knowing or having reason to believe such accusation to be false; or

(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 knowingly and wilfully suppresses any material facts;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

NOTES

1. Offences under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.

2. *Clause (a)*.—A mere false statement not involving an accusation (e.g., a letter to a friend containing insinuations against a non-commissioned officer) is not within this clause. This clause implies an accusation being made to some superior authority which would lead to the superior exercising his authority by enquiry or otherwise or the accusation must mean some assertion made publicly or to another person, which, if true, would expose the person respecting whom it is made to punishment or to moral censure. An accusation may be either verbal or in writing.

3. Before an accused can be convicted of a charge under this clause, it must be proved that the accusation was made against the person named in the particulars of the charge, that it was false and that the accused knew or had reason to believe that it was false. For definition of 'reason to believe' see IPC.s. 26.

4. *Clause (b)*.—(a) It is not necessary that the false statement affecting the character of an officer or other person should be directly related to the subject of the complaint. It is sufficient if the false statement is calculated to create prejudice against the officer etc., with reference to whom the complaint is addressed.

(b) To suppress knowingly and wilfully any material facts in connection with complaints for the redress of wrongs under AA.ss. 26 and 27 is an offence under this clause.

57. Falsifying official documents and false declarations.—Any person subject to this Act who commits any of the following offences, that is to say—

(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; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(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; or

(d) where it is his official duty to make a declaration respecting any matter knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege 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 or document containing a true statement;

shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

NOTES

1. (a) An offence under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85. Before trial is ordered on charges under this section, reference should be made to the Dy JAG Command/ DJAG Corps concerned.

(b) This section refers to strictly official documents.

2. *Clauses (a) and (b)*.—A report (which must be in writing), return, certificate or other document mentioned herein must be one executed by the accused in his capacity as a person subject to AA and not in some civil capacity. The 'other document' which should be ejusdem generis, should be specified in the statement and particulars of the charge. A trivial error in the report should not, in the absence of fraud or bad faith, be made the ground of a charge under these clauses.

3. *'Made by him'*.—Making a document means creating or bringing it into existence e.g., writing or typing it as distinguished from sealing, signing or otherwise executing it.

4. In determining whether or not it was the duty of the accused to ascertain the accuracy of the report, etc., referred to in the charge, the court may use their military knowledge (AA. s. 134).

5. (a) If a person makes false entries as to payments made in a book which it was his duty to keep in his official capacity he may be charged with knowingly making false statement under clause (a) or, if it can be shown that he intended to defraud by means of the entries, he may be charged with knowingly making a fraudulent statement. Similarly, if he omits to make in the book entries of payments made by him or to him he may; if the evidence justifies such a course, be charged with knowingly making such omissions with intent to defraud under clause (b).

(b) When the accused has on the same occasion made a number of fraudulent entries on an acquittance roll, etc an omnibus charge under AA. s. 52(f) would be preferable to a number of charges under clause (a).

6. *Knowingly.*—See note 18 to AA. s. 34.

7. It is wrong to make a statement made by an accused in defence or in explanation of an offence imputed to him, the subject of a charge against him, such statement or explanation is strictly analogous to a plea of 'not guilty' before a court-martial, thus casting the burden of proof on the other side, and the accused is at liberty to make at any preliminary inquiry the best excuse he can.

8. *Clause (c).*—The suppression, etc., of a document is not an offence under this clause if it is affected only with intent to deceive and not to defraud. The question as to the duty of the accused to preserve or produce the document will be determined by the court using their military knowledge. The particulars of a charge under this clause should show the capacity or appointment on account of which it was the accused's duty to produce or preserve the document.

9. *Clause (e).*—(a) Other advantage or privilege must be of a similar kind.

(b) Obtaining pension or other such advantage may be for himself or any other person whether subject to AA or not.

58. Signing in blank and failure to report.—Any person subject to this Act who commits any of the following offences, that is to say ,—

(a) when signing any document relating to pay, arms, ammunition, equipment, clothing, supplies or stores, or any property of the Government fraudulently leaves in blank any material part for which his signature is a voucher; or

(b) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send;

shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

NOTES

1. An offence under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.

2. *Clause (b).*—In a charge under clause (b), the particulars must show that it was the duty of the accused to make or send the report or return, but where the position (appointment etc.,) of the accused is proved the court may use their military knowledge to infer his duty. If the report or return was one for which the superior officer had no right to call, it is not an offence to refuse to make or send it.

3. The report must be in writing; clause (b) does not relate to a verbal report. The neglect must be culpable, i.e., something more than mere forgetfulness or mistake; *see* note 3 to AA. s. 63.

59. Offences relating to court-martial.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being duly summoned or ordered to attend as a witness before a court-martial, wilfully or without reasonable excuse, makes default in attending; or

(b) refuses to take an oath or make an affirmation legally required by a court-martial to be taken or made; or

(c) refuses to produce or deliver any document in his power or control legally required by a court-martial to be produced or delivered by him; or

(d) refuses when a witness to answer any question which he is by law bound to answer; or

(e) is guilty of contempt of court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court ;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

NOTES

1. An offence under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.

2. (a) There is no restriction debarring a court-martial from trying any of the offences specified in this section when committed in respect of itself. In all cases reported by court-martial under AR 150, and in many other cases the members are, however, individually disqualified, under AR 39, from sitting at the second trial so that the result is practically the same. A CO cannot, except with the sanction of superior authority, or in a grave emergency, try by SCM an offence under this section committed against his own authority when sitting at another trial. See AAs. 120(2).

(b) If a person subject to AA is tried for any of the offences specified in this section when committed in respect of a court-martial other than a court-martial held under AA, the charge should be framed under AA. s. 63; as such a court is not a court-martial for the purposes of AA ; see AA. s.3 (vii). ‘

3. See AR 150 and notes for manner of dealing with similar offences when committed by civilians or persons amenable to naval or air force law.

4. As a rule, courts should accept an apology sufficient to vindicate their dignity without resorting to extreme measures.

5. *Clause (a).*—‘Duly summoned or ordered’: *see* AA. s. 135. A person subject to AA who fails to attend the taking of summary of evidence when ordered to do so can be tried under AA. s. 41 or 63 and not under this section, which deals with court-martial.

6. (a) Wilfully or without reasonable excuse: for definition *see* note 2 to AA.s. 49.

(b) For special finding, see AA. s. 139(7).

7. *Clause (b).*—(a) A person who, for reasons of sincerity of which the court is satisfied, refuses to take an oath, must be given the opportunity of making an affirmation; see AA. s. 131 (2) and AR 140. The offence is not complete unless there is proof of a refusal both to take the oath and to make an affirmation provided option so to do is given to the accused. The charges of refusing to take an oath legally required by a court-martial to be taken and refusing to make an affirmation legally required by a court-martial to be made; may, therefore, be properly drawn in the alternative.

8. *Clause (c).*—See IEA. ss. 123-124 which deal with privilege of official documents. Also see lEA s. 162.

When a witness is directed by summons to produce a document which is in his possession or power, he must bring it to court, notwithstanding any objection that he may have with regard to its production or admissibility. After this has been done it rests solely with the court to hear the objection or the claim as to privilege, and to decide whether it should be allowed.

9. *Clause (d).*—Because a person is competent to give evidence, he cannot be compelled to answer every question he may be asked when giving evidence and which is relevant to the matter in issue. For instance, on an incriminating question being put to a witness, he is entitled to ask to be excused from answering it, and if after he has asked to be excused, the court compels him to answer (as they are entitled to do) his answer cannot be proved against him at any criminal proceedings except a prosecution for giving false evidence by such answer; see IEA. s. 132.

10. *Clause (e).*—A court-martial begins to sit from the time the members take their seats for the purposes of trial, even before they are sworn/affirmed, and anything which would be a contempt after the court was sworn/affirmed would be a contempt once the members have so taken their seats.

11. *See* also note 2 above.

60. False evidence.—Any person subject to this Act who, having been duly sworn or affirmed before any court-martial or other court competent under this Act to administer an

oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

NOTES

1. (a) An offence under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.

2. (a) The offence specified in this section is in many respects similar to the offence of giving false evidence under IPC. s. 191.

(b) The courts referred to in this section are.—

(i) Court-martial.

(ii) A court of inquiry on illegal absence under AA. s. 106.

(iii) A court of inquiry on recovered prisoners of war : AA. 191 (2) (d) and AR 181.

(iv) Any other court of inquiry when the officer assembling the court has directed that the evidence be recorded on oath or affirmation: AA. s. 191 (2) (d) and AR 181.

(c) Statement at a summary of evidence cannot be given on oath. If, therefore, false evidence is given at a summary of evidence the charge should be framed under AA. s. 63.

3. The proceedings of the court-martial or court of inquiry before which false evidence is alleged to have been given are not admissible as evidence that the accused gave the evidence as charged. The officer who recorded the proceedings, or some other person, who heard the evidence given, must prove by oral evidence this fact and that the accused was duly sworn/affirmed. He may however, use the record to refresh his memory, (IEA. ss. 159 and 160). The proceedings of the court are, however, admissible to prove that the occasion on which the alleged false statement was made was a properly constituted court-martial or court of inquiry.

4. A charge under this section cannot be preferred when the false evidence is given at a naval or air force court-martial though in such cases a charge under AA. s. 63 or 69 could be preferred.

61. Unlawful detention of pay.—Any officer, junior commissioned officer, warrant officer or non-commissioned officer who, having received the pay of a person subject to this Act unlawfully detains or refuses to pay the same when due, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

NOTES

1. This offence cannot be committed by a sepoy.

2. This section is a corollary of AA. s. 25 which provides that the pay of any person subject to AA shall be paid without any deductions other than those authorised by or under AA or any other Act. For deductions authorised by or under AA see AA. ss. 90, 91 and AR 205.

3. AA. s. 90(c) also makes provision for penal deductions to be made from the pay and allowances of an officer to make good any sum which has unlawfully been retained or withheld by him but recovery under that clause does not require disciplinary action. However, as there is no similar provision in AA. s. 91, a JCO, WO or NCO must be tried for the offence before he can be placed under stoppages.

62. Offences in relation to aircraft and flying.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) wilfully or without reasonable excuse damages, destroys or loses any aircraft or aircraft material belonging to the Government; or

(b) is guilty of any act or neglect likely to cause such damage, destruction or loss; or

(c) without lawful authority disposes of any aircraft or aircraft material belonging to the Government; or

(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; or

(e) during a state of war, wilfully 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;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned, and, in any other case, to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

NOTES

1. (a) Offences under this section should not be dealt with summarily under AA.ss. 80, 83, 84 or 85.

(b) Before trial is ordered on charges under this section, reference should be made to the Dy JAG of Command or DJAG Corps concerned; see Regs for the Army para 459.

2. As the terms 'aircraft' and 'aircraft material' have not been defined in AA, they should, be construed in the light of the definitions given in the Air Force Act which are as under :

"aircraft" includes aeroplanes, balloons, kite balloons, airships, gliders or other machines for flying.

"aircraft material" includes any engines, fittings, guns, gear, instruments or apparatus for use in connection with aircraft, and any of its components and accessories and petrol oil, and any other substance used for providing motive power for planes.

3. The word 'neglect' in this section means culpable neglect; see note 3 to AA. s. 63.

4. Wilfully or without reasonable excuse. See note 2 to AA. s. 49.

5. If an accused is charged under this section with wilfully damaging an aircraft he may be found guilty of damaging it without reasonable excuse under AA. s. 139(7) if the evidence justifies this course.

63. Violation of good order and discipline.—Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

NOTES

1. As a rule a charge should not be preferred under this section where special provision for the offence is made elsewhere in AA. In a proper case, however, an alternative charge may be added under this section.

2. A charge under this section must recite its actual words. *i.e.*, there must be charged an "act" or "omission" "prejudicial to good order and military discipline". But, of course, an act or omission is not brought within the scope of the section by merely applying to it the statutory language; and a court is not warranted in convicting unless is of the opinion that the act, etc., proved was prejudicial both to good order and to military discipline, having regard to its nature and to the circumstances in which it took place.

3. (a) "An omission" to be punishable under this section must amount to neglect which is wilful or culpable. If wilful, *i.e.*, deliberate it is clearly blameworthy. If it is not wilful, it may or may not be blameworthy, and the court must consider the whole circumstances of the case and, in particular, the responsibility of the accused. A high degree of care can rightly be demanded of a person who is in charge of a motor vehicle or public money or property, or who is handling firearms or explosives, where a slight degree of negligence may involve loss or danger to life; in such circumstances a small degree of negligence may be blameworthy. On the other hand, neglect which results from mere forgetfulness, error of judgment or inadvertence, in relation to a matter which does not rightly demand a very high degree of care, would not be judged blameworthy so as to justify conviction and punishment. The essential thing for the court to consider is whether in the whole circumstances of the case as they existed at the time of the offence the degree of neglect proved is such as, having regard to their military knowledge of the amount of care which ought to have been exercised, renders the neglect substantially blameworthy and deserving of punishment.

(b) *Negligently.*—Negligence has been defined by judicial pronouncements as the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do and as "doing some act which a person of ordinary care and skill would not do under the circumstances''.

4. The following are a few instances of offences not uncommonly charged under this section:—

Negligent performance of duties connected with money or stores resulting in a deficiency and loss.

Being in improper possession of public property or of property belonging to a comrade (where there is no evidence of actual theft).

Improperly using Government transport and petrol for private purposes.

Borrowing money from persons under his command, gambling, and other cases of disobedience of regulations which are not published as regimental orders [see note to AA. s. 42(e)].

Negligently wounding or injuring self or others.

Improperly using or obtaining railway warrants.

Sending an anonymous letter to his Commanding Officer.

Neglect of duty when a sentry, on guard, etc.

Causing a disturbance in the lines.

Stating a falsehood to a superior officer.

Using criminal force to a comrade.

5. AA recognises no such offence as "making a frivolous complaint"; but the repetition of baseless complaints may amount to an offence under this section; so too may a complaint so framed as to be offensive or indicative of insubordination, etc.

64. Miscellaneous offences.—Any person subject to this act who commits any of the following offences, that is to say,—

(a) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or

(b) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or

(c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or

(d) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazar, carrying a rifle, sword or other offensive weapon; or

(e) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or

(f) commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

NOTES

1. *Clause (a).*—The offence under this clause can only be committed by a person who is in command.

2. For definition of riot and trespass, see IPC. ss. 146 and 441 respectively.

3. *Clause (b).*—The offence under this clause, which is similar to offence under chapter XV of the IPC is based on the Fundamental Right to freedom of religion conferred by Art. 27 of the Constitution.

4. *Intentionally*.—A person is presumed to intend the natural and probable consequences, of his act and the court may infer intention from the circumstances. See note 4 to AA. s. 34.

5. *Clause (c).*—(a) This offence is the same as the civil offence under IPC. s. 309.

(b) A person should not be charged with attempted suicide unless the circumstances of the case make it clear that he seriously intended to take his life.

(c) Where the action falls short of a deliberate intent to end his life, the accused could be charged under AA. s. 46(c) or 63 (if appropriate); the charge alleging that the accused rendered himself temporarily unfit for duty by reason of his conduct.

(d) At the summary of evidence and the trial evidence must be given by a medical officer as to the probable effect of the action which the accused took and he should also express his opinion as to the state of mind of the accused at the time of the commission of the alleged offence.

6. *Clause (d).*—(a) This offence can only be committed by NCO or sepoy.

(b) *Camp.*—See note 13 to AA. s. 34.

'Cantonment' is not restricted to those stations which have been declared to be "cantonments" for the purposes of the Cantonments Act, 1924 (II of 1924). Troops are considered to be in a cantonment for the purposes of AA when they are quartered in any Station or locality as a permanent, or semi-permanent, arrangement.

(c) *Without proper authority.*—See note 3 (a) to AA. s. 49.

7. *Clause (e).—(a) Gratification.*—This term is not restricted to a pecuniary gratification or a gratification estimable in money. The offence is complete if the gratification is given with the intention indicated, and it is not necessary that the enrolment or other object should be actually procured. An attempt to obtain a gratification (*e.g.*, by asking for it) is punishable equally with the actual receipt of one. An attempt to give a gratification (*e.g.*, an offer of a bribe) is an abetment of the offence by way of instigation and is punishable under AA. s. 66 or 68 as the case may be.

(b) *Any other advantage or indulgence.*—Such advantage etc., must be *ejusdem generis.*

8. *Clause (f).—(a) Offence.*—For definition see AA. s. 3 (xvii). The word "offence" here means an offence which would be punishable, if committed in India as a civil offence.

(b) *See* note 11 to AA. s. 42. It is frequently of the highest importance to conciliate the inhabitants of the country where the troops happen to be, and to induce them to bring provisions and supplies. From this point of view an offence, which in other circumstances would be trivial, may require severe punishment, as for instance, if a trifling theft has the effect of disturbing the confidence of the inhabitants and endangering the supplies of the Army. A person should not be charged under this clause when the offence is committed in India. Elsewhere it is better that a charge should be preferred under AA. s. 69 and not under this clause. The charge must set out the specific acts of violence or the specific offence alleged to have been done or committed.

65. Attempt.—Any person subject to this Act who attempts to commit any of the offences specified in sections 34 to 64 inclusive and in such attempt does any act towards the commission of the offence shall, on conviction by court-martial, where no express provision is made by this Act for the punishment of such attempt, be liable,

if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

NOTES

1. Attempts to commit the offences specified in AA. ss. 34 to 64 are, except where such attempts are specifically provided for (e.g., an attempt to desert), triable under this section. Attempts to commit civil offences are not triable under this section but are triable under AA. s. 69 read with IPC. s. 511.

2. Does any act towards the commission of the offence: There is a difference between the preparation antecedent to an offence and the actual attempt. To constitute an attempt to commit an offence there must be an intent to commit the offence, a commencement of the commission and an act done towards the commission. An act is said to be done towards the commission of the offence when the offence remains incomplete only because something yet remained to be done, which the person intending to commit the offence is unable to do by reason of circumstances independent of his own volition. These words must not be construed to include all acts, however, remote, which tend towards the commission of the offence. The thing done may be too small or it may proceed too short a way towards the accomplishment of the offence for the law to notice it as an attempt. It must in every case be a question depending upon the circumstances

whether a particular act done (with the requisite intention) towards the commission of the offence is sufficiently proximate to its commission to constitute an attempt or is so remote as to merely constitute preparation for its commission.

3. A person charged before a court-martial with any offence under AA may be found guilty of the attempt to commit that offence if the evidence so warrants: AA. s. 139 (8).

66. Abetment of offences that have been committed.—Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by court-martial, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

NOTES

1. For definition of 'abetment' see IPC. s. 107 (Part III).

2. Abetment of a civil offence is not triable under this section or AA. s. 67 or 68 but under AA. s. 69.

3. A person subject to AA who abets a person not subject to the said act e.g., civilian, airmen etc., in doing a thing which would have been an offence under AA had the person doing it been subject thereto is not punishable under AA. ss. 66 to 68. Such cases will, however, generally fall within the terms of AA. s. 69.

4. A person charged before a court-martial with any offence under AA may be convicted of having abetted the commission of that offence. AA. s. 139(8).

67. Abetment of offences punishable with death and not committed.—Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

NOTES

1. See notes to AA. s. 66.

2. This section deals with punishment for abetment of offences punishable with death where the offence has not been committed in consequence of the abetment and no specific provision for such punishment has been prescribed by AA.

68. Abetment of offences punishable with imprisonment and not committed.—Any person subject to this Act who abets the commission of any of the offences specified in section 34 to 64 inclusive and punishable with imprisonment shall, on conviction by court-martial, if that offence is not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this act mentioned.

NOTES

1. *See* note to AA. s.66.

2. This section is similar to AA. s. 67; except that it deals with abetment of offences punishable with imprisonment.

69. Civil offences.—Subject to the provisions of section 70, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a court-martial 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 India with death or with imprisonment for life[1], he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the aforesaid law and such less punishment as is in this Act mentioned;

[1] See IPC s. 53A

(b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned.

NOTES

1. (a) An offence under this section should not be dealt with summarily under AA. ss. 80, 83, 84 or 85.

(b) A SCM cannot try an offence punishable under this section unless the provisions of AA. s. 120(2) have been complied with.

(c) Before trial is ordered on any charge under this section, as a rule the advice of the Dy JAG of Command/DJAG Corps concerned should be obtained. Regs for the Army para 459.

2. 'Civil offence' means an offence triable by a criminal court [AA. s. 3(ii)]. For definition of 'criminal court' see AA. s. 3(viii). It therefore follows that a person subject to AA who while stationed in any country other than India commits an act or omission which is an offence under the civil law of that country but which if committed in India would not amount to a 'civil offence' cannot be charged under this section though a charge may properly be framed under AA. s. 63 if the facts so warrant.

3. 'Subject to the provisions of AA. s. 70'.—AA. s. 70 prohibits trial by court-martial of three civil offences viz.. murder, culpable homicide not amounting to murder of a person not subject to military, naval or air force law e.g.. a civilian or rape in relation to such a person, unless the said offence was committed:

(a) While on active service (for definition see AA. ss. 3(i) and 9, or

(b) at any place outside India, or

(c) at a frontier post specified by the Central Government by notification in this behalf.

The test is where the offence was committed and not where the trial is held. If the offence was committed at a place and in the conditions which permit of the offence being tried by court-martial; the court-martial may be held anywhere (AA. s. 124) where courts-martial may be convened.

4. Certain Acts of Parliament require that, before proceedings can be instituted in the criminal courts, the consent of the appropriate Govt. must be obtained [e.g., under s. 13(3) of the Official Secrets Act, 1923]. It is not, however, necessary, before a person is charged with an offence under this section alleging that the civil offence is against such an Act, to obtain such a consent.

5. For adjustment of jurisdiction between a criminal court and a court-martial when both have jurisdiction in respect of the same civil offence, see AA. ss. 125 and 126 and notes thereto. Also see AR 197A and Regs for the Army para 418.

6. See AA. s. 139(6) and notes thereto, which enables a court-martial, when trying a person for a civil offence to find him not guilty of that offence but guilty of any other offence of which he might have been found guilty under the Cr. PC.

7. (a) For offences falling under clause (a), except only those offences for which an obligatory punishment is provided under the law in force in India (e.g., death or imprisonment for life for murder), a court-martial may award any of the following punishments:—

(i) Any punishment, other than whipping, assigned to the offence under the law in force in India; and

(ii) In addition to the above, one or more of the punishments specified in AA. s. 71.

(b) For offences falling under clause (b), courts-martial may award:

(i) the punishment, other than whipping, assigned to the offence under the law in force in India, or

(ii) imprisonment which may extend to seven years, or

(iii) in addition to any of the above, one or more of the punishments specified in AA. s. 71.

(c) Fines are awardable (as penalties authorised under the law in force in India) under both clauses of this section.

8. Chapter VI deals generally with offences punishable by the ordinary civil law which are made offences against AA by this section.

70. Civil offences not triable by court-martial.—A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial unless he commits any of the said offences—

(a) while on active service, or

(b) at any place outside India, or

(c) at a frontier post specified by the Central Government by notification in this behalf. (Explanation)[1].

NOTE

l. See note 3 to AA, s. 69.

[1] Omitted by Act 13 of 1975

CHAPTER VII

PUNISHMENTS

71. Punishment awardable by courts-martial.—Punishment may be inflicted in respect of offences committed by person subject to this Act and convicted by court-martial, according to the scale following, that is to say,—

(a) death;

(b) (imprisonment for life)[1] ;

(c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years;

(d) cashiering, in the case of officers;

(e) dismissal from the service;

(f) reduction to the ranks or to a lower rank or grade or place in the list of their rank, in the case of warrant officers; and reduction to the ranks or to a lower rank or grade, in the case of non-commissioned officers :

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy;

(g) forfeiture of seniority of rank, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers; and forfeiture of all or any 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;

(i) severe reprimand or reprimand, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers;

(j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service ;

(k) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal;

(l) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

NOTES

1. See Regs for the Army para 468 as to the principles to be observed by a court-martial in awarding sentence. These should be treated as a guide only and it may be necessary to pass more severe sentence if, for example, the offence is committed on active service, or where attention has been called in local orders to the prevalence of the offence and such orders have been proved to the satisfaction of the court.

2. The punishments referred to in this section are the only punishments awardable by a court-martial on conviction for an offence specified in any of the AA. ss. 34 to 68.

In cases of charges under AA. s. 69, a court-martial can also award any punishment, other than whipping, assigned for the offence under any law in force in India. For instance, a fine is not specified as a punishment in this section but a court-martial exercising jurisdiction under AA. s. 69 can award a fine and such fine is recoverable under AA. ss. 90(f)/91(h) or 174, if the civil offence in question is punishable with a fine under the law in force in India.

---

[1]See IPC s. 53A.

3. As to jurisdiction and powers of GCM, SGCM, DCM and SCM, see AA. ss. 118 to 120.

4. As to disposal of property produced before a court-martial or regarding which an offence has been committed, see AA. ss. 150 and 151.

5. AA. s. 73 specifies the particular instances in which more than one punishment may be awarded.

6. *Clause (a).*—(a) A sentence of death can only be passed by a GCM with the concurrence of at least two-thirds of the members or by a SGCM with the concurrence of all the members; see AA. s. 132(2) and (3). A certificate to the effect that the death sentence was passed with the concurrence of.... members/ unanimously, as the case may be, should be endorsed in the proceedings.

(b) In awarding a sentence of death the court must add a direction that the accused shall suffer death by being hanged by the neck until he be dead; or by being shot to death; see AA. s. 166.

(c) A person who is sentenced by a court-martial to death continues to be subject to AA till the sentence is executed: see AA. s. 123(4).

(d) Apart from AA. s. 69, the offences where a sentence of death can be awarded are specified in AA. ss. 34, 37 and 38(1).

(e) An officer sentenced to death or imprisonment must first be sentenced to be cashiered. AA. s. 74.

(f) For forms of warrants, see Appx V to AR.

7. *Clause (b).*—(a) Imprisonment for life is a punishment which a GCM or SGCM can award only in cases of charges under AA. s. 69 where such a punishment is assigned for that offence under the law in force in India or where the offence is punishable with death as under AA. s. 34, 37 or 38(1) and the court considers that sentence to be too severe in the circumstances of the case.

Imprisonment for life cannot be awarded for any of the remaining offences as the maximum punishment laid down for such offences is imprisonment for fourteen years or cashiering/dismissal.

(b) For calculating fractions of terms of punishment imprisonment for life is to be reckoned as equivalent to imprisonment for twenty years (IPC.s. 57), though for other purposes it is treated as imprisonment for the whole of the remaining period of the convicted man's natural life. In practice, the sentence of imprisonment for life is treated as a sentence for a certain number of years only.

(c) In case of officers, a sentence of cashiering must precede sentence of imprisonment for life; see AA.s. 74.

(d) Though a WO or NCO is deemed to be reduced to the ranks if sentenced to imprisonment for life, imprisonment or dismissal from the service under AA.s. 77, it is desirable to specify the reduction in the sentence.

(e) As to the date from which a sentence of imprisonment for life is to be reckoned, see AA.s. 167.

(g) As to execution of sentences of imprisonment for life and forms of warrants see AA.ss. 168, 170 and 172 and notes thereto. Form A and Form F in Part II of Appx IV to the AR and Form J in Appx V to the said Rules.

(h) For suspension of a sentence of imprisonment for life or imprisonment see AA.ss. 182 to 190 and notes thereto.

8. *Clause (c).*—(a) Imprisonment is either (i) rigorous, that is, with hard labour; or (ii) simple. The terms "rigorous" and "simple" should invariably be used in sentences passed under AA. If a court inadvertently passes a sentence of "imprisonment" without specifying whether it is rigorous or simple, the sentence is treated as one of "simple imprisonment". Sentences of simple imprisonment are inexpedient and inconvenient of execution.

(b) A sentence of imprisonment, whether revised or not, and whether the accused is already undergoing sentence or not, commences on the day on which the original proceedings were signed by the presiding officer or in the case of a SCM, by the court (AA.s. 167). See AA sec 169 A also.

(c) An officer sentenced to death, imprisonment for life or imprisonment must first be sentenced to be cashiered. (AA.s. 74).

(d) As to the automatic reduction to the ranks as a result of the sentence, see note 7(d) above.

(e) As to execution of sentences of imprisonment see AA.ss. 169, 170 and 171. For forms of warrant see Forms B, C, F and G in Appx IV to AR. See AA sec 169 A also.

Advantage should be taken of AA. s. 169(3) to award short sentences of imprisonment, not exceeding three months, to be undergone in military custody to persons whom it is desired to retain in the service. See Regs Army para 494.

(f) For suspension of sentences see AA.ss. 182 to 190 and notes thereto.

(g) Sentences of imprisonment, unless for one or more years exactly, should, if for one month or upwards, be recorded in months. Sentences consisting partly of months and partly of days should be recorded in months and days. Also see Regs Army para 468 (e).

9. *Clause (d) and (e)*.—(a) Cashiering is the more ignominous form of dismissal; and normally an officer who has been cashiered cannot hold an appointment under the Government.

(b) In case of an officer, a sentence of cashiering must precede the sentence of death, imprisonment for life or imprisonment: AA.s. 74.

(c) For the date on which sentences of cashiering and dismissal take effect, see AR 168.

(d) for effects of cashiering or dismissal on pension or gratuity, see pension Regs 16(a) and 113 for officers and PBOR, respectively.

(e) Regs Army para 703 (a) makes provision for the forfeiture of gallantry decorations, campaign and commemorative medals clasps in the event of a person subject to AA being cashiered or dismissed.

(f) Dismissal under this section is a punishment awardable by a court-martial whereas dismissal under AA.s. 19 is an administrative measure.

10. *Clause (f)*.—(a) Service in the lower rank, grade or class will reckon from the date of signing the original sentence, whether the original sentence in question was a revised sentence or mitigated by the confirming officer from a more severe sentence.

(b) Although the definition of NCO includes an acting NCO, a court-martial does not deal with acting or lance rank; a sentence reducing a naik (acting Havildar) to naik or lance naik, or a lance naik to the ranks, is inoperative. See Regs Army para 131 for definition of ranks and appointments.

(c) Reduction of a WO or NCO under this section to the ranks or to a lower rank or grade is a punishment awardable by a court-martial whereas a similar reduction under AA.s. 20(4) is an administrative measure resorted to on grounds of inefficiency or unsuitability. See Regs Army paras 172 and 173.

(d) The term ‘grade’ means ‘rank’.

11. *Clause (g)*.—(a) For form of sentence see part I of Appendix III to AR.

A sentence of forfeiture of seniority may be combined with a sentence of forfeiture of service for the purpose of promotion.

(b) *Forfeiture of seniority of rank*.—The effect of a sentence of forfeiture of a seniority of rank is that the seniority of the person in his rank alone is affected, not the period of the service in the rank. For example, Capt ‘A’, who is substantive Capt having been commissioned on 1 Jan 69, is awarded by a GCM on 1 Jun 78 forfeiture of 2 years seniority of rank. The sentence specifically reading as—“to take rank and precedence as ‘if his appointment as substantive Capt bore date the first day of Jan 1971”. ‘As a result of this sentence Capt ‘A’ would be junior to all Captains commissioned before 1 Jan 71 in that rank.

(c) *Forfeiture of service for the purpose of promotion*.—This sentence can be awarded in respect of all or any part of his service. The forfeiture does not affect the seniority of the officer etc., in the rank he holds at the time the sentence is passed. The effect of this sentence would be that all future promotions depending upon length of service will be retarded by the period forfeited under this clause. This would not preclude a court-martial from awarding the punishment of forfeiture of seniority of rank in the form of sentencing an officer to take precedence in the rank held by him in his corps as if his name had appeared a specified number of places lower in the list of his corps, in cases where dates of appointment of a large number of officers are identical and the forfeiture of even one day’s service for the purposes of promotion might in its effect constitute too severe a punishment for the offence which nevertheless would not be adequately met by a severe reprimand.

12. *Clause (h)*.—(a) ‘Prescribed’ means prescribed by rules made under AA. No other ‘purpose’ has so far been ‘prescribed’ under this clause.

(b) As to forfeiture of service towards pension or gratuity on conviction for desertion or fraudulent enrolment, see Regs Pension, where the conditions under which service so forfeited is restored are also laid down.

13. *Clause (i): Severe reprimand or reprimand*.—(a) Although acting rank is not cognisable in the sentence of a court-martial, a sepoy holding any such rank, being a NCO [AA.s. 3 (XV)], may nevertheless be sentenced by a court-martial to be severely reprimanded or reprimanded.

(b) Severe reprimand constitutes a 'red ink' entry; see Regs Army para 387(b).

14. *Clause (j).*—(a) This punishment can only be awarded by a court-martial where an offence is committed on active service: for definition of 'active service', see AA.ss. 3 (i) and 9. It is immaterial where the trial takes place.

(b) This sentence may be awarded in addition to other punishments. Care must be taken in awarding a sentence of forfeiture of pay and allowances in days to ensure that the total period in days does not exceed three calendar months e.g., when February intervenes.

(c) The forfeiture commences from the date of award and applies to all pay and allowances but see AA.s. 94. Any other stoppages of pay and allowances which the offender may be under are suspended during the period of the forfeiture.

15. *Clause (k)*.—As cashiering or dismissal takes effect from the date specified in AR 168, this punishment will hardly be effective unless action has already been taken under AA.s. 93 for withholding the pay and allowances of the accused in which case the pay and allowances so withheld will automatically be forfeited under AA.s. 91(b) read with P and A Regs if the accused was in custody; forfeiture under this clause will then cover only arrears of pay and allowances prior to the date the accused was placed in custody as well as any public money due to him.

16. *Clause (l)*.-An award to compensate for loss or damage is termed 'stoppages'. Such an award can only be made if the particulars of the charge allege that the act or omission of the accused occasioned a loss or damage and, is proved on record [AR 30 (6)].

17. Irrespective of the currency in which the wording of a charge may assess the loss or damage, any stoppage that is imposed by a court-martial must be awarded in the Indian currency. The only exception to this rule is where the accused's rate of pay is expressed in any Regulations/Instructions in any other currency.

18. If a court wishes to award compensation to the injured party as well as to cause the offender to lose all arrears of pay and allowances, etc., it should sentence him to stoppages under this clause and to forfeiture of all arrears of pay and allowances, etc. under clause (k). The stoppages will first be satisfied from any pay and allowances or other public money due to him, and the remainder (if any) will be forfeited to the State under the sentence.

19. A court-martial acting under this clause will simply sentence the offender to stoppages to a certain extent. The recovery which is automatic will take place under the provisions of AA.s. 90 or 91, whichever is applicable, and the P & A Regulations. The officer enforcing the sentence will be guided by AA.ss. 94 and 95 i.e., he will (unless the offender is sentenced to dismissal or is an officer) stop half his pay and allowances in any one month and the whole of any gratuity or other public money (not pay and allowances) due to him, until the compensation awarded in the sentence is complete. No portion of the pay and allowances of a person sentenced to dismissal is protected and the whole of such a person's pay and allowances can, if necessary be withheld.

72. Alternative punishments awardable by court-martial—Subject to the provisions of this Act, a court-martial may, on convicting a person subject to this Act of the offences specified in sections 34 to 68 inclusive, award either the particular punishment with which the offence is stated in the said sections to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in section 71, regard being had to the nature and degree of the offence.

NOTES

1. "Subject to the provisions of this Act"; AAs. 73 specifies the particular instances in which more than one punishment may be awarded.

2. [ ][1]

3. The punishments awardable by a court-martial on conviction for a civil offence under AA.s. 69 are set out in that section.

[1] Omitted. See Act No. 37 of 1992.

73. Combination of punishments.—A sentence of a court-martial may award in addition to, or without any one other punishment the punishment specified in clause (d) or clause (e) of section 71 and any one or more of the punishments specified in clauses (f) to (1) of that section.

NOTES

1. The following combined sentences are legal :—

(i) Cashiering, imprisonment, stoppages and forfeiture of pay and allowances in the case of an officer.

(ii) Imprisonment, dismissal, reduction (WO and NCO), stoppages and forfeiture.

(iii) Dismissal, reduction (NCO) stoppages and forfeiture;

(iv) Forfeiture of seniority of rank, forfeiture of service for promotion (when applicable), severe reprimand, forfeitures and stoppages, in the case of an officer, JCOs, WO or NCO.

2. It should be noted that forfeiture of pay and allowances can only be awarded for an offence committed on active service. Further, a DCM cannot award a sentence of imprisonment to a WO (AA.s. 119).

3. The punishments specified in this section may be awarded for civil offences tried under AA.s. 69 either in lieu of, or in addition to, those assigned by the ordinary law to the offence of which the accused has been convicted. See note 7 to AA.s. 69.

74. Cashiering of Officers.—An officer shall be sentenced to be cashiered before he is awarded any of the punishments specified in clauses (a) to (c) of section 71.

NOTES

Care must be taken to comply with this provision. A sentence of death, imprisonment for life or imprisonment and cashiering is incorrect as the sentence of cashiering must precede the sentence of death, imprisonment for life or imprisonment. If such a punishment is awarded the confirming officer should vary it under AR 73. However, in the case of an officer, a sentence of dismissal and imprisonment is no sentence at all being unknown to law; such a sentence, if passed by a court-martial, should be sent back for revision.

75. [Omitted][1]

76. [Omitted][1]

77. Result of certain punishments in the case of a warrant officer or non-commissioned officer.—A warrant officer or a non-commissioned officer sentenced by a court-martial to (imprisonment for life)[2], imprisonment, [ ][1] or dismissal from the service, shall be deemed to be reduced to the ranks.

NOTES

1. Although under this section a WO or NCO holding substantive rank, when sentenced to imprisonment for life, imprisonment or dismissal, is, *ipso facto*, reduced to the ranks it is desirable to specify the reduction in the sentence. A court-martial cannot sentence a person holding an acting rank to reduction to the ranks; but an acting NCO, being a NCO in terms of AA.s. 3 (XV) loses his acting rank under this section upon being sentenced to any of the punishments therein mentioned. See notes 10(b) to AA.s. 71.

2. The remission of the punishment mentioned in this section would not of itself avoid the reduction to the ranks consequent on the sentence. If it is desired to avoid such reduction to the ranks the reduction must be remitted as well; see AA.s. 181.

78. Retention in the ranks of a person convicted on active service.—When on active service, any enrolled person has been sentenced by a court-martial to dismissal, or to (imprisonment for life)[2] or imprisonment whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and such service shall be reckoned as part of his term of (imprisonment for life)[2] or imprisonment, if any.

NOTES

1. *Any enrolled person.*—Means a person subject to AA under AA.s. 2(1) (b), JCOs and WOs though originally enrolled are not liable to be retained to serve in the ranks under this section.

2. 'Prescribed officer' : see AR 191.

---

[1]Omitted by Act No. 37 of 1992.

[2]See IPC s. 53A.

3. A person can only be retained to serve in the ranks under this section while he is on active service, and the order must be made before the sentence of dismissal has taken effect; see AR 168. The dismissal is not avoided but is merely suspended so long as the person is retained to serve in the ranks. If it is subsequently desired to retain the person in the service, the dismissal must be remitted.

79. Punishments otherwise than by court-martial.—Punishments may also be inflicted in respect of offences committed by persons subject to this Act without the intervention of a court-martial and in the manner stated in sections 80, 83, 84 and 85.

NOTES

The proceedings under AA.ss. 80, 83, 84 and 85 are summary proceedings. The officer disposing of the case summarily under these sections is not a 'court' nor does the Indian Evidence Act, 1872 apply to such proceedings. Further, unlike a trial by court-martial, the accused has no right to be represented by counsel/defending officer or even assisted by the 'friend' of the accused.

80. Punishments of persons other than officers, junior commissioned officers and warrant officers.—Subject to the provisions of section 81, a commanding officer or such other officer as is, with the consent of the Central Government specified by the (Chief of the Army Staff)[1], may, in the prescribed manner proceed against a person subject to this Act otherwise than as an officer, junior commissioned officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,—

(a) imprisonment in military custody up to twenty-eight days;

(b) detention up to twenty-eight days;

(c) confinement to the lines up to twenty-eight days;

(d) extra guards or duties;

(e) deprivation of a position of the nature of an appointment or of corps or working pay, and in the case of non-commissioned officers, also deprivation of acting rank or reduction to a lower grade of pay;

(f) forfeiture of good service and good conduct pay;

(g) severe reprimand or reprimand;

(h) fine up to fourteen days' pay in any one month;

(i) penal deductions under clause (g) of section 91;

(j) [ ][2]

NOTES

1. *"Subject to the provisions of Section 81".*—AA.s. 81 imposes certain limitations or restrictions on the powers granted to the Commanding or other officer under this section.

2. For the definition of CO; see AA.s. 3 (v).

A JCO commanding a unit or detachment, not being an officer, within the meaning of AA.s. 3 (xviii), cannot award any of the punishments under this section.

3. In the prescribed manner—see 'offence report' in Part II of Appendix-III to AR.

For the duties of a CO as to investigation of a charge for an offence and disposal of the charge; see AA.s. 102 and. ARs 22 to 24.

Every charge must be heard in the presence of the accused; Witnesses are not sworn or affirmed, but the accused must have full liberty to cross-examine, to call witnesses and to make any statement.

---

[1] Substituted by Act No. 19 of 1955.

[2] Omitted by Act No. 37 of 1992

A CO may dismiss the charge, and he should do so if, in his opinion, the evidence does not show that some offence under AA has been committed, or if, in his discretion, he thinks that the charge ought not to be proceeded with. See AR 22 (2).

4. (a) Where a person has been convicted or acquitted of an offence by a court-martial or by a criminal court or summarily dealt with or the charge has been dismissed he is not liable to be summarily punished or tried by court-martial for the same offence or for an offence which is substantially the same; AA.s. 121. If, for example, he has been acquitted or convicted of, or summarily punished for, absence without leave, and the absence amounted to desertion, he cannot afterwards be tried for desertion.

(b) A person convicted by a court-martial of an offence cannot afterwards be sentenced under this section by his CO to stoppages for damage caused by that offence.

(c) A person is also not liable to be tried for an offence which has been pardoned or condoned by competent military authority, or which was committed more than three years before the date of his trial unless the offence was mutiny, desertion or fraudulent enrolment; see AA.s. 122 and AR 53.

5. (a) *'To the extent prescribed'*.—A CO or other officer specified in this section, if below field rank, cannot award, imprisonment or detention for a period exceeding seven days unless empowered to do so by an officer having power not less than an officer commanding a division. AR 192.

(b) For officers specified by the Chief of the Army Staff, with the consent of the Central Government, under this section; see Regs Army para 443.

6. The following combined punishments under this section are legal;

(a) In the case of a NCO—

One or more of the punishments specified in clauses (d) to (i).

(b) In the case of a Sepoy—

(i) Imprisonment, detention and confinement to the lines if the total period does not exceed 42 days, but the confinement to the lines will take effect on the expiry of imprisonment and or detention; or

In addition to the punishments mentioned in clause (i) above, the CO may award one or more of the following punishments e.g., extra guard or duties, deprivation of corps or working pay, reduction to a lower class of pay, forfeiture of good service and good conduct pay, fine and stoppages.

7. A CO cannot increase a punishment after he has once made his award, which is considered complete when the person has quitted his presence. But a CO can at any time before the punishment has been completed, mitigate or remit such punishment. As to entry of his award, see Regs Army para 387 (b).

8. Awards by a CO which appear to be illegal, unjust or excessive can be reviewed by superior military authority as defined in clause (a) of AA.s. 88: see AA.s. 87 and Regs Army para 442 also.

9. *Clause (a).*—(a) Imprisonment may be rigorous or simple. See s. 3 (27) of the General Clauses Act, 1897. The term 'rigorous' or 'simple' should always be used in the award, see note 8 (a) to AA.s. 71.

(b) Imprisonment, detention or confinement to the lines will not be awarded to a person who is of the rank of NCO or was of such rank at the time of committing the offence for which he is punished: AA.s. 81 (4). The term 'Non-commissioned officer' as defined in AA.s. 3 (xv) includes an acting NCO.

(c) Imprisonment will be reserved for serious and repeated offences.

(d) Imprisonment or detention commences from the date of award and ends at sunset of the day the sentence expires.

(e) An award of imprisonment, rigorous or simple, carries with it a minimum of two hours of military instruction daily; Regs for the Army para 509(a).

(f) As to deduction from pay and allowances entailed by an award of imprisonment or for absence without leave, see AA.s. 91 (a) and P and A Regs (OR).

(g) Imprisonment, detention, confinement to the lines and extra guards or duties may be awarded separately or conjointly but the carrying out of imprisonment and detention will precede confinement to the lines and extra guards or duties: AA.s. 81(2).

(h) No award or awards including imprisonment, detention and confinement to the lines shall exceed in the aggregate forty-two days, AA.s. 81 (3). Also see AA.s. 81 (2) and note (g) above.

10. *Clause (b).*—For detention in military custody: See Regs for the Army para 510. Also see notes 9 (b), (d), (g) and (h) above.

11. *Clause (c).*—(a) Defaulter's will be required to answer to their names at uncertain hours throughout the day, and will be employed on working parties to the fullest practicable extent with a view to relieving well-conducted soldiers therefrom. Defaulters will attend parades, and take all duties in regular turn. When the working parties required are not sufficient to keep the defaulters fully employed, the CO may order them to attend extra drill, which will be limited to one hour a day, and will include some form of useful instructions. (See item I, column 4 of the Table appended to Regs for the Army para 443.)

(b) Confinement to the lines is not 'custody' for the purpose of AA.s. 51.

(c) See notes 9 (b), (g) and (h) above.

12. *Clause (d).*—(a) This punishment is awarded for minor offences on those duties.

(b) See note 9 (g) above.

13. *Clause (e).*—(a) For ranks and appointments; see Regs for the Army para 131.

(b) Lower grade of pay includes lower class of pay.

(c) The maximum period for which such forfeiture can be ordered has not been prescribed, but see P&A Regs (OR).

14. *Clause (f).*—The CO or other specified officer can forfeit at a time one rate of such pay : see P and A Regs (OR).

15. *Clause (g).*—(a) This punishment can be awarded only to a NCO or an acting NCO. AA.s. 81 (5). A lance naik is a NCO for the purpose of this clause.

(b) An award of severe reprimand constitutes a red ink entry; Regs for the Army para 387 (b).

16. *Clause (h).*—(a) This punishment may be awarded alone or in conjunction with any other punishment under this section.

(b) Recovery can be effected under AA.s. 91 (h).

17. *Clause (i).*—Under this clause the CO or specified officer is authorised to award stoppages to meet any expenses, loss, damage or destruction caused by the offender to the Central Government or to any building or property: but the deductions so ordered shall not exceed in any month one half of his pay and allowances for that month, AA.ss. 91 (g) and 94.

81. Limit of punishments under section 80.— (1)—[Omitted][1]

(2) In the case of an award of two or more of the punishments specified in clauses (a), (b), (c) and (d) of the said section, the punishment specified in clause (c) or clause (d) shall take effect only at the end of the punishment specified in clause (a) or clause (b).

(3) When two or more of the punishments specified in the said clauses (a), (b) and (c) are awarded to a person conjointly, or when already undergoing one or more of the said punishments, the whole extent of the punishments shall not exceed in the aggregate forty-two days.

(4) The punishments specified in clauses [(*a*), (*b*), and (*c*)][2] of section 80 shall not be awarded to any person who is of the rank of non-commissioned officer or was, at the time of committing the offence for which he is punished, of such rank.

(5) The punishment specified in clause (g) of the said section shall not be awarded to any person below the rank of a non-commissioned officer.

---

[1] Omitted by Act No. 37 of 1992

[2] Substituted by Act No. 37 of 1992.

NOTES

1. See notes 9 (b), (g) & (h), 15 (a) and 18 (c) to AA.s. 80.

2. For sub-sec (4) and (5) of this section, a lance naik shall be deemed to be a NCO.

82. Punishments in addition to those specified in section 80.—(The Chief of Army Staff)[1] may, with the consent of the Central Government, specify such other punishments as may be awarded under section 80 in addition to or without any of the punishments specified in the said section, and the extent to which such other punishments may be awarded.

NOTES

1. This section empowers the Chief of the Army Staff to add, with the consent of the Central Government, to the punishments awardable under AA.s. 80 and to specify the extent of the punishments so added.

2. For other punishments (i.e., specified under this section) which may be awarded under AA.s. 80 see Regs for the Army para 443.

83. Punishment of officers, junior commissioned officers and warrant officers by brigade commanders and others.—An officer having power not less than a brigade, or an equivalent commander or such other officer as is, with the consent of the Central Government, specified by the Chief of Army Staff[1] may, in the prescribed manner, proceed against an officer below the rank of a field officer, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say,—

(a) severe reprimand or reprimand;

(b) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

NOTES

1. See generally notes to AR. 26.

2 This section and AA.s. 84 obviate the necessity for trying by court-martial certain officers. JCOs or WOs who commit some offence which is not of a serious nature but which cannot at the same time be overlooked.

3 An officiating brigade, sub area or equivalent commander, irrespective of his rank, can exercise the powers under this section.

4 As to the 'prescribed manner' see AR 26, Forms 1 and 2 in Part I of Appendix IV to AR and Regs for the Army para 444.

5 An abstract of evidence, referred to in AR 26, if adduced must not consist of statements made at an earlier court of inquiry.

6. (a) An officer of the rank of Major or above cannot be dealt with under this section.

(b) For definition or 'field officer' see AR 2 (c).

7. The sentence of forfeiture of seniority or of service for the purpose of promotion cannot be awarded under this section.

8. Stoppages : see AA.ss. 90 (e) and 91 (e) and note 16 to AA.s. 71.

9. Awards under this section, AA.ss. 84 and 85, which appear to be illegal, unjust or excessive can be reviewed by the authorities specified in AA.s. 88(b) : see AA.s. 87 and Regs for the Army para 442.

10. For transmission of proceedings, see AA.s. 86.

11. For period of limitation for trial see AA.s. 122 and notes thereto.

---

[1] Substituted by Act No. 19 of 1955.

84. Punishment of officers, junior commissioned officers and warrant officers by area commanders and others.—An officer having power not less than an area commander or an equivalent commander or an officer empowered to convene a general court-martial or such other officer as is, with the consent of the Central Government, specified by the Chief of the Army Staff[1] may, in the prescribed manner proceed against an officer below the rank of lieutenant colonel, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, 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 previous to the award to elect to be tried by a court-martial;

(b) severe reprimand or reprimand;

(c) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

NOTES

1. See generally notes to AA.s. 83 and AR 26.

2. An officiating area or equivalent commander or other officer specified in this section, irrespective of his rank, can exercise the powers under this section.

3. As to the 'prescribed manner' see AR 26, Form 1 and 2 in Part I of Appendix IV to AR and Regs Army para 444.

4. Charges against an officer, who at the time of the commission of offence or disposal held the rank of Lt Col (actg or substantive) should not be dealt with summarily, even if he has ceased to hold that rank at the time the case has been referred to the superior authority by his CO. He should be brought to trial by a court-martial or dealt with administratively depending on the merits of the case.

5. Forfeiture of seniority of rank or service : see note 11 to AA.s. 71. If the authority dealing summarily with the case proposes to award this punishment he shall ask the accused "Do you elect to be tried by court-martial or will you accept my award?"

6. For period of limitation for trial see AA.s. 122 and notes thereto.

85. Punishment of junior commissioned officers.—A commanding officer or such other officer as is, with the consent of the Central Government specified by the Chief of the Army Staff[1] may, in the prescribed manner, proceed against a junior commissioned officer who is charged with an offence under this Act [and award one or more of the following punishments, that is to say,—

(i) severe reprimand or reprimand;

(ii) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good :

Provided that the punishment specified in clause (i) shall not be awarded if the commanding officer or such other officer is below the rank of Colonel][2].

NOTES

1. A CO or any 'specified' officer can award stoppages and other punishments against a JCO who is charged with an offence.

2. Prescribed manner : see AR 26, forms 1 and 2 in Part I of Appendix IV to the AR and Regs Army para 444.

3. Awards under this section which appear to be illegal, unjust or excessive can be cancelled, varied or remitted by superior military authority specified in AA.s. 88(a) i.e., any officer superior in command to the CO.

4. For period of limitation for trial see AA.s. 122 and notes thereto.

5. Transmission of proceedings : see AA.s. 86.

86. Transmission of proceedings.—In every case in which punishment has been awarded under any of the sections 83, 84 and 85, certified true copies of the proceedings

---

[1] Subtituted by Act No. 19 of 1955.
[2] Subtituted by Act No. 37 of 1992

shall be forwarded, in the prescribed manner, by the officer awarding the punishment, to a superior military authority as defined in section 88.

NOTE

See notes to AR 26 and Appendix Q to Regs Army para 444.

87. Review of Proceedings.— If any punishment awarded under any of the sections 83, 84 and 85 appears to a superior military authority as defined in section 88 to be illegal, unjust or excessive, such authority may cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case.

NOTES

1. (a) A "punishment is wholly illegal" if (i) the finding of guilty cannot be upheld : or (ii) the only punishment awarded is of a kind which cannot be awarded for the offence charged (e.g., stoppage of pay and allowances for an offence which is not alleged to have occasioned any loss); or (iii) where the punishment awarded is of a kind which the authority dealing with the case is not authorized to award.

(b) Where the punishment is wholly illegal it must be cancelled and appropriate directions made by the superior military authority.

2. (a) A punishment is "excessive" when it is in excess of the punishment authorised by law for the offence i.e., where it is of a kind which the authority dealing with the case is authorised to award for the offence charged but is greater in amount than he is authorised to award e.g., if an authority under AA.s. 83, 84, 85 were to award stoppages greater than the amount of the loss proved to have been occasioned by the offence.

(b) In such cases the superior military authority specified in AA.s. 88 can vary the punishment by reducing the amount of punishment to an amount which is authorised by law.

3. Where the punishment though not in excess of the punishment authorised appears to be 'unjust' or severe, the superior military authority has the power to remit the whole or part of the punishment. If the whole of the punishment is remitted there will be nothing left except the finding which will stand good and the accused will suffer the forfeitures or penalties which are consequential on conviction.

4. 'Make such other direction, as may be appropriate in the circumstances of the case' : These words would enable the superior military authority to mitigate or commute the punishment where it is unjust or excessive.

5. Though this section does not specifically provide review of the punishments awarded under AA.s. 80, the same procedure should be followed in respect of those punishments. Also see Regs Army para 442.

6. In exercise of the powers vested under section 88(b) of the Army Act, 1950, the chief of the Army staff has specified the Officer Commanding the Army Corps as a superior military authority for the purpose of sections 86 and 87 of the Army Act, 1950.

88. Superior Military Authority.—For the purpose of sections 86 and 87, a "superior military authority" means—

(a) in the case of punishments awarded by a commanding officer, any officer superior in command to such commanding officer;

(b) in the case of punishments awarded by any other authority, the Central Government, the (Chief of Army Staff)[1] or other officer specified by the (Chief of the Army Staff)[1].

NOTE

1.Clause (a).-In cases where a detachment etc., commander can exercise the power of a CO within the meaning of AA, the CO of the main unit can be the superior officer of the detachment etc., commander under this clause.

2. Clause (b).—Chief of the Army Staff has specified the Officer Commanding an Army Corps as superior military authority for the purposes of sections 86 and 87 of the Army Act, 1950

89. Collective fines.—(l) Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army, army corps, division or independent brigade to which such units belongs may, after obtaining the report of a court of inquiry impose a collective fine upon the junior commissioned officers, warrant officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgement, should be held responsible for such loss or theft.

[1]Substituted by Act No. 19 of 1955.

(2) Such fine shall be assessed as a percentage on the pay of the individuals on whom it falls.

NOTES

1. This section authorises imposition of a collective fine on a company or similar unit for the purpose of enforcing collective responsibility. Such a collective fine must be distinguished from a joint fine based on individual responsibility. The intention of the section is not to permit of the punishment by fine of persons against whom there is suspicion but insufficient proof to warrant their conviction by court-martial. This section is, in a sense, an exception to the general scheme of AA, under which individual responsibility is the basis for punishment or for penal deduction. The powers granted by this section are, therefore, of an administrative and not judicial character.

2. A collective fine cannot be imposed upon officers.

3. The imposition of a collective fine under this section upon persons of a unit is not a bar to trial by court-martial of any person of that unit, whose individual act or omission may have contributed to the loss.

4. Whenever a weapon or part of a weapon referred to in this section and AR 186 is lost or stolen, a court of inquiry is mandatory under AR 185.

5. The amount of the fine to be imposed is regulated by AR 186 and the fine must be assessed as a percentage on the pay of the individuals on whom it falls.

Fine cannot be imposed in respect of weapons or parts of weapons not enumerated in AR 186.

CHAPTER VIII

PENAL DEDUCTIONS

90. Deduction from pay and allowances of officers.—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, unless a satisfactory explanation has been given to his commanding officer and has been approved by the Central Government;

(b) all pay and allowances for every day while he is in custody or under suspension from duty on a charge for an offence for which he is afterwards convicted by a criminal court or a court-martial or by an officer exercising authority under section 83 or section 84;

(c) any sum required to make good the pay of any person subject to this 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 83 or section 84;

(e) all pay and allowances ordered by a court martial [ ][1] 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 69;

(g) any sum required to make good any loss, damage, or destruction of public or regimental property which, after due investigation, appears to the Central Government to have been occasioned by the wrongful act or negligence on the part of the officer;

(h) all pay and allowances forfeited by order of the Central Government if the officer is found by a court of inquiry constituted by the (Chief of the Army Staff)[2] 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 wilful 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;

(i) any sum required by order of the Central Government, [or any prescribed officer][3] 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.

NOTES

1. (a) AA.s. 25 enjoins that the pay of any person subject to AA due to him as such under any regulation for the time being in force shall be paid without any deduction other than the deductions authorised by or under this or any other Act.

The term 'pay' means the rate of pay with increases, if any, for length of service, to which a person subject to AA is entitled by reason of his rank, appointment, trade group or trade classification, and includes additional remuneration such as qualification pay, proficiency pay and various forms of additional pay which is admissible only on fulfillment of certain conditions. Regulations may provide for the withdrawal of such additional remuneration if the conditions governing them, are not fulfilled. All other emoluments are 'allowances'. Also See note 1 to AA.s. 25.

---

[1]Omitted by Act No. 37 of 1992.

[2]Substituted by Act No. 19 of 1955.

[3]Inserted by Act No. 37 of 1992.

(b) It is illegal to make deductions which are not authorised and the unlawful withholding of pay is an offence under AA. s. 61.

2. This section and AA. s. 91 enunciate the penal deductions that may be made from the pay and allowances of an officer and a person other than an officer respectively and by implication exclude other penal deductions but they do not prohibit deductions not penal e.g., in respect of rations, or stoppages to meet a public claim or regimental debt or claim etc., under AR 205.

3. Though this section and AA. s. 91 are permissive, some of the penal deductions authorised thereunder have been made mandatory by P & A Regs (Officers) and OR. Penal deductions under clauses (a), (d), (e) and (f) of this section have been made mandatory and those under clauses (b), (c), (g), (h) and (i) permissive; see para 528 of P & A Regs (Officers).

4. As to remission of penal deductions, see AA.s. 97 and AR 195.

5. *Clause (a).*—If pay has been discontinued under P & A Regs or has not been drawn during a period of absence without leave, such pay is liable to be forfeited under this clause on the issue of an order by the Central Govt. If pay has been drawn during such a period, the issue constitutes an over-issue and the amount is recoverable as a public claim under AR 205. It is unnecessary for an officer to be found guilty of absence by any tribunal before any deductions for the period of absence can be enforced under this clause.

6. *Clause (b).*—Pay and allowances are issuable to an officer though he is in custody or under suspension from duty on a charge for an offence unless such pay and allowances or any part thereof are directed to be withheld under AA. s. 93, in which case they can be forfeited on his subsequent conviction for that offence. Even though pay and allowances are not so withheld, their issue during such period may constitute an over-issue and the amount may be recovered as a public claim under AR 205.

7. 'Custody' includes custody by the civil authorities.

8. *Suspension from duty.*—See Regs for the Army para 349. Valid deductions under this clause can only be made if the officer is subsequently convicted of the offence for which he was suspended or kept in custody.

9. *Clause (c).*—It is an offence under AA. s. 61 to detain pay unlawfully, etc., but it would not appear necessary for an officer to be convicted of an offence under that section before a deduction may be made under this clause.

10. *Clause (d).*—'Occasioned by'. In order to put an officer under stoppages by way of penal deductions, under either this clause or clause (g), it is not sufficient to show merely that the loss, etc., was facilitated or made possible by his offence, act, or neglect. It is necessary to show that the loss etc., was "occasioned by" in the sense of being the natural and reasonable consequence of the particular offence of which he is convicted. In the case, however, of the continuing wrongful act of improperly using Govt. property, e.g., a motor vehicle, any loss or damage happening to such property during the continuance of such user may be held to be occasioned thereby. Where the loss etc., was merely facilitated or made possible by the offence, it is possible to effect its recovery as a public etc., claim under AR 205 where appropriate.

11. The terms 'expenses' and 'losses' etc., in this clause are not limited to public and regimental funds and property but would also extend to, e.g., loss of wages and doctor's expenses incurred by an individual (servicemen or a civilian), as the direct result of the offence of which the delinquent is convicted. But occasion will rarely arise when it is advisable for a military tribunal to exercise its power of awarding a penal deduction to compensate a civilian, who has always his proper legal remedy of bringing a civil action for recovery of damages. Stoppages, however, should be awarded where a charge of theft of or damage to the property of a civilian is dealt with by court-martial or summarily.

A person is not liable for the ordinary expenses of his prosecution, capture or conveyance or indirect expenses of a similar kind. Nor would he be liable under this clause for damage to a policeman's clothes, because the policeman fell down and damaged them while in pursuit of the person endeavouring to escape. Where a person refuses to march being able to do so, and a taxi has to be hired for his conveyance, he may be held liable for the expense thus incurred by his contumacy; but he would not be liable if intoxicated and incapable of walking.

The principle is that stoppages are intended, not for punishment, but to compensate for the loss etc., sustained.

12. Where an officer has been convicted for an offence by a court-martial which did not award any stoppages, no penal deductions can subsequently be ordered under this clause administratively for compensation for damage caused through that offence.

13. As regards averment in the particulars of the charge of the amount of the loss etc., see AR 30 (6).

14. *Clause (e).*—A court-martial can award both forfeiture of pay and allowances or arrears thereof and stoppages under clauses (j) , (k) and (l) of AA. S. 71 respectively.

15. *Clause (f).*—Fine is not one of the punishments specified in AA.s. 71 and is only awardable by a court-martial when exercising jurisdiction under AA.s. 69.

16. When the fine awarded by court-martial cannot be recovered wholly by deductions from the pay and allowances of an officer, action may also be taken for its recovery under AA.s. 174.

17. *Clause (g).*—'Public property' in this clause means not only property of the Govt. but also any property belonging to the community at large as distinct from that which is private property. Captured enemy property becomes public property.

18. The words 'of public or regimental property' qualify 'loss' and 'damage' as well as destruction. Furniture etc., hired by the military authorities for military use may be treated as "public" or "regimental" property.

19. It must be shown to the satisfaction of the Central Govt. that there has been a loss etc., occasioned by (in the sense referred to in note 10 above) some wrongful act or negligence on the part of the officer; and as a general rule an officer is first afforded an opportunity of advancing any reasons why a deduction should not be made from his pay and allowances.

The Central Government can legally impose a penal deduction on an officer under this clause notwithstanding that he has been previously dealt with under AA. s. 83 or 84 or by a court-martial for the wrongful act or neglect but they may not increase a penal deduction awarded by court-martial or other authority, or order such deduction where the loss etc., was averted in the particulars but the court-martial or other authority did not award any stoppages. A mere invitation to an officer to make a payment towards any loss or damage occasioned by his wrongful act or neglect however, does not bar the Central Govt. from making an order under this clause.

20. Negligence has the same meaning as 'omission' or 'neglect' in AA.s. 63, see notes thereto. Also see Regs Army para 435.

21. *Clause (h).*—(a) When there is reason to believe that an officer has been taken prisoner by his own voluntary action or wilful neglect of duty or that he has served with or under or has aided the enemy, etc., a provisional court of inquiry will be assembled at the earliest moment to investigate the circumstances: See Regs Army para 522. The COAS is or any officer authorised by him may then under AA.s. 96 order the pay and allowances of such person to be withheld pending the result of such inquiry.

A court of inquiry respecting a prisoner of war still absent and not known to have died in captivity will be provisional, to be followed later by another court of inquiry when the individual returns to service or is recovered. If the officer's conduct is found by the court of inquiry (provisional or otherwise) to be blameworthy, the Central Govt. may, on the basis of such finding, order forfeiture of the pay and allowances of the officer. An officer, unlike a JCO, WO or OR, does not automatically forfeit his pay and allowances while a prisoner of war.

(b) When a court of inquiry is assembled on a prisoner of war, evidence shall he recorded on oath or affirmation, AR 181 (a). Also see AR 178.

(c) As to remission of penal deductions; see AA.s. 97 and AR 195 (a).

(d) As to provision for dependents of prisoners of war from remitted deductions or from his pay and allowances, see AA.s. 98 and 99 and AR 196.

(e) For the duration for which a person is deemed to be a prisoner of war; see AA.s. 100.

22. *Clause (i).*—(a) This clause, like clause (i) of AAs. 91 was enacted mainly in order to prevent any financial hardship being caused to the wife or children by the provisions of AAs. 28 under which the pay and allowances of a person subject to AA cannot be attached in satisfaction of any decree of a civil court. In other words, if in a suit for manitenance or payment of alimony a civil court grants a decree in favour of the wife or children, the amout decreed can be deducted from the pay and allowances of a person and paid to the wife or children under this clause. Such being the intention, deductions should not, as a rule, be ordered under this clause or clause (i) of AAs. 91 except to give effect to a decree for maintenance granted by a civil court.

(b) See notes to AAs. 28

91. Deduction from pay and allowances of persons other than officers.—Subject to the provisions of section 94 the following penal deductions may be made from the pay and allowances of a person subject to this Act other than an officer, 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 (imprisonment for life)[1] or imprisonment awarded by a criminal court, a court-martial or an officer exercising authority under section 80, [ ][2];

(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 imprisonment [ ][2] by an officer exercising authority under section 80;

(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;

(d) 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 his own misconduct or imprudence, such sum as may be specified by order of the Central Government or such officer as may be specified by that Government;

(e) all pay and allowances ordered by a court-martial or by an officer exercising authority under any of the sections 80, 83, 84 and 85, 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 while 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 Central 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 69, or an officer exercising authority under any of the sections 80 and 89.

(I) Any sum required by order of the Central 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.

NOTES

1. See notes 1 and 2 AA.s. 90.

2. Penal deductions under clauses (a), (b), (c) and (f) of this section have been made mandatory see Rule 51 of P & A Regs (OR). In cases falling under clauses (a), (b) and (c) the pay and allowances are to

[1] See IPC. S. 53 A

[2] Ommitted by Act No. 37 of 1992

be forfeited automatically and no discretion is given to the CO to decide whether or not to enforce wholly or partially the forfeiture, but as to remission of which deductions; see AA.s. 97 and AR 195.

3. *Clause (a).*—It is unnecessary for a JCO, WO or OR to be found guilty of absence by a court-martial or by his CO before a forfeiture of pay and allowances for the period of absence can be enforced under this clause.

4. A sepoy who has been sentenced by his CO to undergo detention or confinement to the lines under AA. s. 80 does not suffer deductions under this clause.

5. A JCO, WO or OR automatically forfeits his pay and allowances while a prisoner of war and such pay and allowances cannot as a rule be restored to him unless a court of inquiry assembled to inquire into his conduct finds that he was not taken prisoner through neglect or misconduct on his part or that he was otherwise blameless and the authority prescribed in AR 195(c) remits the forfeiture see AA. ss. 98 to 100, ARs 178, 181 and 196 and Regs Army para 522.

6. AA.s. 92 prescribes how days of absence etc., are to be calculated for the purposes of this clause and clause (b).

For instance, if a person absented himself from 9 P.M. on 1st Jun 78 and returned at 2.45 A.M. on 2nd Jun 78, he would forfeit no pay as his absence did not amount to six hours or upwards. If he was bound to go on guard or perform some other military duty and in consequence of his absence some other person had to go on guard or perform that duty, then he would forfeit one day's pay.

Again, if a person absents himself at 10 P.M., on the 1st Jun 78 and remains absent until 4 A.M., on the 2nd Jun 78, he would forfeit one day's pay, and if he remained absent until 2 A.M., on the 9th Jun 78, he would forfeit nine day's pay for in the latter case he would be absent for over twelve consecutive hours and the period of absence on the 1st and 9th Jun would each reckon as absence for one whole day.

7. When the sentence of imprisonment for life or imprisonment is suspended by competent authority under AA.s. 182, no forfeiture under this clause can take place for the period it is so suspended.

8. *Clause (b)*—See note 6 to AA.s. 90. Effect cannot be given to this provision unless the pay and allowances of a person in custody on a charge for an offence have been ordered to be withheld under AA.s. 93. Once they have been so withheld, the deductions are carried out automatically on conviction for that offence. If pay and allowances are not so withheld, their issue during such period constitutes an over-issue and the amount is recoverable as a public claim under AR 205. JCOs & NCOs under "close arrest" but not in confinement will incur no forfeiture of pay and allowances. For persons below that rank "close arrest" is the same thing as "confinement" and they will forfeit pay and allowances for every day of "close arrest". See note under Rule 51 (f) of P&A Regs (OR). "Custody" includes custody by the civil authorities.

9. NCO or sepoy who has been sentenced to any punishment other than imprisonment or field punishment under AA.s. 80 for the offence of absence without leave or a sepoy who is awarded imprisonment or field punishment under AA.s. 80 for an offence other than that of absence without leave does not forfeit his pay and allowances while in custody under this clause.

10. Upon a charge for desertion or absence without leave, a finding that the accused did the act charged but was insane at the time when he did the same, does not amount to a conviction, as it negatives "intention", and no forfeiture of pay and allowances results. See notes to AA.s. 145.

11. *Clause (c).*—The deduction under this clause is only authorised where the sickness is caused by an offence of which a person has been found guilty. It, therefore, does not extend to sickness caused by immorality or intemperance, when there is no conviction (either by a court-martial or the officer disposing of the case summarily) for an offence by which the sickness was caused. The medical officer must attend the investigation of the offence, whether before the court-martial or the officer disposing of the case summarily, and give evidence in substantiation of the facts contained in his certificate. Also see Regs Army para 1228.

12. *Clause (d).*—See Regs Army para 1228. The amount to be deducted is specified in P and A Regs (OR).

13. *Clause (e).*—Forfeiture of Pay and allowances or of arrears of pay and any public money due at the time of dismissal can only be awarded by a court-martial under clauses (j) and (k) of AA.s. 71 respectively. Such punishments cannot be awarded under AA.s. 80, 83, 84 or 85. A CO or specified officer can, however, award deprivation of corps or working pay, forfeiture of good service and good conduct pay or a fine under AA.s. 80.

14. (a) Stoppages or compensation cannot be awarded by a court-martial unless the grounds for awarding it are stated in the particulars of the charge and the loss etc., proved in evidence: see AR 30(6) and notes thereto. Also see note 5 to AA.s. 54, note 16 to AA.s. 71 and 13 of AA.s. 90.

(b) A deduction cannot be effected in anticipation of stoppages.

15. As to the limit of deductions: see AA.s. 94.

16. *Clause (f).*—A person subject to AA other than an officer forfeits his pay and allowances while a prisoner of war under clause (a) read with Rule 51 (c) P and A Regs (OR). See note 5 above. This clause authorise forfeiture of pay and allowances due to such person between the date of his being recovered from the enemy and the date of his dismissal from the service if the court of inquiry assembled under AA.s. 96 and Regs Army para 522 to inquire into his conduct finds that he was taken prisoner through neglect or misconduct on his part. Also see AA.s. 100.

17. For definition of enemy; see AA.s. 3 (x).

18. *Clause (g).*—For the meaning of words "expenses" and "losses" etc., see note 11 to AA.s. 90.

19. *Caused by.*—These words have the same meaning as the expression "occasioned by". See note 10 to AA.s. 90.

These words have also been held to include loss of wages and doctor's fee when a person's negligence has occasioned personal injury to a third person.

20. 'Any Building or property' : The building or property need not be public building or property; the words include the buildings or property of persons subject to AA or civilians, whether there is any claim against the public or not. Thus, a CO may order a person to pay damages for a broken window, or such other minor damage done by him. A case of serious damage is, of course, not one which a CO should dispose of summarily.

21. Where a person has been convicted by a court-martial for an offence, his CO cannot subsequently award compensation for damage caused through that offence. The penal deductions under this clause are purely executory following CO's award under AA. s. 80(i).

22. A JCO may be awarded stoppages by his CO under this clause. See AA.s. 85.

23. As to the limit of deductions; see AA.s. 94.

24. *Clause (h*).—See AA.s. 80 (b) The deductions permissible on account of fine under this clause cannot, except where the accused is sentenced to dismissal, exceed in any one month one half of his pay and allowances for that month AA.s. 94.

25. In addition to deduction under this clause, a fine awarded by a court-martial can also be recovered under the provisions of AA.s. 174.

26. *Clause (i).*— See note 22 to AA.s. 90, which applies *mutatis mutandis* to this clause.

27. As to extent of deductions, see AA.s. 94.

92. Computation of time of absence or custody.—For the purposes of clauses (a) and (b) of section 91,—

(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;

(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 military duty which was thereby 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;

(d) a period of absence or imprisonment, which commences before, and ends after, midnight may be reckoned as a day.

NOTES

1. This section explains how a 'day' of absence or custody referred to in clauses (a) and (b) of AA.s. 91 is to be computed.

2. (a) This section prescribes six hours as the minimum period of absence that will count as a day of absence unless two conditions are fulfilled, first, that the absentee was prevented by his absence from fulfilling a military duty, and second, that the duty was thrown upon some other person. Six clear hours must, therefore, elapse, and they must be reckoned consecutively.

(b) If the absence or custody amounts to six hours but not to twenty four hours one day's pay is forfeited unless the absence exceeds twelve consecutive hours and falls partly on one natural day (reckoned from midnight to midnight) and partly on another, in which case such absence or custody is reckoned for the whole of each natural day during any portion of which the person was absent or in custody.

(c) Also see note 6 to AA.s. 91.

93. Pay and allowances during trial.—In the case of any person subject to this 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 allowance 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 clause (b) of sections 90 and 91.

NOTES

1. Pay and allowances of a person are payable to him even though he is in custody or under suspension from duty on a charge unless the said pay and allowances, or any part thereof are withheld by the prescribed authority under this section pending the result of his trial on that charge; unless they are so withheld, the provisions of AA.s. 90 (b) and 91 (b) will remain ineffectual, but for the recovery of the amount as a pubic claim under AR 205, see notes 6 and 8 to AA.ss. 90 and 91 respectively.

2. The prescribed officer is, in the case of an officer, COAS, and in the case of a person other than an officer, the officer empowered to convene a court-martial for his trial. See AR 194.

94. Limit of certain deductions.—The total deductions from the pay and allowances of a person made under clauses (e), (g) to (i) of section 91 shall not, except where he is sentenced to dismissal, exceed in any one month one-half of his pay and allowances for that month.

NOTES

From this section it appears that the intention is to leave a certain minimum proportion of his monthly emoluments to a person, other than an officer, for his subsistence. The restriction imposed, however does not apply—

(a) to deductions under AA.s. 90 from the pay and allowances of an officer; or

(b) to deductions under clauses (a), (b), (c), (d) and (f) of AA.s. 91; or

(c) where the offender has been sentenced to dismissal.

95. Deduction from public money due to a person.—Any sum authorised by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

NOTES

1. 'Any public money due to him other than a pension'—

(a) This will allow the amount to be deducted from a gratuity or other sums earned by but not paid to a person subject to AA. It would not include money lodged in a fund of whatever description, nor ration or lodging etc., allowance.

(b) A pension is excluded because being granted as an act or grace it is non-justifiable and the Government can take away or modify its grant [S. 4 of Pension Act, 1871 (XXIII of 1871)], Further, a pensioner not being subject to AA is outside the scope thereof.

2. "Without prejudice to any other mode of recovering the same"—for instance, though a fine awarded by a court-martial exercising jurisdiction under AA.s. 69 is recoverable under clause (f) of AA.s. 90 or clause (h) of AA.s. 91, it can also be recovered under the provisions of AA.s. 174.

96. Pay and allowances of prisoner of war during inquiry into his conduct.—Where the conduct of any person subject to this Act when being taken prisoner by, or while in the hands of, the enemy, is to be inquired into under this Act or any other law, the (Chief of the Army Staff)[1] or any officer authorised by him may order that the whole or any part of the pay and allowances of such person shall be withheld pending the result of such inquiry.

NOTES

A JCO, WO or OR automatically forfeits his pay and allowances for the period he is a prisoner of war unless a court of inquiry assembled under Regs for the Army para 524 finds that he was not taken prisoner through neglect or misconduct on his part and the forfeiture has been remitted by the competent military authority specified in AR 195(3). In the case of a person other than an officer, therefore, the pay and allowances which may be withheld under this section will relate to the period after he returns or is apprehended. An officer, however does not automatically forfeit his pay and allowances while a prisoner of war. This section, therefore, provides that the pay and allowances of an officer may be withheld by the COAS or other officer authorised by him, pending the result of an inquiry into the officer's conduct; if the court of inquiry finds him to be blameworthy, his pay and allowances can then be forfeited by the Central Government. In other words, this section was enacted to give effect to the provisions of clause (h) of AA.s. 90 and clause (f) of AA.s. 91 and thus supplements those clauses.

97. Remission of Deductions.—Any deduction from pay and allowances authorised by this Act may be remitted in such manner and to such extent, and by such authority, as may from time to time be prescribed.

NOTES

1. *"Prescribed".*—See AR 195. The most common case is that of a person absent without leave for a period not exceeding five days. In such a case, unless the person is convicted by a court-martial, his CO may remit the forfeiture of pay and allowances which his absence entails see AA.s. 91(a).

2. And to such extent.—The remission may be partial, but there is nothing to prevent a further remission made subsequently.

98. Provision for dependents of prisoner of war from remitted deductions.— In the case of all persons subject to this Act being prisoners of war, whose pay and allowances have been forfeited under clause (h) of section 90 or clause (a) of section 91, but in respect of whom a remission has been made under section 97, it shall be lawful for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependents of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

NOTES

1. 'Prescribed authorities'—See AR 196. .

2. If the officer who assembles the court is not one of the prescribed authorities, he should forward the proceedings with his recommendation, to one of those authorities. A court of inquiry on a prisoner of war who is still absent may be assembled in order to assist the authorities prescribed in ARs 195 and 196, in determining respectively whether remission of forfeiture of pay and allowances shall be ordered and if so what provision under this section, shall be made for the dependents of such prisoners of war. A second court of inquiry must be assembled as soon as possible after the return of the prisoner of war. Regs for the Army para 524 (g).

99. Provision for dependants of prisoner of war from his pay and allowances.—It shall be lawful for proper provision to be made by the prescribed authorities for any dependants of any person subject to this Act who is a prisoner of war or is missing, out of his pay and allowances.

---

[1] Substututed by Act No. 19 of 1955.

NOTES

1. This section applies where the pay and allowances of a person who is a prisoner of war or is missing have not been forfeited e.g., in the case of a person, other than an officer, who is missing or in the case of an officer who is a prisoner of war or is missing and in whose case a court of inquiry under the Regs Army has not been held or a court of inquiry has been held but the court found the officer blameless.

2. For *'prescribed authorities'*—See AR 196.

3. Under this section, unlike, AA.s. 98, provision can be made for a person's dependents even when such person is found missing.

100. Period during which a person is deemed to be a prisoner of war.—For the purposes of sections 98 and 99, a person shall be deemed to continue to be a prisoner of war until the conclusion of any inquiry into his conduct such as is referred to in section 96, and if he is cashiered or dismissed from the service in consequence of such conduct, until the date of such cashiering or dismissal.

CHAPTER IX

ARREST AND PROCEEDINGS BEFORE TRIAL

101. Custody of offenders.—(1) Any person subject to this Act who is charged with an offence may be taken into military custody.

(2) Any such person may be ordered into military custody by any superior officer.

(3) An officer may order into military custody any officer, though he may be of a higher rank engaged in a quarrel, affray or disorder.

NOTES

1. As to arrest and investigation of charges see ARs 22 to 27 and notes thereto and Regs for the Army paras 391 to 397, 401 and 402.

2. *Sub-sec*. (l).—Charged with an offence: The charge referred to here is not the formal written charge (AR 28) preferred by the CO when it is decided to send the case for trial but a complaint or accusation that an offence has been committed and which gives rise to the preliminary investigation.

3. *Military custody*.—See AA.s. 3(xiii).

This expression is here restricted to the military custody of persons when charged with offences and does not apply to persons in military custody when undergoing sentences.

4. *Sub-sec* (2).—Superior officer; see AA.s. 3 (xxiii).

5. *Sub-sec* (3).—Officer—see AAs. 3(xviii).

6. As to offences in relation to this sub-sec. see AA.s. 42(a).

102. Duty of commanding officer in regard to detention.—(1) It shall be the duty of every commanding officer to take care that a person under his command when charged with an offence is not detained in custody for more than forty-eight 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 having regard to the public service.

(2) The case of every person being detained in custody beyond a period of forty-eight hours, and the reason thereof shall be reported by the commanding officer to the general or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

(3) In reckoning the period of forty-eight hours specified in sub-section (1), Sundays and other public holidays shall be excluded.

(4) Subject to the provisions of this Act, the Central Government may make rules providing for the manner in which and the period for which any person subject to this Act may be taken into and detained in military custody, pending the trial by any competent authority for any offence committed by him.

NOTES

1. *Sub-sec.* (1).—For definition of CO. see AA.s. 3(v). A CO who unnecessarily detains a person in arrest or confinement renders himself liable to a charge under AAs. 50(a).

2. This sub-sec which applies in the case of officers as well as JCOs, WOs and OR, means that the investigation must be commenced within the time specified, though it may be impossible to complete it within that time. As to exclusion of Sunday and public holidays, see sub-sec. (3).

3. *Sub-sec.* (2).—The report should be made by letter and should refer specifically to the case, and state the reasons justifying the detention of the accused in custody without investigation. The absence of an important witness would justify a remand or the accused might be ordered to return to his duty with a specific intimation that his case will be investigated as soon as the absent witness is available.

4. *Sub-sec.* (3).—Sundays and other public holidays are excluded when computing the period of forty-eight hours referred to in sub-sec. (1) though they are not so excluded for any other purpose e.g., time reckoned for the purposes of punishment or of any deduction of pay.

5. *Sub-sec.* (4).—See AR 27.

103. Interval between committal and court-martial.—In every case where any such person as is mentioned in section 101 and is not on active service remains in such custody for a longer period than eight 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, and a similar report shall be forwarded at intervals of every eight days until a court-martial is assembled or such person is released from custody.

NOTES

1. The intention of this section is to bring the accused to trial as soon as possible and to avoid delays in disposing of cases under AA.

2. AA does not require these reports to be rendered where the accused is on active service.

3. The section applies whether the accused is in open or close arrest.

4. *Special report*.—For form see Appendix III (Part IV) to AR.

The object of this section is that all intervals beyond eight days must be justified by submission of special reports until a court-martial has been ordered to assemble or the person concerned released. AR 27(3) has been framed under AA.s. 102(4), in order to render unlawful any detention beyond 2/3 months without a court-martial having been ordered to assemble unless the sanction of the COAS or approval of the Central Govt. as the case may be has been obtained.

104. Arrest by civil authorities.—Whenever any person subject to this Act who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate, or police officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

NOTES

This section enjoins the civil authorities e.g., a magistrate or a police officer to assist in the arrest and delivery to military custody of a person accused of an offence under AA if within their jurisdiction, upon a requisition signed by his CO.

105. Capture of deserters.—(1) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs, shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, into military custody.

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act, and to be a deserter or to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

NOTES

(1) The section lays down the procedure to be followed for apprehending deserters or suspected deserters and for dealing with persons so arrested. For detailed instructions as to action to be taken by the CO, see Regs for the Army para. 377.

2. This section is a special application of the powers granted to the civil authorities under AAs. 104.

3. The 'corps' referred to in this section is the corps as defined in AR 187(3).

Department.—See AA.s. 3(ix).

Detachment.—Recruiting parties, including enrolled recruits accompanying them under the orders of a RO or ARO, enrolled personnel forming the establishment for the time being, of AOC establishment or ordnance or clothing factory and enrolled personnel forming the establishment, for the time being, of a military hospital are examples of a detachment.

Civil authorities.—This includes political and police authorities.

4. Sub-sec. (2). This sub-sec. does not make the man's desertion a civil offence punishable by a criminal court.

106. Inquiry into absence without leave.—(1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

NOTES

1. For procedure of courts of inquiry held under this section, see AR 183.

2. In the event of a person subject to AA being absent without leave for a period of 30 clear days, a court of inquiry must be assembled at once, unless before such court of inquiry has been assembled it has come to the knowledge of the person's CO that he has been apprehended or has surrendered or that he was involuntarily absent (e.g., in prison). In that case no court of inquiry will be held and the fact of his absence and of the deficiency (if any) of his clothing, etc., must be proved by oral evidence at any subsequent court-martial. As to dispensing with the court of inquiry in the case of a reservist who has failed to attend for training, etc., see Rule 9 of the Indian' Reserve Forces Rules, 1925 (Part Ill).

3. In calculating the period of 30 days, the day on which the person became absent and the day on which the court of inquiry assembles must both be excluded. If the court of inquiry assembles a day too soon, the record of its declaration is not admissible in evidence, as an entry has not made in the regimental books in accordance with AA s. 142(3). The person, however should be declared illegally absent and charged with absence as from the day on which absence commences.

4. Prescribed manner.-See ARs 183 and 140. Evidence must be taken on oath or affirmation.

5. Before declaring any deficiency of arms, etc., the court of inquiry will satisfy itself by evidence that the absentee, was in possession of the missing articles within a reasonable period before the date of absenting himself. It will record the values of the unexpired wear of all articles of Government property including arms, equipment, public clothing, etc., found to be deficient.

6. The property of Government entrusted to his care—i.e., Government property issued to him for his use or entrusted to his care for military purposes.

A court of inquiry under this section does not inquire respecting a deficiency of public money or stores which had been in the absentee's charge.

7. The declaration of the court of inquiry should contain the date and place from which the person absented himself, the date of the deficiency (if any) of clothing etc., and the place where it occurred. Under AR 183 and this section the witnesses will be sworn/affirmed, but not the members of the court of inquiry. As to the form of declaration, See notes to AR 183; the actual values of missing articles will be stated.

8. In order to make the record admissible in evidence, it must be a record in the regimental books of the unit to which the person belonged at the time of the holding of the court of inquiry and entered by the then CO [AA.s. 142(3)]. The actual proceedings of the court of inquiry (which ought, under AR 183, to be destroyed as soon as its declaration is recorded in the regimental books) are not admissible in evidence.

The record of the finding of the court of inquiry will be admissible, notwithstanding that the person had already surrendered or been apprehended provided that such surrender or apprehension had not come to the knowledge of his CO when the court of inquiry assembled.

9. As soon as the declaration of illegal absence has been made and recorded, the person is struck off the strength of the unit as a deserter, but he does not thereby cease to belong to the corps in which he is enrolled; see Regs for the Army para 376.

10. When a person, who has been "struck off" as a deserter rejoins, the CO, if satisfied that the evidence does not justify a charge of desertion, may legally deal with the case as one of absence without leave.

11. As to disposal of deserter's property, see Army and Air Force (Disposal of Private Property) Act, 1950 (Part III).

12. As to the period of limitation for trial, see AA.s. 122.

13. This section and AR 183 do not apply to the enrolled persons of the TA, when subject to AA. see AA.s. 2(1)(e); Rule 24 of the TA Rules, 1948 and schedule II to Rule 24.

107. **Provost-marshals**.—(1) Provost-marshals may be appointed by the (Chief of the Army staff)[1] or by any prescribed officer.

(2) The duties of a provost-marshal are to take charge of persons confined for any offence, to preserve good order and discipline, and to prevent breaches of the same by persons serving in, or attached to, the regular Army.

(3) A provost-marshal may at any time arrest and detain for trial any person subject to this Act who commits, or is charged with, an offence and may also carry into effect any punishment to be inflicted in pursuance of the sentence awarded by a court-martial, or by an officer exercising authority under section 80 but shall not inflict any punishment on his own authority:

Provided that no officer shall be so arrested or detained otherwise than on the order of another officer.

4. For the purposes of sub-sections (2) and (3), a provost-marshal shall be deemed to include a provost-marshal appointed under any law for the time being in force relating to the governance of the Navy or Air Force, and any person legally exercising authority under him or on his behalf.

NOTES

1. For definition of a 'provost-marshal', see AA.s. 3(xx). So far as his duties and powers are concerned, a 'provost-marshal' is also deemed to include a provost-marshal appointed under naval and air force law or any person legally exercising authority under him or on his behalf, see sub-sec. 4.

2. '*Prescribed officer*'.-See AR 197.

3. It is an offence under AA.s. 42(f) to impede the provost-marshal or any person, lawfully acting on his behalf or to refuse to assist the provost-marshal or person lawfully acting on his behalf.

4. Under AR 39(3) a provost-marshal or assistant provost-marshal is disqualified from serving as a member of a GCM or DCM. Similarly, AR 151(3) prohibits the provost-marshal or his assistant from sitting as members of the SGCM. An officer, who is serving with the corps of Military Police, should not normally sit as a member of any court-martial.

5. A provost-marshal or any officer working under him may at any time, arrest and detain for trial any person subject to AA (even though superior in rank) who commits or is charged with an offence. However, vide proviso to sub-sec (3), an officer can be arrested or detained only on the order of another officer. Similarly, though any member of the Corps of Military Police can legally arrest a JCO, a JCO should not be so placed in arrest except under orders of an officer or another JCO of the Corps of Military Police.

---

[1]Substituted by Act No. 19 of 1955.

CHAPTER X

COURTS-MARTIAL

108. Kinds of courts-martial.— For the purposes of this Act there shall be four kinds of courts-martial, that is to say,—

(a) general courts-martial;

(b) district courts-martial;

(c) summary general courts-martial; and

(d) summary courts-martial.

NOTE

For purposes of easy reference, provisions dealing with the convening, composition etc., of the four types of courts-martial are tabulated below—

	Convening AA.s.	Composition AA.s.	Powers AA.s.	Confirmation AA.s.
GCM	109	113	118	154
DCM	110	114	119	155
SGCM	112	115	118	157
SCM	..	116	120	No confirmation required but see AA.s. 161(2)

109. Power to convene a general court-martial.—A general court-martial may be convened by the Central Government or the (Chief of the Army Staff)[1] or by any officer empowered in this behalf by warrant of the (Chief of the Army Staff).[1]

NOTES

1. For form of warrant, See Part IV. The 'A-1' warrant is at present, issued by the COAS to officers Commanding Army, Corps. Division/Area and Independent Brigade and to officers prescribed by the Central Government under AA.s. 8.

2. When a warrant has been issued and its contents communicated to the addresses, he can act upon it before it actually reaches him. It follows that he cannot act after he has received notification that the warrant has been revoked though he may not have received the actual order.

3. (a) In granting a warrant, it should be clearly shown that during the absence of the officer to whom such warrant is issued, the powers therein conferred may be exercised by the officer on whom the command devolves, if he is not under a specified rank. It is, therefore, common to address such a warrant to an officer by designation of his office and not by name.

(b) If the officer on whom the command devolves is the CO of the person to be tried or an officer who has investigated the case, he cannot (except on board a ship or in such special cases as may be determined by the Central Government) afterwards act as convening officer in the same case, but must refer it to a superior authority. See Regs for the Army para 449(b).

4. An officer cannot convene or confirm a court-martial held outside the territorial limits of his command; but an officer having power to convene a GCM at a port of embarkation can issue a warrant to the OC of the troops on board a ship empowering the latter to convene and confirm, on board the ship, during the period of the voyage, DCM in respect of a person under his command, who is subject to AA. The warrant thus given should be granted for the period of the voyage only, and will become inoperative as soon as the troops reach the port of disembarkation.

5. As to the duty of an officer before convening a court, see AR 37.

[1]Substituted by Act No. 19 of 1955.

110. Power to convene a district court-martial.—A district court-martial may be convened by an officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of any such officer.

NOTES

1. For form of warrant, see Part IV 'B-1' warrant which empowers, the holder thereof to convene as well as confirm the findings and sentences of DCsM is at present, issued to sub-area/brigade commanders by the officers empowered to convene a GCM. Such a warrant, has also been issued to officers prescribed by the Central Government under AA.s.8.

2. Also see notes 2 to 5 to AA.s. 109.

111. Contents of warrants issued under sections 109 and 110.—A warrant issued under section 109 or section 110 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

112. Power to convene a summary general court-martial.- The following authorities shall have power to convene a summary general court-martial namely—

(a) an officer empowered in this behalf by an order of the Central Government or of the (Chief of the Army Staff);[1]

(b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;

(c) an officer commanding any detached portion of the regular Army on active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by a general court-martial.

NOTES

1. The object of this section is to provide for the speedy trial of offences committed abroad or on active service in cases where it is not practicable, with due regard to the interests of discipline and of the service, to try such offences by an ordinary GCM or DCM. A SGCM can try any offence committed on active service but when troops are not on active service it can only be convened by an officer empowered in this behalf by an order of the Central Government or of the COAS.

2. The court can be convened by an officer commanding under clause (c) without a warrant or authorisation. For definition of 'regular Army': see AA.s. 3(xxi). Frequently, limitations are imposed by general orders of the Commander of the Forces as to who shall convene such Courts.

3. If troops on board a ship are on active service, the OC troops can convene a SGCM for trial of an offender on board.

4. For definition of active service, see AA.s. 3(i). Also see AA.s. 9.

113. Composition of general court-martial.—A general court-martial shall consist of not less than five officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of captain.

NOTES

1. For definition of 'officer' see AA.s. 3(xviii).

2. Number of officers.—(a) A convening officer can increase beyond the legal minimum the number of officers to sit on a court-martial, but cannot decrease the number below the minimum; he must therefore, take care to convene a court with not less than the minimum, otherwise the proceedings are void. See also AA.s. 117(1). It is desirable that every court should consist of an uneven number of officers.

(b) If originally more than the legal minimum sat and during the trial one was incapacitated by illness etc., the court could proceed with the trial provided the number did not fall below the legal minimum. The member who retired through sickness etc., cannot, of course, take his place when he recovers or is available once the court has sat without him. See AR 86.

---

[1]Substituted by Act No. 19 of 1955.

(c) ''Waiting'' members can be detailed to replace absentees, or members successfully challenged (AR 44), before the Court is sworn/affirmed but if a waiting member sits in addition to all the members detailed, and not in place of an absentee etc., the court will be improperly constituted.

(d) If before the accused is arraigned, the full number of officers detailed are not available to serve and a sufficient number of waiting members have not been detailed, the court shall ordinarily adjourn unless it is of opinion that in the interests of justice and for the good of the service, it is inexpedient so to adjourn or unless it is reduced in number below the legal minimum [AR 38(1)].

3. *Service*.—A court would have no jurisdiction if each member had not held a commission for the required period, or if its composition differed in any respect from that detailed in the convening order. Any period during which an officer has held a commission in any of the three services shall count as commissioned service for this purpose, but no account shall be taken of an ante-date of seniority.

4. *Rank*.—Not less than four officers must be of the rank of Captain or above. Further, no officer below the rank of Captain can be a member of a court-martial for the trial of a field officer [AR 40 (3)].

5. As to the composition of GCsM and DCsM generally see ARs 39 and 40 and Regs for the Army para 460.

6. (a) The presiding officer of the GCM, DCM or SGCM is not detailed in the convening order but the senior member sits as the presiding officer (AA.s. 128).

(b) The members and waiting members of the court may be detailed by name or by their ranks and units to which they belong, and in case where units cannot be specified they should be named.

114. Composition of district court-martial.— A district court-martial shall consist of not less than three officers, each of whom has held a commission for not less than two whole years.

NOTES

1. See notes to AA.s. 113.

2. There is no statutory requirement as to the rank of a member of a DCM, but see Regs for the Army para 460.

115. Composition of summary general court-martial.— A summary general court-martial shall consist of not less than three officers.

NOTES

1. See notes 1, 2 and 6 to AAs. 113.

2. (a) Though there is no statutory requirement as to the rank or service of a member of a SGCM, officers appointed or detailed as members should have held commission for not less than one year and if any officers with commissioned service of not less than three years are available, they should be selected in preference to officers of less service [AR 151 (2)]. .

(b) Any available officer, other than the provost-marshal, assistant provost-marshal, a prosecutor or witness for the prosecution may be appointed a member of the court. AR 151 (3). For instance, the convening officer can himself be a member of the court, but see AR 164 which makes inter-alia AR 74 (member or prosecutor not to confirm proceedings) applicable, so far as practicable, to a SGCM.

116. Summary court-martial.—(1) A summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such be sworn or affirmed.

NOTES

1. *Sub-sec*. (l).—'Commanding officer'—

(a) See AA.s. 3(v).

(b) A medical officer commanding a hospital or other medical unit is the "Commanding Officer" of medical personnel under his command and is also, for the time being, the "Commanding Officer" of a person subject to AA not belonging to the medical, who is a patient in, or is

employed in that hospital or medical unit and may either himself dispose of a charge against such person or refer it for disposal, after the person has left the hospital or medical unit, to the officer commanding the corps, department or detachment to which such person belongs or is attached, but the medical officer in charge of a regimental medical establishment is not, unless that establishment is detached, the "Commanding Officer" of the establishment or of any person who is a patient in, or is employed in, the medical unit to which that establishment belongs.

(c) An officer of the Indian Navy or the Air Force may become a CO of a person subject to AA when such person is serving under conditions prescribed in AR 188.

2. *Corps*.—See AR 187(3).

Department.—See AA.s. 3(ix).

Detachment.—means every separate body of persons subject to AA which is not a corps or department; see note 3 to AA.s. 105.

3. *Sub-sec*. (2).—(a) For definitions of 'officer' and, 'JCO'. see AA.s. 3 (xviii) and (xii) respectively.

(b) Unless two officers or JCOs or one of either attend the trial throughout the Court will have no jurisdiction. Such officers or JCOs, who cannot take part in the proceedings as such, need not, however, belong to the unit of the accused.

4. If the CO does not himself take the interpreter's oath, one of the officers or JCOs attending the trial may be appointed interpreter. He may legally combine this duty with attendance at the trial under this section.

5. For trial of deserters, see Regs Army para 381.

117. Dissolution of courts-martial.— (1) If a court-martial after the commencement of a trial is reduced below the minimum number of officers required by this Act, it shall be dissolved.

(2) If, on account of illness of the judge advocate or of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) The officer who convened a court-martial may dissolve such court martial if it appears to him that military exigencies or the necessities of discipline render it impossible or inexpedient to continue the said court-martial.

(4) Where a court-martial is dissolved under this section, the accused may be tried again.

NOTES

1. *"Shall be dissolved"*.—Apart from the conditions laid down in this section, in which the court must be dissolved, a court always has the power to adjourn (AR 82) and report to the convening officer when something has occurred, which, in the opinion of the court makes it improper or undesirable that it should continue to hear the case, e.g if through inadvertence a previous conviction of the accused for a similar offence had been brought to the notice of the court before the finding. In such a case the convening officer, if he agrees with the opinion of the court, may dissolve it and convene a fresh court (AR 83). The members who sat on the dissolved court will be ineligible to sit on the fresh court [AR 39 (2)(c)].

2. *Sub-sec* (1)—The trial is for the purposes of this section, held to have commenced when the accused is arraigned. See ARs 48, 85 and 86.

3. *Sub-sec*. (2).—Illness of the accused or the JA.—A medical certificate should always, where possible, be obtained, stating that the illness of the accused/JA renders his presence in court impracticable or dangerous to himself or others; it will also state the medical officer's opinion as to when the accused/JA will be able to be present. See ARs 84 and 104.

4. *Impossible to continue*.—This means to continue within a reasonable time having regard to all the circumstances.

5. *Sub-Sec* (4).—It may frequently be inexpedient to convene a fresh court for a re-trial under this sub-sec, especially where the accused has been for some time under arrest or in confinement.

118. Powers of general and summary general courts-martial.—A general or summary general court-martial shall have power to try any person subject to this Act for any offence punishable therein and to pass any sentence authorised thereby.

NOTE

When the court has a discretion whether to pass sentence of death or not, a sentence of death cannot be so passed by a GCM without the concurrence of at least two-thirds of the members or by a SGCM without the concurrence of all members of the court (AA.s. 132 (2) and (3).

119. Power of district courts-martial.—A district court-martial shall have power to try any person subject to this Act other than an officer or a junior commissioned officer for any offence made punishable therein, and to pass any sentence authorised by this Act other than a sentence of death, (imprisonment for life)[1], or imprisonment for a term exceeding two years;

Provided that a district court-martial shall not sentence a warrant officer to imprisonment.

NOTE

Powers of a DCM are limited in as much as it has no jurisdiction to try an officer or a JCO nor can it pass a sentence of death, imprisonment for life or imprisonment over two years. If such a court, therefore, passes a sentence of death or imprisonment for life or sentences a WO to imprisonment, it will be wholly illegal and must be sent back for revision by the confirming officer (AA.s. 160 and AR 68) and if wrongly confirmed, action should be taken under AA.s. 163 to substitute a valid sentence. However, a sentence of imprisonment for a period of three years to a NCO or sepoy being in excess of the punishment authorised by law can be varied by the confirming officer to a sentence authorised by law, i.e., imprisonment not exceeding two years and confirmed (AR 73 and notes thereto).

120. Powers of summary courts-martial.—(1) Subject to the provisions of sub-section (2), a summary court-martial may try any offence punishable under this Act.

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 69, or any offence against the officer holding the court.

(3) A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer, Junior commissioned officer or warrant officer.

(4) A summary court-martial may pass any sentence which may be passed under this Act, except a sentence of death or (imprisonment for life)[1] or of imprisonment for a term exceeding the limit specified in sub-section (5).

(5) The limit referred to in sub-section (4) shall be one year if the officer holding the summary court-martial is of the rank of lieutenant-colonel and upwards, and three months if such officer is below that rank.

NOTES

1. The discipline of the regular Army depends in a great measure on the SCM. When a person amenable to AA has committed an offence which is ordinarily triable by SCM, a CO when determining by what court the accused is to be tried, must bear in mind that the legislature, in conferring upon him the power of a SCM, intends that he shall exercise those powers.

2. *Sub-sec (1) and (2).*—(a) Though a SCM may, subject to the provisions of sub-sec (2), try an offence punishable under AA, it is obvious that its powers of punishment are insufficient for many of the graver offences known to military law. COs should, therefore, notwithstanding the increased powers of summary trial vested in them, submit to higher authority any cases which appear to require more exemplary

[1] See IPC.s. 53A.

punishment than a SCM can award. It should, however, be remembered that even a comparatively slight punishment promptly inflicted is often more deterrent than a heavier one which follows long after the offence.

(b) The CO is the best and sole judge, at the time, of the necessity which justified him in trying, without reference, cases which should ordinarily be tried only after reference and sanction. If it should subsequently appear to superior authority that his action was not justified, this should merely be viewed as a grave irregularity for which the CO may be held responsible but it does not affect the legality of the finding or sentence nor, in ordinary circumstances, furnish reason for setting aside the trial, in whole or in part. Where, however, the officer holding the trial loses sight of the law, and tries without considering whether an emergency exists or not, the trial is illegal. See AR 130 for certificate to be attached to the proceedings by the officer holding the trial when he tries, without reference, a case which would ordinarily be referred to the officer empowered to convene a DCM or, on active service, a SGCM.

(c) The offences which are not ordinarily triable by a SCM without reference and sanction are: offences punishable under AA.ss. 34, 37 and 69 and offences against the officer holding the court.

(d) *Offence against the officer holding the trial.*—It is difficult to lay down a definite rule in this matter, but, speaking generally, a consideration of personal interest which would suffice to disqualify an officer to sit as a member of a GCM or DCM debars him from holding a SCM (save in case of emergency) without previous reference. Offences under AA. ss. 40 and 41 when committed towards a CO fall under this category, and should not, except in case of emergency, be tried by SCM without previous reference to the officer empowered to convene a DCM (or on active service a SGCM) for the trial of the alleged offender. Theft or misappropriation of property of which a CO is either part-owner or trustee (e.g., mess or regimental property) should not, except as aforesaid, be tried by SCM without such reference. The reasons behind this restriction are:

(i) It is most undesirable that an offence against an individual should be tried by that individual, and the reason for immediate action would require to be unusually weighty to justify the provision as to reference to higher authority being disregarded when the offence is one against the officer holding the trial.

(ii) At a trial by SCM the officer holding the trial cannot himself give evidence against an accused person appearing before him, except evidence of a formal character such as the production of document. But see AR 123 which authorises the court to record "of its own knowledge" certain facts for guidance in determining the sentence. If he gives formal evidence, he must be sworn/affirmed as, a witness.

Where it is necessary for the CO of the accused to give material evidence for the prosecution, he should apply for a DCM so as to secure an impartial trial.

3. *Sub-see (3).*—A SCM can only try a NCO or a sepoy.

4. Under the command of the officer holding the court—An officer holding the court, i.e., the CO of a unit cannot try a NCO or a sepoy by SCM unless such person is under his command, e.g., belongs to that unit on the date of trial. The only two exceptions to this rule are, in the case of trial of deserters or absentees without leave and in cases where such a person is a patient in a hospital . For trial of deserters, see Regs Army Para 381.

5. [x x x x x][1]

6. *Sub-secs (4) and (5).*—The maximum punishment awardable by a SCM is imprisonment for one year if the officer holding the court is of the rank of Lt. Col and above and for three months if such an officer is below that rank.

7. As to the principles to be observed by a SCM in awarding sentence, see notes to AA.s. 169 and Regs Army para 448.

121. Prohibition of second trial.—When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under any of the sections 80, 83, 84 and 85, he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections.

---

[1]Deleted by order of Govt of India, Min of Def letter No. B/80328/JAG/1585/2001-D (AG) dated 28 Aug 2001.

NOTES

1. Finding of a GCM, SGCM or DCM, if not confirmed, is of no validity, in such case, therefore, the accused has not been acquitted or convicted, and may legally be tried again; see AA.s. 153; but re-trials should rarely be resorted to, and only when the needs of discipline and justice demand that an offender shall not escape punishment on account of a legal technicality. Re-trial should not be ordered until the DJAG of the command has been consulted and the sanction of superior authority obtained.

2. Where a court is not legally constituted and has no jurisdiction as for example, if the convening order is signed by or on behalf of an officer not authorised to convene such a court, or if the number of officers composing the court is below the legal minimum required for that type of court, or if unqualified officers sit—it is no court at all. The accused will not have been really tried, and may be tried again even though the proceedings of such illegally constituted court have been inadvertently confirmed.

Where, however, a conviction is confirmed and then quashed, not for improper constitution of the court, but because the trial was unsatisfactory—e.g. because evidence was improperly admitted—the accused has stood a trial and cannot be tried again.

3. It is a general principle of law—also incorporated as a fundamental right in Art 20 of the constitution—that a person cannot be tried twice in respect of the same offence; but the application of the rule is not always easy. Where the same incident, or set of incidents, gives rise to two trials, the test of whether the offence is "the same" offence would appear to be this: —Could the accused have been lawfully convicted at the first trial upon the charge-sheet then before the court, of the offence charged at the, second trial'? If so, the second trial is illegal and void. Thus. On a charge of desertion, a person could by virtue of AA.s. 139(1) be convicted of absence without leave: if he is acquitted generally, the acquittal applies to both offences and he cannot subsequently be charged with absence (upon the same facts); if, however, the court while acquitting him of desertion; convicts him of absence, and this finding is not confirmed, he has not been acquitted of absence, and can be charged again with that offence.

4. Where a person is re-tried on the same charge, it is not usual to impose a more severe punishment than that awarded on the first trial, and a confirming officer should exercise his powers of mitigation, etc. when confirming the proceedings, if a greater punishment has been awarded on the second trial.

5. Where a new trial is ordered no officer may serve on it who sat on the former court; AR 39(2)(c),

6. The section prohibits a second trial by court-martial or a criminal court or being dealt with again under AA.ss. 80, 83, 84 and 85.

7. See AR s 53(1) and 114, which provide that a plea in bar of trial may be raised on this ground.

122. Period of limitation for trial.—(l) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years and [such period shall commence,—

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.][1]

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37.

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.

---

[1]Substituted by Act No. 37 of 1992

NOTES

1. Sub-secs (l) and (2).—(a) The effect of this section is that on the expiration of three years from the commission of the offence, the period of three years to be computed in accordance with sub-sec (3). The offender is free from being tried or punished under AA by a Court-martial for any offence except those mentioned in AA.s. 37, desertion or fraudulent enrolment. It follows that where an accused person is charged with desertion commencing on a date more than three years before his trial begins, he cannot be found guilty under AA.s. 139(1) of absence without leave from that date, but such absence must be restricted to a period not exceeding three years immediately prior to the commencement of the trial. Where, however, such a finding and sentence has been wrongly confirmed, the authorities specified in AA.s. 163 may substitute a valid finding and pass sentence for the offence specified or involved in such finding.

(b) A plea in bar of trial may be raised on this ground: AR 53(1)(c).

2. The section, does not prohibit deductions being ordered from his pay and allowances under AA.s. 90(a), (c), (g) and (h) or 91(a), (f) and (g) even though the period of limitation for trial has expired. Though the section specifically stipulates the period of limitation for trial by court-martial, the same principle would equally apply to summary disposal of offences under AA.s. 80, 83, 84 or 85.

3. (a) Offences mentioned in AA.s. 37 and desertion on active service can be tried at any time by a court-martial. For desertion not on active service and fraudulent enrolment, a person, not being an officer, cannot be tried if he has since served continuously in an exemplary manner for not less than three years with any portion of the regular Army. See sub-sec (4).

(b) A person is considered as having served in an exemplary manner if at any time during his service subsequent to the commission of the offence he has had no red ink entry in his conduct sheet for a continuous period of five years and ten years for other ranks and officers respectively (Regs for the Army paras 170 and 465A). For 'red ink entries' see Regs Army paras 386 and 387(b).

4. (a) An 'offence' includes a 'civil offence' as defined in AA.s. 3(ii); see AA.s. 3(xvii). Where, therefore, a person subject to AA has committed a civil offence and his trial by court-martial is barred under this section, he may be handed over to the civil authorities to be dealt with according to law as a civil offence is triable by a criminal court at any time.

5. For forfeiture of service in the case of desertion and fraudulent enrolment, see Regs Pension Reg 123.

6. Sub-see (3): The period of three years referred to in sub-sec (1) is extended by any time spent by the offender as a prisoner of war, or in enemy territory or in evading arrest after the commission of the offence; for instance, if a, person absconds immediately after misappropriating Govt or regimental funds and later surrenders or is apprehended after the expiry of three years, he can still be tried by a court-martial, the period during which he had absconded being ignored.

7. 'Enemy territory' means any area, at the time of the presence therein of the person in question, under the sovereignty of or administered by or in the occupation of a state at that time at war with the Union.

8. Sub-sec (4).—'On active service', see AA. ss. 3(i) and 9.

9. See note 3(b) above. This exemption does not apply to an officer.

10. 'Regular Army' see AAs. 3(xxi).

123. Liability of offender who ceases to be subject to Act.—(1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in military custody, and tried and punished for such offence as if he continued to be so subject.

(2) No such person shall be tried for an offence, unless his trial commences [within a period of three years after he had ceased to be subject to this Act; and in computing such period, the time during which such person has avoided arrest by absconding or concealing himself or where the institution of the proceeding in respect of the offence has been stayed by an injunction or order, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.][1]

Provided that nothing contained in this sub-section shall apply to the trial of any such person for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37 or shall affect the jurisdiction of a criminal court to try any offence triable by such court as well as by a court martial.

---

1. Subs by Act No 37 of 1992

(3) When a person subject to this Act is sentenced by a court-martial to (imprisonment for life)[1] or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissed from the regular Army, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(4) When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out.

NOTES

1. This section meets the case of a person who commits an offence against AA whilst subject to it, and then ceases to be subject to it. Such cases will occur, for example, when an officer relinquishes his commission or is dismissed or when a JCO, WO or OR is discharged.

2. (a) Such a person though he has ceased to be subject to AA even before discovery of the offence may nevertheless be arrested, tried and punished just as if he were 'still so subject but he can only be tried within three years after he has ceased to be so subject; the three years will not be deemed to have expired if the trial has commenced within that period. An exception has been made in the case of desertion, fraudulent enrolment and offences mentioned in AA.s. 37, for which he can be tried at any time subject to the restrictions in AA.s. 122. Further, a criminal court can try such offence, if triable by it as well as a court-martial, though the offence is no longer triable by a court-martial under sub-sec. (2).

(b) When the three years have once expired, the offender is protected and his liability is not revived in respect of the earlier offence, by his again becoming subject to AA.

3. *Sub-Sec* (3).-Under this sub-sec. which deals, with the case of a person subject to AA who is tried and sentenced to imprisonment for life or imprisonment to be undergone in a civil prison, AA applies to such a person during the term of his sentence, notwithstanding that his cashiering or dismissal from the service has been formally carried out, or that he has otherwise ceased to be subject to AA. Consequently he may be tried by court-martial for an offence committed by him while under sentence at any time before his sentence is completed or he may be kept in or removed to military custody and made to undergo his sentence there although the sentence is one to be undergone in a civil jail. Also see. AR 168.

124. Place of trial.—Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

NOTES

l. 'Any place whatever' means any place in which the offender may for the time being be and which is within the jurisdiction of an officer authorised to convene a court-martial for his trial as if the offence had been committed where the trial takes place and the offender were under the command of the officer convening such court.

2. The section enables a court-martial convened in India to try a person for an offence committed elsewhere and vice versa. See Regs Army para 452(c).

125. Choice between criminal court and court-martial.—When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

NOTES

1. (a) For definitions of 'criminal court' and 'court-martial' see AA.s. 3(viii) and (vii) respectively.

(b) All civil offences can be tried by a court-martial (subject to the provisions of AA.s. 70) or by a criminal court. See also Regs for the Army para 419 (a).

---

[1]See IPC. s. 53A

(c) Where there is a dual jurisdiction as indicated above, the choice initially lies with the military officers mentioned in this section to decide whether an accused should be dealt with by a court-martial or he should be handed over to the civil authorities for being dealt with according to civil law.

(d) The 'prescribed officer' for the purpose of this section is the officer commanding the brigade or station in which the accused person is serving, except where death has resulted from the alleged offence, in which case the lowest competent military authority is the officer commanding a division/area or independent brigade. AR 197.A.

2. (a) Where a criminal court having jurisdiction considers that the accused should be tried before itself, it may, in writing, call upon the officer referred to in this section to hand over the accused to it for trial, in which case the said officer should either hand over the accused as demanded or pend the proceedings and refer the case to the Central Govternment (AA. s. 126).

(b) When a person subject to AA is brought before a magistrate and charged with an offence for which he is liable to be tried by a court-martial, such magistrate, unless he is moved by the competent military officer referred to in AA.s. 125 to proceed against the accused under the Cr PC, 1973, shall before so proceeding give written notice to the CO of the accused and, until the expiry of fifteen days from the date of service of such notice, shall not proceed to try such person or to inquire with a view to his commitment for trial by the court of sessions for any offence triable by such court; see Government of India Ministry of Home Affairs notification S.O. 488 dated 9 Feb. 1978, the criminal courts and court-martial (Adjustment of Jurisdiction) Rules, 1978 and Regs Army para 418. .

3. An offender is normally handed over to the civil authorities for trial where he is alleged to have committed an offence in collaboration with other persons who are not subject to military law.

126. Power of criminal court to require delivery of offender.—(1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice require the officer referred to in section 125 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final.

NOTE

See notes to AA.s. 125.

127. [Omitted][1]

[1]Omitted by Act No. 37 of 1992

CHAPTER XI

PROCEDURE OF COURTS-MARTIAL

128. Presiding officer.—At every general, district or summary general court-martial the senior member shall be the presiding officer.

NOTES

1. *See* note 6 to AA.s. 113 and Regs for the Army para 460.

2. As to duties of presiding officer, *see* AR 76.

129. Judge Advocate.—Every general court-martial shall, and every district or summary general court-martial may be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General or if no such officer is available, any person approved of by the Judge Advocate General or any of his deputies.

NOTES

1. (a) Presence of a JA at a GCM is a legal necessity and his non-attendance there at will invalidate the proceedings.

(b) A court-martial, in the absence of a judge advocate (if such has been appointed) shall not proceed and shall adjourn. AR 82 (4).

2. Any 'officer' of the JAG's department or, if such officer is not available, an officer approved by the JAG or one of his deputies can attend as JA. Although at a DCM and SGCM, appointment of a JA is not legally necessary, in practice a JA is nominated by the DJAG command concerned. Invalidity in the appointment of a JA does not vitiate the trial: AR 103.

3. The accused has no right to object to the JA, *see* AA. s. 130.

4. As to powers and duties of a JA, *see* AR 105.

5. For substitution of a JA on death, illness or absence *see* AR 104.

130. Challenges.—(1) At all trials by general, district or summary general court-martial, as soon as the court is assembled, the names of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded and the remaining officers of the court shall, in the absence of the challenged officer decide on the objection. .

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

NOTES

1. As to challenges generally see AR 44 and notes thereto; as to adjourning for the purpose of appointing fresh members, and the power to convene another court see AR 38; and as to challenges where a court is being sworn/affirmed to try several persons, see AR 89.

2. The accused has no right to object to the JA or prosecutor.

131. Oaths of member, judge advocate and witness.—(1) An oath or affirmation in the prescribed manner shall be administered to every member of every court-martial and to the judge advocate before the commencement of the trial.

(2) Every person giving evidence before a court-martial shall be examined after being duly sworn or affirmed in the prescribed form.

(3) The provisions of sub-section (2) shall not apply where the witness is a child under twelve years of age and the court-martial is of opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation.

NOTES

1. Sub-sec (1).—(a) Prescribed form/manner of oath or affirmation :

(i) for a member of the court. ARs 45, 109 and 155;

(ii) for the JA, officer attending for the purposes of instruction, shorthand writer and interpreter, ARs 46, 109 and 155.

(b) The person to administer oaths or affirmation is prescribed by AR 47.

2. The oath/affirmation taken by the members of the court binds them in their capacity of jurors to find a true verdict according to the evidence (discarding from their minds any private knowledge or information they may happen to possess**),** and in their capacity of judges to administer justice; and to keep secret the votes or opinions of other members. See note 8 to AR 45 and AA. s. 132 (2).

3. No member can be added to the court after it is sworn/affirmed.

4. *Sub-sec (2).*— The prescribed form of oath or affirmation for witness and the person to administer it are prescribed in AR 140.

5. (a) Refusal by a witness subject to AA to take an oath or make an affirmation is punishable under AA. s. 59(b).

(b) Giving false evidence on oath/affirmation is an offence under AA. s. 60.

(c) If a civilian witness refuses to take the oath or make an affirmation or gives false evidence on oath/affirmation, action should be taken by the court as indicated in AR 150(3). See notes to AR 150(3).

6. *Sub-sec (3)*—This provision is based on the proviso to s. 5 of the Oaths Act, 1873.

132. Voting by members.—(1) Subject to the provision of sub-section (2) and (3), every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused.

(2) No sentence of death shall be passed by a general court-martial without the concurrence of at least two-thirds of the members of the court.

(3) No sentence of death shall be passed by a summary general court-martial without the concurrence of all the members.

(4) In matters, other than a challenge or the finding or sentence, the presiding officer shall have a casting vote.

NOTES

1. As to manner of voting, see AR 87 and notes.

2. See note 6 to AA.s. 71 regarding endorsement to be made where a GCM or SGCM sentences the offender to death.

3. As to procedure on incidental questions, see AR 88.

133. General rule as to evidence.—The Indian evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

NOTES

1. Indian Evidence Act 1872 has been reproduced in Part III of the manual. Also see generally Part I chapter VI.

2. "Subject to the provisions of this Act" -See AA.ss. 134, 140 to 144 and ARs 134 to 143.

134. Judicial Notice.—A court-martial may take judicial notice of any matter within the general military knowledge of the members.

NOTES

1. "Judicial notice" means that the court will recognize a matter without formal evidence. Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities and obligations of different members of the service, or generally as to any matters which an officer, as such, may reasonably be expected to know.

2. For other matters of which a court may take judicial notice, see IEA. s. 57. Also see IEA. ss. 56 and 58.

135. Summoning Witnesses.—(1) The convening officer, the presiding officer of a court-martial [or courts of inquiry][1], the judge advocate or the commanding officer of the accused person may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to military authority, the summons shall be sent to his commanding officer, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.

NOTES

1. As to privilege from arrest under civil or revenue process of a witness summoned to attend before a court-martial, see AA. s. 30.

2. When an application has been made for a court-martial, no military witness will be allowed to leave the station without the sanction of the convening authority nor will witnesses disperse after trial without the previous sanction of such authority. See Regs for the Army para 456.

3 For form of summons, see Appendix III (part Ill) to AR.

4. See also ARs 22(1), 137 and notes thereto,

5. *Sub-sec (l)*.—(a) Under this sub-sec, a civilian witness can be required to attend before a CO, a Court of Inquiry or at the taking of the summary of evidence, or a court-martial; but see AR 23(5).

(b) 'Under his hand'.—Such summons be signed by the officer specified in this sub-sec; but see AR 5.

6. *Sub-sec (2)*.— Witnesses who are subject to AA should be ordered by the proper authority to attend without the issue of a formal summons. If no summons has been issued, the witness cannot be dealt with under AA. s. 59 for making default in attending, but he may be dealt with under AA. s. 41 or 63, as the case may be.

7. *Sub-sec (3)*.—For action where a civilian witness, who has been duly summoned and whose expenses have been tendered, makes default in attending, see AR 150(3) and notes thereto. A civilian witness is not deemed to be duly summoned unless the summons is served on him through a magistrate as required under this sub-sec.

8. *Sub-sec (4)*.—When a witness is directed by summons to produce a document etc., which is in his possession or power, he must bring it to court, notwithstanding any objection that he may have with regard to its production or admissibility. After this has been done, it rests solely with the court to hear the

[1] Inserted by Act No. 37 of 1992.

objection or the claim as to privilege, and to decide whether it should be allowed; IEA. s. 162. Also see, Regs. Army para 320.

9. A witness summoned merely to produce a document shall be deemed to have complied with the summons if he causes it to be produced instead of attending personally to produce the same.

136. Documents exempted from production.—(1) Nothing in section 135 shall be deemed to affect the operation of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(2) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, High Court or Court of Sessions, wanted for the purpose of any court-martial, such magistrate or Court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or Court may direct.

(3) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or High Court or Court of Session.

NOTES

1. *Sub-sec (1).*—IEA. ss. 123 and 124 deal with "affairs of State" and "official communications". See Regs. Army para 320, as to how such matters are protected from disclosure in courts of law, including courts-martial, except under adequate guarantees for public interests being safeguarded. "Affairs of State" include all matters of a public nature with which the Government is concerned.

2. *Sub-secs (2) and (3).*—These sub-secs indicate the only way in which letters, postcards, telegrams and similar documents in the custody of the postal or telegraph authorities can be made available as evidence. If none of the authorities mentioned in sub-sec (2) are available, and it is considered necessary that the document should be detained until such authority is communicated with, application should be made to one of the authorities mentioned in sub-sec (3), one of whom is certain to be present in or near any military station in India, however small.

137. Commissions for examination of witnesses.— (l) Whenever, in the course of a trial by court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued.

(2) The Judge Advocate General may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides to take the evidence of such witness.

(3) The magistrate or officer to whom the commission is issued, or if he is the district magistrate, he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner and may for this purpose exercise the same powers, as in trials of warrant cases under the Code of Criminal Procedure, 1973 [2 of 1974][1]or any corresponding law in force in [the State of Jammu and Kashmir].[2]

(4) When the witness resides in a tribal area or in any place outside India, the, commission may be issued in the manner specified in [Chapter XXII, of the Code of Criminal Procedure, 1973 [2 of 1974][1] or of any corresponding law in force in [the State of Jammu and Kashmir][2].

(5) In this and the next succeeding section, the expression "Judge Advocate General" includes a Deputy Judge Advocate General.

---

[1]Subtituted by Act No. 37 of 1992

[2]Subtituted by the adaption of Laws (no. 3) Order 1956.

NOTES

1. This section and the next provide for the examination of witness "on commission", that is, by means of a series of written questions decided upon by the court trying the case, which questions are sent to another court at a distance and put by it to the witness whose answers are then recorded. It will be noticed that the procedure here laid down can only be set in motion by a court-martial assembled for the trial of the accused, and then only in the circumstances specified in sub-sec (1), while the actual issue of the commission can only be effected by, the JAG or the Dy JAG.

When a court-martial considers that the evidence of a witness should be taken on commission it should forward to the Dy JAG of the command (or to the JAG if the trial is not held in command or is held in a command in which there is not a Dy JAG) a list of questions to be put to the witness, along with an explanation of the circumstances which appear to render his examination on commission necessary. Any questions which the prosecutor or the accused desire to have put to the witness, and which the court considers relevant, should be added.

2. The taking of evidence by commission in courts-martial should be most sparingly resorted to, and ought not to be adopted save in extreme cases of delay, expense or inconvenience. The following considerations should guide courts-martial in this important matter :—

(a) A complainant, or a witness who practically fills the role of complainant, should never be examined on a commission; the risk of injustice to the accused is too great.

(b) A material prosecution witness, the value of whose evidence can only be made apparent under full examination and cross-examination in court should very seldom be so examined.

(c) A merely "formal" or corroborative witness for either side, or a material witness for the defence, if the accused is fully satisfied by this action, might generally be examined on a commission. By "formal" is here meant a witness who has to prove a document, entry, or similar fact which must be legally proved, but which when so proved cannot rationally be disputed by the accused or by the prosecution.

138. Examination of a witness on commission.—(1) The prosecutor and the accused person in any case in which a commission is issued under section 137 may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer executing the commission shall examine the witness upon such interrogatories.

(2) The prosecutor and the accused person may appear before such magistrate or officer by counsel or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine as the case may be, the said witness.

(3) After a commission issued under section 137 has been duly executed, it shall be returned, together with the deposition of the witness examined there-under to the Judge Advocate General.

(4) On receipt of a commission and deposition returned under sub-section (3), the Judge Advocate General shall forward the same to the Court at whose instance the commission was issued, or if such court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to inspection by the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(5) In every case in which a commission is issued under section 137, the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

NOTES

1. See notes to AA. s. 137.

2. Evidence taken on commission at the instance of a court-martial which has been dissolved is admissible before another court-martial assembled for the trial of the accused (of course, only on the same or substantially the same charges). If great delay in the return of a commission is anticipated, advantage

may be taken of this provision and the original court dissolved. In such a case, however, each of the witnesses who gave evidence at the first trial must repeat this evidence on oath or affirmation at the second trial unless—

(a) he is dead or cannot be found; or

(b) he is incapable of giving evidence; or

(c) he is kept out of the way by the adverse party; or

(d) his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable.

In any of these cases the evidence given at the first trial can, under IEA.s. 33, be read and considered at the second trial.

139. Conviction of offence not charged.—(1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may be found guilty of being absent without leave.

(3) A person charged before a court-martial with using criminal force may be found guilty of assault.

(4) A person charged before a court-martial with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a court-martial with any one of the offences specified in clauses (a), (b), (c) and (d) of section 52 may be found guilty of any other of these offences with which he might have been charged.

(6) A person charged before a court-martial with an offence punishable under section 69 may be found guilty of any other offence of which he might have been found guilty as if the provisions of the Code of Criminal Procedure, 1973 (2 of 1974)[1], were applicable.

(7) A person charged before a court-martial with any offence under this Act, may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

(8) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted or abetted the commission of that offence, although the attempt or abetment is not separately charged.

NOTES

1. The object of this section is to prevent a miscarriage of justice by permitting a person charged with one of the offences mentioned in it to be found guilty of a cognate offence. But a court-martial has no power to find a person guilty of offence other than that with which he is charged in the statement of the offence except in the cases specified in this section (see notes in AR 30). A Court may, however, (as allowed by AR 62(5))find a person guilty of a charge with the exception of certain words in the particulars of the charge or with certain immaterial variations, and this finding will be valid as long as in its reduced or varied form it discloses the offence which forms the subject of the charge.

2. Alternative charges should not be preferred in the cases provided for in this section but in other cases where the facts disclose a greater and a lesser offence it may in practice be expedient to prefer alternative charges, the more serious offence being placed first in order (see note to AR 52(3).)

3. This section does not permit a court-martial to find an accused guilty of one or other of two offences e.g., a finding of "not guilty of theft but guilty of dishonest misappropriation or criminal breach of trust."

4. This section does not apply to summary awards under AAs. 80, 83, 84 or 85 but in such cases the officer dealing with the case, if not the CO, can have the charge amended by the CO.

---

[1]Subtituted by act No. 37 of 1992

5. *Sub-sec (l).*— Care must be taken in this case to ensure that the provisions. of AA.s. 122 are not offended.

6. *Sub-sec (5).*—The special finding under this sub-sec applies only where the charge is laid under one of the specified clauses of AAs. 52 and not when the accused is charged under AAs. 69 with having committed the civil offence of theft etc., for which see sub-sec (6).

7. *Sub-sec (6).*—For the special findings referred to in this sub-sec, see Cr PC, 1973, ss. 221 and 222 (Part III).

8. *Sub-sec (7).*—Thus, a person charged with using criminal force to his superior officer in the execution of his office may be convicted of using criminal force to his superior officer; or a person charged with an offence committed on active service may be found guilty of the same offence committed not on active service; or a person charged with wilfully allowing the escape of a person in his charge may be found guilty of allowing his escape without reasonable excuse.

9. *Sub-see (8).*—(a) Where a person charged with an offence is found guilty of having attempted or abetted the commission of that offence and no express provision has been made for the punishment for such attempt or abetment, the punishment will be laid in as specified in AAs. 65 for attempt and AA.ss. 66 to 68 for abetment.

(b) AA.ss. 38(1), 51 and 64(e) make attempt to commit the offences specified therein as substantive offences.

140. Presumption as to signatures.—In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the service of the Government shall, on production, be presumed to have been duly signed by the person by whom and in the character in which it purports to have been signed, until the contrary is shown.

NOTES

1. *Purporting.*—See note 3. to AA.s. 142.

2. The presumption only relates to the signature and the character by whom and in which it purports to have been signed and not to the contents of the document. The application, certificate, warrant etc., must be admissible in evidence as such, and upon its being admitted, the presumption in question can be drawn.

141. Enrolment paper.—(1) Any enrolment paper purporting to be signed by an enrolling officer shall in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given.

(2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

NOTES

1. On the trial of a person subject to AA for making a false answer on enrolment or for fraudulent enrolment, the answer made or the fact of enrolment can be proved by the production of his enrolment paper. The fact of the enrolment (but not any answer made on enrolment) may also be proved by a properly certified true copy of the enrolment paper, The enrolment paper, or when admissible the true copy thereof, must be produced by a witness on oath or affirmation and the accused identified as the person referred to.

2. Where a certified true copy of the enrolment paper is admissible, it must purport to be so certified by the officer having custody of the enrolment paper and not by a subordinate officer 'for' him.

3. See generally notes to AA.s. 142.

142. Presumption as to certain documents.—(1) A letter, return or other document respecting the service of any person in, or the cashiering, dismissal or discharge of any person, from any portion of the regular Army, or respecting the circumstances of any person not having served in, or belonged to any portion of the Forces, if purporting to be signed by or on behalf of the Central Government or the (Chief of the Army Staff)[1], or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

---

[1]Subtituted by act No. 19 of 1955

(2) An Army, Navy or Air Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers, junior commissioned officers or warrant officers therein mentioned, and of any appointment held by them and of the corps, battalion or arm or branch of the services to which they belong.

(3) Where a record is made in any regimental book in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts therein stated.

(4) A copy of any record in any regimental book purporting to be certified to be a true copy by the officer having custody of such book shall be evidence of such record.

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of any officer or other person subject to this Act, or any portion of the regular Army, or has been apprehended by such officer or person, a certificate purporting to be signed by such officer, or by the commanding officer of that portion of the regular Army, or by the commanding officer of the corps, department or detachment to which such person belongs, as the case may be, and stating the fact, date and place of such surrender or apprehension, and the manner in which he was dressed, shall be evidence of the matters so stated.

(6) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by a police officer not below the rank of an officer in charge of a police station, a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension and the manner in which he was dressed shall be evidence of the matters so stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government [or any of the Government scientific experts, namely, the Chief Inspector of the Explosives, the Director of the Finger Print Bureau, the Director, Haffkeine Institute**,** Bombay, the Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory and the Serologist to the Government][1] upon any matter or thing duly submitted to him for examination or analysis and report, may be used as evidence in any proceeding under this Act.

NOTES

1 As to documentary evidence generally see 1EA.ss. 61 to 90 (Part III). The provisions of the Indian Evidence Act, which apply to the court-martial proceedings and further supplemented by the provisions relating to evidence in AA e.g. AA ss. 134, 140 to 144.

2. (a) This section provides for the admissibility in evidence of a variety of documents or copies of documents used in connection with military administration, but does not make them conclusive proof of the facts stated in them; therefore evidence may be given to contradict them.

(b) The documents made admissible in evidence by this section can only be received as such when produced by a witness on oath or affirmation.

(c) A document purporting to be such a document as specified in the various sub-secs is upon mere production on oath or affirmation to the court prima facie evidence of the facts therein stated; but, of course, it is not evidence that the accused is the person to whom it relates; and evidence must be given on oath or affirmation by witness to prove that the accused is in fact the person referred to in the document. If the accused disputes the identity, great caution is required as to the sufficiency of the evidence, and if he disputes the accuracy or completeness of the books further evidence on the disputed points must be adduced.

3. *Purporting*— This expression that if the paper appears to be certified or signed, as mentioned in the sub-sec, it can be accepted without calling a witness to prove that it has been so certified, signed, etc., unless, indeed some evidence is given to the contrary. If any evidence is given casting a doubt on the authenticity of a document, the court should require evidence of the certificate or signature, etc. to be given by a witness.

---

[1]Inserted by Act No. 37 of 1992.

4. *Sub-sec (1).*—(a) This sub-sec is limited to proof of the fact of length of service or date of dismissal or discharge: it does not assist proof of particular incidents occurring during such service. A telegram, as delivered by the telegraph department, respecting the service of a person is not signed at all and would not be admissible.

(b) As to prescribed officer, see AR 198.

5. *Sub-sec (2).*—Documents under this sub-sec need not be produced on oath/affirmation but may be handed in to the court.

6. *Sub-sec (3).*—The phrase 'any regimental book' means 'any regimental book' specified in Regs Army para 610 to be maintained by corps and departments.

7. It should be noted that every entry in a regimental book is not made evidence under this sub-sec; the entry must be made for the purpose of being used as a record, and must be made in pursuance of AA or of any rules made thereunder or in pursuance of military duty, and it must purport to be signed by the CO or by the officer whose duty it is to make the record. No hard and fast rules can be laid down as to what entries can properly be considered as "records", but as a general rule this sub-sec should only be taken advantage of in cases, where a formal record, prima facie of non-controversial character, is made in a regimental book of record in pursuance of AA, the AR or of military duty and purporting to be signed in accordance with this sub-sec. Entries which cannot properly be considered as records, such as daily entries in accounts, and entries in books not being "regimental books", such as book of a brigade or station office and company order books, can, of course, be proved under the ordinary provisions of the Indian Evidence Act.

8. The fact that a statement is recorded in a "regimental book" does not make it admissible in evidence if it is otherwise legally objectionable, e.g., if a court of inquiry under AA.s. 106 be held before 30 clear days have expired, a record of its finding is inadmissible.

9. *Sub-sec (4).*—Such a copy cannot be certified by another officer "for" the officer having the custody of the book.

10. Where a certified true copy of a record in any "regimental book" is to be produced, the copy should show clearly that the record purports to have been signed by the CO or by the officer whose duty it was to make the record.

11. Where IAFD-918 is to be produced, it must be signed by the officer having the custody of the books from which it is compiled. The original declaration of the court of inquiry even if in existence, is not admissible in evidence. Nor is IAFD-918, unless the entry in the court-martial book (of which it is a certified copy) purports to have been signed by the officer in actual command of the accused's corps or department, as required, by AA.s. 106.

12. *Sub-sec (5).*—In this sub-sec and sub-sec (6), the certificate should only state the fact, date and place of surrender or apprehension and the manner in which the offender was dressed; it can only be admitted as evidence of those facts and then only cases of desertion or absence without leave. If it is necessary to prove the circumstances of the surrender or apprehension, a witness must be called.

13. If the deserter or absentee surrenders to or is apprehended by any officer, the certificate must purport to be signed by that officer. But if the offender surrenders himself to a JCO, WO, NCO or Sepoy of any unit, department or detachment, or if the offender is apprehended by a JCO, WO, NCO, or sepoy, the certificate must purport to be signed by the CO of such JCO etc., of that unit, department or detachment.

14. The certificate must purport to be signed by the officer indicated and not by another officer 'for' him.

15. *Sub-sec (6).*—See note 12 above.

16. Under this sub-sec it is essential that the certificate should be actually signed by a police officer not below the rank of officer incharge of a police station. It is, however, not necessary that it must be signed by the police officer incharge of the police station concerned. The certificate should be on IAFD-910.

17. *Sub-sec (7).*—This sub-sec applies only to the report signed by any Chemical Examiner to the Government or his assistant and not to the report of any other Govt scientific experts mentioned in this sub-sec.

143. Reference by accused to Government officer.—(1) If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorised

absence, and refers in support thereof to any officer in the service of the Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn the proceedings until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him be received in evidence and have the same effect as if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion annul the proceedings and order a fresh trial.

NOTE

This section goes much further than AA.s. 140 in as much as the document, e.g., written reply is prima facie evidence not only of the signature of the writer and the character in which it was signed but also of the truth of the facts stated therein.

144. Evidence of previous convictions and general character.—(1) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of any previous convictions of such person either by a court-martial or by a criminal court, or any previous award of, punishment under any of the sections, 80, 83, 84 and 85, and may further inquire into and record the general character of such person and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

NOTES

1. This section should be read with ARs 64 and 123 which prescribe the other matters which may be proved.

2. Character includes both reputation and disposition but apart from previous conviction, evidence of character, where admissible, may only be given of general reputation and general disposition and not of particular acts by which reputation or disposition were shown (IEA.s. 55, Explanation).

3. In criminal proceedings, which include trials by court-martial, the fact that the accused is of general good character is always relevant but evidence of the accused's bad character is relevant and admissible only in the following cases:

(a) After a finding of 'guilty', to enable to court to determine the quantum of punishment.

(b) Before the finding of guilty—

(i) If the accused has in the first instance through the defence witnesses given evidence of good character, the whole question of his character, good or bad, is opened and the prosecutor is at liberty to tender evidence of general bad character. See AR 143(3).

(ii) In cases where guilty knowledge or intention or design is of the essence of the offence, proof may be given that the accused did other acts similar to those which form the basis of the charge; such evidence is admissible not to show that because he has committed one offence, he would, therefore, be likely to commit another offence of the same nature but to prove intention, knowledge, good faith etc., of the accused with regard to the act or to rebut (even by anticipation) the defence of accident, mistake etc, and to show that the offence charged formed part of a series of similar occurrence IEA.ss. 14 and 15.

145. Lunacy of accused.—(1) Whenever, in the course of a trial by a court-martial, it appears to the court that the person charged is by reason of unsoundness of mind incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or knowing that it was wrong or contrary to law, the court shall record a finding accordingly.

(2) The presiding officer of the court, or, in the case of a summary court-martial the officer holding the trial, shall forthwith report the case to the confirming officer, or to the authority empowered to deal with its finding under section 162, as the case may be.

(3) The confirming officer to whom the case is reported under sub-section (2) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was charged.

(4) The authority to whom the finding of a summary court-martial is reported under sub-section (2), and a confirming officer confirming a finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner and shall report the case for the orders of the Central Government.

(5) On receipt of a report under sub-section (4) the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

NOTES

1. As to insanity in connection with responsibility for crime, see IPC.s. 84, which lays down the legal test of responsibility in cases of alleged unsoundness of mind.

2. It is to be observed that two distinct cases are contemplated. A person may have been sane at the time when he did act or made the omission charged, but may not be sane enough to make his defence; while on the other hand, a person insane at the time when he did the act or made the omission charged may have recovered sufficiently to take his trial.

In the case of a court-martial whose finding requires confirmation, confirmation is required in both the cases mentioned above.

3. An application that the accused is of unsound mind and consequently incapable of making his defence should be made before arraignment. The application will normally be made by counsel for the defence or the defending officer, but should, if necessary, be made by the prosecutor. Evidence in support of the application may of course, be given.

4. Where a court-martial finds that an accused person committed the act (or made the omission) alleged as constituting the offence (or offences) specified in the charge or charges but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, such finding does not amount to a conviction, but means that on the facts proved the court would have found him, guilty of the offence (offences) had it not been established to its satisfaction that the accused at the time was not responsible for his actions.

If such a finding is recorded, no pay and allowances are forfeited automatically under AA.ss. 90 and 91 and P and A Regs, e.g. in respect of the period during which the accused is in custody awaiting trial.

5. *Prescribed manner.*— Sec AR 199(3). The authority/officer mentioned in sub-sec (4) should then forward the proceedings to Army HQ.

6. *Sub-sec (5).*—Other suitable place. In view of the provisions of Cr.P .C. 1973, s. 337, the place of safe custody must, if it is not a lunatic asylum, be a jail.

146. Subsequent fitness of lunatic accused for trial.—Where any accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under section 145, the officer commanding the army, army corps, division or brigade within the area of whose command the accused is in custody or is detained, or any other officer prescribed in this behalf, may—

(a) if such person is in custody under sub-section (4) of section 145, on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained in a jail under sub-section (5) of section 145, on a certificate of the Inspector General of Prisons, and if such person is detained in a lunatic asylum under the said sub-section on a certificate of any two or more of the visitors of such asylum that he is capable of making his defence,

take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, if the offence is a civil offence, by a criminal court.

NOTE

Prescribed officer: See AR 199(1) and (2).

147. Transmission to Central Government of orders under section 146.—A copy of every order made by an officer under section 146 for the trial of the accused shall forthwith be sent to the Central Government.

148. Release of lunatic accused.—Where any person is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of that section—

(a) if such person is in custody under the said sub-section (4), on the report of a medical officer, or

(b) if such person is detained under the said sub-section (5), on a certificate from any of the authorities mentioned in clause (b) of section 146 that in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person, the Central Government may order that such person be released or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

149. Delivery of lunatic accused to relatives.—Where any relative or friend of any person who is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of that section desires that he should be delivered to his care and custody, the Central Government may upon application by such relative or friend and on his giving security to the satisfaction of that Government that the person delivered shall be properly taken care of and prevented from doing injury to himself or any other person, and be produced for the inspection of such officer, and at such times and places, as the Central Government may direct, order such person to be delivered to such relative or friend.

150. Order for custody and disposal of property pending trial.—When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court-martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

151. Order for disposal of property regarding which offence is committed.— (1) After the conclusion of a trial before any court-martial, the court or the officer confirming the finding or sentence of such court-martial, or any authority superior to such officer, or, in the case of court-martial whose finding or sentence does not require confirmation, the officer commanding the army, army corps, division or brigade within which the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within India or not, be sent to a magistrate within whose jurisdiction such property for the time being is situated, and such magistrate shall thereupon cause the order to be carried into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) [1] or any corresponding law in force in (the State of Jammu and Kashmir)[2].

(3) In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

NOTES

1. Theft or misappropriation of property does not alter the ownership, and therefore, *prima facie* the person from whom property has been stolen or misappropriated is the lawful owner of it, and can recover it from the holder.

2. Where stolen property has not been recovered, the value of the property should be stated in the particulars of the charge and proved in evidence. Stoppages may then be awarded to recoup the owner; AR 30(6). In a case of theft followed by sale to an innocent purchaser, stoppages may be awarded to recoup the purchaser on a charge of theft, provided that charge contains an additional averment informing the accused of the further liability he has incurred in respect of the innocent purchaser.

152. Powers of court-martial in relation to proceedings under this Act.— Any trial by a court-martial under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860), and the court-martial shall be deemed to be a court within the meaning of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974). [1]

NOTES

1. See note 3 to AA.s. 59 and notes to AR 150.

2. This section indicates that summary proceedings under AA.s. 80, 83, 84 or 85 are not deemed to be 'judicial proceedings' nor is the officer disposing of the case summarily under those sections a 'court' within the meaning of the Cr. PC.

---

[1] Substituted by Act No. 37 of 1992.
[2] Substituted by the Adaption of Laws (No.3) Order, 1956.

CHAPTER XII

CONFIRMATION AND REVISION

153. Finding and sentence not valid, unless confirmed.—No finding or sentence of a general, district or summary general court-martial shall be valid except so far as it may be confirmed as provided by this Act.

NOTES

1. (a) For details as regards the authorities/officers empowered to confirm findings and sentences of courts-martial see AA.ss. 154 to 157 and notes thereto.

(b) The finding(s) and sentence of a SCM do not require confirmation: AA.s. 161.

2. (a) Confirmation is complete when the proceedings are promulgated. (See AR 71). At any time before promulgation the confirming authority may cancel his minute of confirmation and revoke the minute or order a revision. If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.

(b) A CO who has investigated the case cannot subsequently confirm the proceedings of a court-martial arising out of the same matter. Regs Army para 472.

(c) Similarly a member of a court-martial or an officer who has acted as prosecutor cannot confirm the proceedings of that court-martial. AR 74.

3. (a) The result of this section is that if a finding of 'guilty' or 'not guilty' is not confirmed it is invalid; consequently there is no conviction or acquittal, and the accused has not been convicted or acquitted by a court-martial for the purpose either of any subsequent trial or of any entry in regimental books or of any forfeiture. See AR 149 as to merely technical errors not involving injustice to the accused.

(b) Confirmation of the sentence alone implies confirmation of the finding also, but is not the correct mode of recording confirmation.

4. Confirmation ought to be withheld in the following cases :—

(a) Where the provisions of AA relating to jurisdiction have been contravened. See AA.ss. 109 to 115, 118 and 119 and 128 to 132.

(b) Where evidence of a nature prejudicial to the accused has been wrongly admitted.

(c) Where the accused has been unduly restricted in his defence.

(d) Where a finding of 'guilty' has been come to with the exception of certain words of the charge, and these words so far describe the essence of the offence, that the finding with the words omitted fails to disclose an offence of which the court could legally have convicted.

(e) Where a special finding of 'guilty' fails to disclose an offence of which the court could have legally convicted.

(f) Where the charge is bad in law, even though the accused has pleaded guilty.

(g) Where there has been such a deviation from the ARs that injustice has been done to the accused.

5. A confirming officer cannot substitute special finding on any charge for the court's finding; he can only confirm, reserve confirmation for superior authority, send back for revision, or refuse to confirm.

154. Power to confirm finding and sentence of general court-martial.— The findings and sentences of general courts-martial may be confirmed by the Central Government, or by any officer empowered in this behalf by warrant of the Central Government.

NOTES

1. A-2 warrant is at present issued by the Central Government to the COAS; and A-3 warrants are issued by the said Central Govt. to GOC-in-C commands, GOsC corps, division/area and Commanders Independent brigade/sub-area and to officers exercising such powers under AA.s. 8.

2. For forms of warrant, see Part IV of the Manual.

3. See notes to AA.s. 153 and notes 2 and 3(a) to AA.s. 109.

155. Power to confirm finding and sentence of district court-martial.— The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of such officer.

NOTES

1. For forms of warrant see Part IV of the Manual. B-2 Warrants, which also empower the holders to convene DCsM, are at present issued to brigade/sub area commanders and officers exercising the power of a brigade etc., commander under AA.s. 8 by the GOC-in-**C** commands, or GOC corps, division/area.

2. An officer having power to convene a GCM at a port of embarkation can issue his warrant to the officer commanding the troops on board a ship empowering the latter to confirm during the period of the voyage the findings and sentences of DCM held on board the ship.

3. See notes to AA.s. 153 and notes 2, 3(a) and (4) to AA.s. 109.

156. Limitation of powers of confirming authority.—A warrant issued under section 154 or section 155 may contain such restrictions, reservations or conditions as the authority issuing it may think fit.

NOTES

1. As to restrictions, etc., see forms of warrants (part IV). For instance, a sentence of death must be reserved for confirmation by the Central Government.

2. See Regs Army para 472.

157. Power to confirm finding and sentence of summary general court-martial.— The findings and sentences of summary general courts-martial may be confirmed by the convening officer or if he so directs, by an authority superior to him.

NOTES

1. In the case of a SGCM, the convening officer can confirm the finding and sentence thereof, if he so desires.

2. A member of a SGCM or an officer who has acted as prosecutor thereat should not, so far as practicable, confirm the proceedings of that court-martial; see ARs 164 and 74.

158. Power of confirming authority to mitigate, remit or commute sentences.— (1) Subject to such restrictions, reservations or conditions, as may be contained in any warrant issued under section 154 or section 155 and to the provisions of sub-section (2), a confirming authority may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 71.

(2) [Repealed][1]

NOTES

1. As to mitigation of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see AR 72; and as to the power of the confirming officer to vary a sentence informally expressed or in excess of the punishment authorized by law, see AR 73.

---

[1]See IPC.s. 53A.

2. The powers conferred by this section may be exercised by the confirming officer, as such, only when confirming the sentence. After promulgation, when the confirmation is complete the power of the confirming officer in that capacity ceases and the above powers can only be exercised by one of the authorities mentioned in AA.s. 179.

3. A confirming officer may also, under AA.s. 183 direct that an offender sentenced to imprisonment for life or imprisonment be not committed until the orders of the authority / officer specified in AA.s. 182 are obtained. If himself an authority under AA.s. 182 he has further powers as such under that section.

4. '*Mitigation'* is awarding a less amount of the same species of punishment, as, for example, by reducing the length of imprisonment to which an offender has been sentenced; and is in effect equivalent to a remission of part of the sentence. The power to mitigate etc., cannot be exercised whilst execution of the sentence is suspended.

5. '*Remission'* may be remission of the whole or of part of the sentence; thus a sentence of imprisonment may be remitted altogether, or a portion of the term may be remitted.

A confirming officer cannot remit such forfeiture of pay and allowances, as follow automatically (under AA.s.s. 90 and 91 and P and A Regs) upon the finding of the court.

6. (a*) 'Commutation'* is changing the description of punishment by awarding a punishment lower in the scale of punishments in AA.s. 71, as imprisonment in lieu of imprisonment for life, or dismissal in lieu of cashiering, or forfeiture of seniority in lieu of reduction in rank.

(b) *'Other punishments.*—There is no standard of comparison between one punishment and two or more other punishments, and as it is necessary that the commuted sentence should be less than the original sentence, commutation of one punishment to two or more punishments is only permissible where it is obvious that the two are together less severe than the one e.g., death commuted to cashiering and imprisonment for life or dismissal to forfeiture of seniority and severe reprimand. Partial commutation of any one punishment by the substitution for a portion thereof of another punishment is illegal; thus where in a case of "losing by neglect" a court passed a sentence of imprisonment, but omitted to pass a sentence of stoppages of pay which would have been valid, a portion of the imprisonment cannot be commuted to stoppages.

(c) If a confirming officer purports (by way of commutation) to substitute for a valid sentence a sentence which the court had no power to award, neither the original sentence-since it has been commuted-nor the new sentence-since it is illegal-can stand. That conviction, however, remains good.

7. Where a term of imprisonment is reduced in length by remission or mitigation, automatic forfeiture of pay under AA.s. 91 and P&A Regs is governed by the term actually undergone—not by that originally imposed. So, too, pay and allowances are not automatically forfeited, whilst a sentence is suspended.

159. Confirming of findings and sentences on board a ship.—When any person subject to this Act is tried and sentenced by a court-martial while on board a ship, the finding and sentence so far as not confirmed and executed on board the ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

NOTES

1. On active service the officer commanding the troops on board a ship can convene a SGCM on board under clause (c) of AA.s. 112.

2. See also notes to AA.ss. 110 and 155.

160. Revision of finding or sentence.—(1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming authority and on such revision, the court, if so directed by the confirming authority, may take additional evidence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or, if a summary general or district court-martial, of three officers.

NOTES

1. See notes to AR 68.

2. 'Which requires confirmation'—The finding or sentence of a SCM can, therefore, never be revised.

161. Finding and sentence of a summary court-martial.—(1) Save as otherwise provided in sub-section (2), the finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith.

(2) If the officer holding the trial is of less than five years service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a brigade.

NOTES

1. *'Carried out forthwith'*—The officer holding the trial when passing sentence may, if a sentence of imprisonment be awarded, direct under the provisions of AA.s. 183(2) that the offender be not committed until the orders of the authority/officer specified in AA.s. 182 are obtained. See notes to AA.s. 183.

2. See AR 132 and notes thereto.

162. Transmission of proceedings of summary court-martial—The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer; and such officer, or the (Chief of the Army Staff)[1], or any officer empowered in this behalf by the (Chief of the Army Staff)[1], may, for reasons based on the merits of the case, but not any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

NOTES

1. *'Division or Brigade':* also area and sub area. See table under SRO 135-A dated 22 Jul 1950 (Part IV).

2. Prescribed Officer.—See AR 200.

3. The proceedings of a SCM cannot be sent back for revision and do not require confirmation, and any sentence passed by the court should, except as provided in AA.ss 161(2), 182 and 183 and AR 132, be put into execution forthwith.

4. Under this section and AR 133, the proceedings must be forwarded for review to the reviewing authority (through the DJAG of the Command in which the trial is held), who, if he considers that justice has been done, should countersign the proceedings and return them to the accused's corps for preservation. (AR 146). If a direction under AA.s. 182 has been passed, he should issue his orders thereon, or, if not himself the authority/officer specified in AA.s. 182, forward the proceedings to such an authority/officer for orders. The reviewing authority can, for reasons based on the 'merit of the case' but not on merely technical grounds (as to which, see note to AR 133), set aside the proceedings or mitigate, remit or commute the sentence. If the sentence is illegal, he must set it aside, or under AA.s. 163 a valid sentence may be substituted by one of the authorities mentioned in AA.s. 179.

5. A sentence of imprisonment for three months or less unaccompanied by dismissal should normally be undergone in military custody. See AA.s. 169 and notes thereto. A reviewing authority may direct that such a sentence should be undergone in military custody, either when reducing a sentence of imprisonment to three months or less or when the court omits to add such a direction to the sentence. But in the former case if the accused is sent to a civil jail, his consent for being reinstated in the service after the expiration of the sentence is necessary in view of the provisions of AR 168.

6. As to the scale for punishments awardable by SCsM see Regs Army para 448.

163. Alteration of finding or sentence in certain cases.—(1) Where a finding of guilty by a court-martial, which has been confirmed, or which does not require confirmation, is found for any reason to be invalid or cannot be supported by the evidence, the authority

[1] Subtituted by Act No. 19 of 1955.

which would have had power under section 179 to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding and pass a sentence for the offence specified or involved in such finding:

Provided that no such substitution shall be made unless such finding could have been validly made by the court-martial on the charge and unless it appears that the court-martial must have been satisfied of the facts establishing the said offence.

(2) Where a sentence passed by a court-martial which has been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority referred to in sub-section (1) may pass a valid sentence.

(3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than, or in excess of the punishment awarded by, the sentence for which a new sentence is substituted under this section.

(4) Any finding substituted, or any sentence passed, under this section shall, for the purposes of this Act and the rules made thereunder, have effect as if it were a finding or sentence, as the case may be, of a court-martial.

NOTES

1. *Sub-sec (1)*.—(a) This sub-sec enables any of the authorities mentioned in AA.s. 179 to substitute a new finding for an invalid finding or for one which cannot be supported by the evidence, which have been confirmed and which are thus not open to revision and to pass a sentence in respect of the new finding. It also gives these authorities similar powers in regard to a finding not requiring confirmation, i.e., any finding of a SCM.

(b) The confirming officer himself has no power to substitute or change the finding; if in his opinion the court has arrived at a wrong finding, he can only send it back for revision or not to confirm it.

(c) The procedure does not apply where the charge is bad in law or where the charge offends AA.s. 122.

2. *Sub-sec* (2).—It similarly enables the said authorities to substitute a valid sentence for an invalid sentence not being a sentence passed in pursuance of a new finding under sub-sec (1).

3. *Sub-sec* (3).—(a) This sub-sec requires that the new sentence substituted for an invalid sentence must not be higher in scale than, or in excess of, the original sentence. The words 'invalid sentence' are used to mean a sentence which is authorised under AA but which is inapplicable in relation to the accused or to the offence with which he is charged, as distinct from an illegal sentence or a sentence which is unknown to the said Act e.g., reproof. In case a sentence which is not specified in the scale of punishments in AA.s. 71, is awarded by a court-martial, it is not feasible for the authority specified in sub-sec (1), to say that any sentence which such authority may propose to substitute for the sentence of the court is not "higher" in the scale of punishments. In such cases, action under this section for the substitution of the sentence is not permitted and the accused will receive no punishment though the conviction will stand.

4. The substituted finding and/or sentence has the same effect as if it were the original finding and/or sentence.

5. As to mitigation of sentence after confirmation, see AA.s. 179 and AR 72(2).

164. Remedy against order, finding or sentence of court-martial.—(1) Any person subject to this Act who considers himself aggrieved by any order passed by any 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.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the

Central Government, the (Chief of the Army Staff)[1] or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the (Chief of the Army Staff)[1] or other officer, as the case may be, may pass such order thereon as it or he thinks fit.

NOTES

1. See Regs Army para 365.

2. Prescribed officer: see AR 201.

3. (a) A person subject to AA who considers himself aggrieved by any order, finding or sentence of a court-martial has a right, under this section, to submit a petition against such order, finding or sentence. The officers or authorities to whom such petitions may be addressed are as follows :

(i) Before confirmation—the officer or authority empowered to confirm the finding and sentence of that court-martial.

(ii) After confirmation—the Central Government, the COAS or any authority superior in command to the confirming authority.

(iii) Trial by SCM—an officer superior in command to the officer who held the SCM provided he has power not less than a brigade commander (AR 201).

(b) Petitions by persons still in service will be addressed to any of the authorities mentioned in note 3(a) above through the confirming or reviewing authority, as the case may be. Unless the redress asked for is granted by a subordinate authority, the petition will be forwarded to the addressee with the remarks of all the intermediate commanders concerned.

(c) A person, who addressed a petition to the confirming officer before confirmation, will have the right to address another petition to any of the authorities mentioned in note 3(a) (ii), above.

(d) A petition can only be addressed by an aggrieved person either personally or through a representative appointed by a power of attorney. A petition received from a person, other than the aggrieved one, or his duly constituted attorney, or a petition from an aggrieved person which has already been finally disposed of will be returned to the petitioner explaining the correct legal position to him.

(e) The orders of the officer or authority to whom the petition is addressed will be final and will exhaust the legal rights of redress under AA but see note 3(c) above. Such orders will be attached to the proceedings, if the proceedings have been called for, or will be forwarded to the JAG, Army Headquarters, for attachment to the proceedings.

4. The types of reliefs that can be granted and the authorities empowered to grant them are set out in AA.s. 179.

165. Annulment of proceedings.—The Central Government, the (Chief of the Army Staff)[1] or any prescribed officer may annul the proceedings of any court-martial on the ground that they are illegal or unjust.

NOTES

1. Prescribed officer. See AR 202.

2. Before passing orders under this section the authorities specified in the section should invariably obtain the advice of the DJAG of the Command concerned. See Regs for the Army para 365(k).

---

[1] Subtituted by Act No. 19 of 1955.

CHAPTER XIII

EXECUTION OF SENTENCES

166. Form of sentence of death.—In awarding a sentence of death, a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

NOTES

1. A person sentenced by a court-martial to death remains subject to AA until the sentence is carried out; AA.s. 123(4).

2. See also AA.s. 132(2) and (3) and notes thereto.

3. For forms of warrants see ARs 169 to 171 and Appx V to AR.

167. Commencement of sentence of (imprisonment for life)[1] or imprisonment.— Whenever any person is sentenced by a court-martial under this Act to (imprisonment for life)[1] or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the presiding officer or, in the case of a summary court-martial by the court.

NOTES

1. (a) Under this section, a term of imprisonment for life or imprisonment cannot be made to commence at the expiration of a previous term, but must commence on the day on which the original proceedings are signed. If, therefore, the court desires to inflict, e.g., six months' additional imprisonment on a prisoner already undergoing six months' imprisonment, of which three months are unexpired, the court must award nine months.

(b) A term of imprisonment for life or imprisonment awarded by way of commutation must commence on the date of the signing of original proceedings even though such sentence was one of a different character.

(c) The suspension of a sentence of imprisonment for life or imprisonment has no effect on its currency. See AA.s. 185.

2. Original proceedings were signed.—Means the day on which the first verdict and sentence, if any, was announced. For example, on his trial by a court-martial, 'A' was found not guilty on 15 May 78. On revision, on 15 Jun 78, he was convicted and awarded 3 months RI. The term of his sentence shall reckon to commence w.e.f. 15 May 78. It is, therefore, essential that the proceedings be dated as well as signed. When, however, a presiding officer or officer holding the trial omits either to sign or date the proceedings, he can even after confirmation sign them and date his signature as of the true date.

3. For framing sentences of imprisonment see Regs for the Army para 468(e) and note 8(g) to AA.s. 71.

4. For forms of warrants see Part II of Appendix IV to AR.

168. Execution of sentence of (imprisonment for life)[1].—Whenever, any sentence of (imprisonment for life)[1] is passed under this Act or whenever, any sentence of death is commuted to (imprisonment for life)[1], the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

NOTES

1. *"Passed"*.—A sentence requiring confirmation (see AA.s. 153) is inoperative until confirmed; action in respect of such a sentence cannot, therefore, be taken under this section before confirmation. Until promulgation has been effected, confirmation is not complete (see AR 71).

2. *Prescribed Officer*.—See AR 166.

3. *Civil prison*.—A prison maintained under the prisons Act, 1894 (IX of 1894). AA.s. 3 (iii).

4. For forms of warrants, see Part II of Appendix IV to AR.

When a death sentence is commuted by the confirming officer to imprisonment for life or imprisonment, Forms J and K in Appendix V to AR will be used.

---

[1] See IPC.s. 53A.

169. Execution of sentence of imprisonment.—(1) Whenever any sentence of imprisonment is passed under this Act by a court-martial or whenever any sentence of death or (imprisonment for life)[1] is commuted to imprisonment, the confirming officer or in case of a summary court-martial the officer holding the court or such other officer as may be prescribed, shall, save as otherwise provided in sub-sections (3) and (4), direct either that the sentence shall be carried out by confinement in a military prison or that it shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub-section (1), the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a court-martial, the appropriate officer under sub-section (1) may direct that the sentence shall be carried out by confinement in military custody instead of in a civil or military prison.

(4) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time appoint.

NOTES

1. See notes 1, 3 and 4 to AA.s. 168.

2. Sub-sec (1).—Prescribed officer: see AR 203.

3. Sentence of imprisonment combined with dismissal should, as a rule, be carried out by confinement in a civil prison. Sentences of imprisonment not exceeding three months, to which no sentence of dismissal has been added, should be carried out by confinement in military custody, or, if sufficient accommodation in cells does not exist, in a military prison. Where an offender has been sentenced to imprisonment exceeding three months (but not exceeding nine months) and circumstances exist which justify the return of the offender to military service, the competent authority should give a direction that he should be committed to a military prison.

4. When the power of directing imprisonment to be undergone in military custody or a military prison vests in the confirming officer, the direction should be part of the confirmation minute, but when, as in the case of a SCM, it vests in the court, the direction should form part of the sentence. The direction may also be given by an authority having power, under AA.s. 162 or AA.s. 179, to mitigate the sentence.

5. Sub-sec (2).—*Prescribed officer.*—see AR 166.

Forms of warrants.—See Forms B, C and F in Part II of Appendix IV to AR.

6. See notes 3 and 4 above.

7. *Sub-sec(4)*.—The officer commanding the forces in the field on active service can establish military prisons in the field in which sentences of imprisonment of any length may be carried out. This enables a sentence of imprisonment to be carried out locally on active service and the prisoner, unless he is dismissed, to be sent back to duty on its expiration. The officer commanding the forces in the field can also appoint a local civil prison as a place in which such sentences may be carried out, if he considers the civil prison to be a suitable place and accommodation is available. Such civil prison not being a 'civil prison' within the meaning of AA.s. 3(iii), the offender's subjection to AA would not cease under AR 168 (3).

[169A. Period of custody undergone by the officer or person to be set off against the imprisonment.—When a person or officer subject to this Act is sentenced by a court-martial to a term of imprisonment, not being an imprisonment in default of payment of fine, the period spent by him in civil or military custody during investigation, inquiry or trial of the same case, and before the date of order of such sentence, shall be set off against the term of imprisonment imposed upon him, and the liability of such person or officer to undergo imprisonment on such order of sentence shall be restricted to the remainder, if any, of the term of imprisonment imposed upon him][2] .

---

[1] See IPC.s. 53A.

[2] Inserted by Act No. 37 of 1992.

170. Temporary custody of offender.—Where a sentence of (imprisonment for life)[1] or imprisonment is directed to be undergone in a civil prison, the offender may be kept in a military custody or in any other fit place, till such time as it is possible to send him to a civil prison.

NOTE

Under this section, which deals with interim custody, a prisoner can be kept in any fit place until the prisoner reaches the civil prison (AA.s. 3(iii)) where he is to undergo his sentence.

171. Execution of sentence of imprisonment in special cases.—Whenever, in the opinion of an officer commanding an army, army corps, division or independent brigade, any sentence or portion of a sentence of imprisonment cannot for special reasons, conveniently be carried out in a military prison or in military custody in accordance with the provisions of section 169, such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

NOTES

1. *'Army, Army corps, division':* —See SRO 135A dated 22 Jul 50. [Part (IV)].

2. The power conferred in this section might be of use in an emergency, such as an epidemic. It will also admit of local arrangements being made for the execution of a sentence of rigorous imprisonment passed in any place outside India when it is, for any reason, inconvenient or undesirable that an offender should be sent to India to undergo his sentence.

In such a case, the warrant of commitment in Form B (see Part II of Appendix IV to AR) must be suitably varied (see AR 4) and must cite the order made under this section. When the prisoner is to be despatched to India he should be demanded by a warrant in Form G in the said Appendix and must be committed to the civil prison in India on a fresh warrant of commitment.

3. This section differs from AA.s. 169(4) in that (a) the direction may be made by the specified authorities even though the troops are not on active service and (b) the direction can be made only when the imprisonment is to be carried out in a military prison or military custody.

172. Conveyance of prisoner from place to place.—A person under sentence of (imprisonment for life)[1] or imprisonment may during his conveyance from place to place, or when on board ship, aircraft, or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

173. Communications of certain orders to prison officers.—Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil or military prison, a warrant in accordance with such order shall be forwarded by the officer making the order or his staff officer or such other person as may be prescribed to the officer in charge of the prison in which such person is confined.

NOTES

1. For form of warrants under this section, see Forms D to G in Part II of Appendix IV to the AR. The heading of each of these shows clearly the cases in which it is to be used. It will be noticed that Form D is applicable to cases in which the person concerned is to be released, Form E to those in which he remains in a civil prison and Form F to those in which he remains in a civil or military prison but with a reduced sentence, and Form G to those in which he is to be transferred to military custody, *i.e.*, to cases in which his sentence, in its new form, admits of or requires such custody. When a death sentence is commuted, subsequent to confirmation, to one of imprisonment for life or imprisonment, Form J or K in Appendix V to AR with the necessary variations, will be used. See AR 4.

2. The order, after promulgation, should be sent to the JAG AHQ, for attachment to the court-martial proceedings.

3. Prescribed officer see AR 167.

---

[1]See IPC.s. 53A.

174. Execution of sentence of fine.—When a sentence of fine is imposed by a court-martial under section 69 whether the trial was held within India or not, a copy of such sentence, signed and certified by the confirming officer, or where no confirmation is required, by the officer holding the trial may be sent to any magistrate in India, and such magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the [Code of Criminal Procedure, 1973][1], or any corresponding law in force in (the State of Jammu and Kashmir)[2] for the levy of fines as if it were a sentence of fine imposed by such magistrate.

NOTE

This provision should be used when the fine imposed by sentence of a court-martial is not recoverable under AA.s. 90(f) or 91(h).

175. Establishment and regulation of military prisons.—The Central Government may set apart any building or part of a building, or any place under its control, as a military prison for the confinement of persons sentenced to imprisonment under this Act.

176. Informality or error in the order or warrant.—Whenever any person is sentenced to (imprisonment for life)[3] or imprisonment under this Act, and is undergoing the sentence in any place or manner in which he might be confined under a lawful order or warrant in pursuance of this Act, the confinement of such person shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant or other document, or the authority by which, or in pursuance whereof such person was brought into or is confined in any such place, and any such order, warrant or document may be amended accordingly.

177. Power to make rules in respect of prisons and prisoners.—The Central Government may make rules providing—

(a) for the government, management and regulation of military prisons;

(b) for the appointment, removal and powers of inspectors, visitors, governors and officers thereof;

(c) for the labour of prisoners undergoing confinement therein, and for enabling persons to earn, by special industry and good conduct, a remission of a portion of their sentence;

(d) for the safe custody of prisoners and the maintenance of discipline among them and the punishment, by personal correction, restraint or otherwise, of offences committed by prisoners;

(e) for the application to military prisons of any of the provisions of the Prisons Act, 1894 (IX of 1894), relating to the duties of officers of prisons and the punishment of persons not being prisoners;

(f) for the admission into any prison, at proper times and subject to proper restrictions, of persons with whom prisoners may desire to communicate, and for the consultation by prisoners under trial with their legal advisers without the presence as far as possible of any third party within hearing distance.

178. Restriction of rule-making power in regard to corporal punishment.—Rules made under section 177 shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment more severe than it is under the law for the time being in force relating to civil prisons.

---

[1]Subtituted by Act No. 37 of 1992

[2]Subtituted by the adaption of Laws (No. 3) Order 1956.

[3]See IPC.s. 53A.

CHAPTER XIV

PARDONS, REMISSIONS AND SUSPENSIONS

179. Pardon and remission.—When any person subject to this Act has been convicted by a court-martial of any offence, the Central Government or the (Chief of the Army Staff) [1] or, in the case of a sentence, which he could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division or independent brigade in which such person at the time of conviction was serving or the prescribed officer may—

(a) either with or without conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded; or

(b) mitigate the punishment awarded; or

(c) commute such punishment for any less punishment or punishments mentioned in this Act :

(Proviso omitted).[2]

(d) either with or without conditions which the person sentenced accepts, release the person on parole.

NOTES

1. As to mitigation, remission and commutation of sentences, see notes to AA.s. 158; as to substitution of a valid for an invalid sentence, see AA. s. 163; and as to mitigation of the sentence when the finding on one of several charges is found to be invalid, see AR 72(2).

2. *Prescribed officer*.— See AR 204.

3. Any order made under this section should, after promulgation, be sent to the JAG, Army HQ, for attachment to the court-martial proceedings.

4. The powers conferred by this section should not be exercised by an officer holding a command inferior to that of the authority confirming the sentence unless such officer is authorised by such confirming authority or an authority superior to the confirming authority to exercise such power. Similarly, the powers conferred by this section shall not be exercised by an officer mentioned therein if such officer holds a command inferior to that of the authority/officer who has already once taken action under this section, without reference to such latter authority/officer. Regs Army para 474.

5. (a) A sentence of dismissal might be remitted on the conditions that the person sentenced shall not receive pay in respect of or count service for any purpose during the period spent under dismissal. The conditions, if any, must be clearly stated and the written acceptance of the person obtained. Mitigation or commutation cannot be made conditional.

(b) A 'pardon' takes away the conviction, and when a pardon has been granted, the record of the conviction must be removed from the pardoned persons' conduct sheet and will not be provable against him should he be again tried by a court-martial and convicted of any offence.

(c) Release on parole with conditions has, like suspension, no effect on the finding but merely suspends the execution of the sentence. Unconditional release on parole is tantamount to remission of the unexpired portion of the sentence.

180. Cancellation of conditional pardon, release on parole or remission.—(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission,

---

[1]Subtituted by Act No. 19 of 1955

[2]See IPC.s. 53A.

not fulfilled, such authority may cancel the pardon, release or remission and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of (imprisonment for life)[1] or imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

NOTES

1. 'Unexpired portion': This is the period of the sentence less the period the person was in custody in consequence of the sentence i.e., less the period from the effective date of sentence to date of release in consequence of the remission.

2. See note 3 to AA.s. 179.

181. Reduction of warrant officer or non-commissioned officer.—When under the provisions of section 77 a warrant officer or a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purpose of section 179, be treated as a punishment awarded by a sentence of a court-martial.

NOTES

1. The remission of the punishments mentioned in AA.s. 77 would not of itself avoid the reduction to the ranks consequent on the sentence. If it is desired to avoid such reduction to the ranks the reduction may, by reason of this section, be remitted as well.

2. A NCO sentenced by court-martial to imprisonment etc., is *ipso facto* reduced to the ranks, and the suspension of his sentence does not cancel or suspend the reduction. There is, however, no legal bar to a person receiving promotion or an appointment whilst under a suspended sentence.

3. See also note 3 to AA.s. 179.

182. Suspension of sentence of (imprisonment for life)[1] or imprisonment.—(1) Where a person subject to this Act is sentenced by a court-martial to (imprisonment for life)[1] or imprisonment, the Central Government, the (Chief of the Army Staff)[2] or any officer empowered to convene a general or a summary general court-martial may suspend the sentence whether or not the offender has already been committed to prison or to military custody.

(2) The authority or officer specified in sub-section (1) may in the case of an offender so sentenced direct that until the orders of such authority or officer have been obtained the offender shall not be committed to prison or to military custody.

(3) The powers conferred by sub-sections (l) and (2) may be exercised in the case of any such sentence which has been confirmed, reduced or commuted.

NOTES

1. AA.ss. 182 to 190, which deal with suspension of sentence only apply to sentences of imprisonment for life or imprisonment passed on persons subject to AA but from the word 'dismissal' in AA.s. 190(2) it appears that the Parliament intended to exclude officers from the purview of these sections.

2. The authority/officer specified in sub-sec (1) may in his discretion, issue a general direction that no person under his command sentenced to imprisonment for life or imprisonment is to be committed to prison or to military custody until his orders have been obtained. Sentence of imprisonment exceeding two years will, since only a GCM or SGCM can pass such a sentence, always require confirmation by an officer who will himself be one of the authorities specified in sub-sec (1).

3. The authority or officer under sub-sec (1) read with AA.s. 186 can at any time suspend a sentence, order it into execution and again suspend it etc., until the sentence expires even though the offender has ceased to be subject to AA under AR 168; see AA.s. 123(3).

4. An order putting a suspended sentence into execution must be signed by the competent authority under sub-sec (1); a minute of suspension may be signed by a staff officer "for" him, so long as it makes it clear that the competent authority/officer himself considered the case and arrived at the decision.

---

[1]See IPC.s. 53A.
[2]Subtituted by Act No. 19 of 1955

183. Orders pending suspension.—(1) Where the sentence referred to in section 182 is imposed by a court-martial other than a summary court-martial, the confirming officer may when confirming the sentence, direct that the offender be not committed to prison or to military custody until the orders of the authority or officer specified in section 182 have been obtained.

(2) Where a sentence of imprisonment is imposed by a summary court-martial the officer holding the trial or the officer authorised to approve of the sentence under sub-section (2) of section 161 may make the direction referred to in sub-section (1).

NOTES

1. The cases in which and by whom a direction under this section may be recorded are as under:—

(a) by the authority/officer specified in AA.s. 182(1); see AA.s. 182(2)

(b) by the confirming officer in the case of any sentence awarded by a DCM unless the confirming officer happens to be one of the authorities specified in AAs. 182(1);

(c) in the case of a SCM—

(i) the officer holding the trial; or

(ii) the officer authorised to approve the sentence under AA.s. 161(2).

2. It should be noted that the officer holding, the trial can only so direct when passing sentence, the officer authorised to approve under AA.s. 161(2) when approving and the confirming officer, when confirming.

184. Release on suspension.—Where a sentence is suspended under section 182, the offender shall forthwith be released from custody.

NOTE

Suspension does not affect the finding or the continuity of the sentence but the offender is released from custody and if in service can carry on his duties.

185. Computation of period of suspension.—Any period during which the sentence is under suspension shall be reckoned as part of the term of such sentence.

NOTE

Suspension of a sentence does not affect its continuity. Under the provisions of AA.s. 167, a sentence of imprisonment for life or imprisonment, whether suspended or not, commences on the date on which the original proceedings of the court were signed and runs continuously until it expires.

186. Order after suspension.— The authority or officer specified in section 182 may, at any time while a sentence is suspended, order.—

(a) that the offender be committed to undergo the unexpired portion of the sentence; or

(b) that the sentence be remitted.

NOTES

1. If the authority/officer specified in AA.s. 187(1) considers at the periodical review that a sentence ought not to remain suspended, he will refer the case to the authority or officer specified in AA.s. 182(1) unless he is himself such authority etc., see notes to AA.s. 187. A suspended sentence may, however, be referred to the authority/officer mentioned in AA.s. 182(1) at any time with a view either to its remission or to the committal of offender to undergo the unexpired portion of the sentence.

2. This section does not contemplate the partial remission of a sentence; the only power of remission under clause (b) is to remit the whole; Partial remission must be effected (if at all) under AA.s. 179. See AA.s. 189.

3. When an offender is committed to prison to undergo the 'unexpired portion' of his sentence, the unexpired portion should be stated in the warrant. As to signing committal warrants, see AR 166. Also see AA.s. 185.

187. Reconsideration of case after suspension.—(l) Where a sentence has been suspended, the case may at any time, and shall at intervals of not more than four months, be reconsidered by the authority or officer specified in section 182, or by any general or other officer not below the rank of field officer duly authorised by the authority or officer specified in section 182.

(2) Where on such reconsideration by the officer so authorised, it appears to him that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall refer the matter to the authority or officer specified in section 182.

NOTES

1. See notes to AA.s. 186. Unless the authority referred to in sub-sec (1) is also one specified in AA.s. 182(1), the former can only—

(a) keep a suspended sentence further suspended by ordering it to be brought forward for reconsideration on such and such a date not more than four months ahead; or

(b) refer it to the authority/officer specified in AA.s. I82(1)—unless he is himself such authority—with a recommendation either that the offender be committed to undergo the unexpired portion of the sentence or that the sentence be remitted.

2. Failure to reconsider a suspended sentence at the proper date has no effect upon the sentence; it can be subsequently reconsidered, and a further suspension or a committal may then be ordered.

188. Fresh sentence after suspension.—Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then—

(a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently;

(b) if the further sentence is for period of three months or more and is not suspended under this Act, the offender shall also be committed to prison or military custody for the unexpired portion of the previous sentence, but both sentences shall run concurrently; and

(c) if the further sentence is for a period of less than three months and is not suspended under this Act, the offender shall be so committed on that sentence only, and the previous sentence shall, subject to any order which may be passed under section 186 or section 187, continue to be suspended.

NOTES

I. *Clause (b).*—(a) Under this clause, the offender is committed to undergo the unexpired portion of the previous sentence from the date the further sentence is effective. An order by a competent military authority under AA.s. 182(1) is not required.

(b) Committal warrants must, in order to comply with the provisions of the Prisoners Act, 1900 (III of 1900), be forwarded to the authorities of the prison to which the offender is sent. It will generally be convenient to prepare separate warrants; in preparing the warrant in respect of the former sentence care must be taken to state the unexpired portion which the offender has to undergo.

2. *Clause (c).*—(a) If dismissal has been added to the further, unsuspended sentence and no order has been passed under AA.s. 169, that the imprisonment is to be undergone in military custody, the offender should not be committed to a civil prison until the competent authority under AA.s. 182(1) has had an opportunity to order the unexpired portion of the former sentence into execution .

(b) As to preparation of committal warrants; see note l(b) above.

189. Scope of power of suspension. —The powers conferred by sections 182 and 186 shall be in addition to and not in derogation of the power of mitigation, remission, and commutation.

NOTE

The authority or officer referred to in AA.s. 182(1) can also in addition exercise the powers of mitigation, remission and commutation under AA.s. 179 provided such authority is also one of the authorities specified in the latter section.

190. Effects of suspension and remission on dismissal.—(I) Where in addition to any other sentence, the punishment of dismissal has been awarded by a court-martial, and such other sentence is suspended under section 182, then, such dismissal shall not take effect until so ordered by the authority or officer specified in section 182.

(2) If such other sentence is remitted under section 186, the punishment of dismissal shall also be remitted.

NOTES

1. *Sub-sec (1)*.—In the case of a sentence of dismissal combined with imprisonment for life or imprisonment which is suspended, the dismissal does not take effect until so ordered by the competent authority under AA.s. 182(1). This is so even if the sentence is subsequently ordered into execution by the competent authority or is automatically put into execution under clause (b) of AA.s. 188. A competent authority who orders into execution a sentence of imprisonment for life or of imprisonment other than imprisonment to be undergone in a military prison or military custody should, if dismissal has been added to such sentence, as a rule, order the dismissal to take effect when the offender is received into a civil prison. If the dismissal accompanies a sentence of imprisonment for life or imprisonment which is not suspended, it takes effect as provided in AR 168, that is, when the sentence is one of imprisonment for life or of imprisonment which has to be undergone in a civil prison it takes effect immediately on the offender being received into such a prison and he therefore, ceases to be subject to the Act. In such a case, therefore, the dismissal must be remitted before the sentence of imprisonment for life or imprisonment can be suspended. In this connection see notes to AA.s. 188.

2. *Sub-sec (2)*.—The effect of this sub-sec is that whenever dismissal has been added to a sentence of imprisonment for life or imprisonment and such sentence is remitted under AA.s. 186, the dismissal is also automatically remitted. The remission of a sentence of imprisonment for life or imprisonment under AA.s. 179 does not operate so as to remit a sentence of dismissal, which accompanied such sentence. If a suspended sentence to which dismissal has been added runs out whilst still under suspension, the dismissal should as a rule, be formally remitted under AA.s. 179 by one of the authorities/officers empowered under that section to do so as this sub-sec does not automatically remit such dismissal.

CHAPTER XV

RULES

191. Power to make rules.—(1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the rules made thereunder may provide for—

(a) the removal, retirement, release, or discharge from the service of persons subject to this Act;

(b) the amount and incidence of fines to be imposed under section 89;

(c) [ ][1]

(d) the assembly and procedure of courts of inquiry, the recording of summaries of evidence and the administration of oaths or affirmations by such courts;

(e) the convening and constituting of courts-martial and the appointment of prosecutors at trials by courts-martial;

(f) the adjournment, dissolution and sitting of courts-martial;

(g) the procedure to be observed in trials by courts-martial and the appearance of legal practitioners thereat;

(h) the confirmation, revision and annulment of, and petitions against, the findings and sentences of courts-martial;

(i) the carrying into effect of sentences of courts-martial;

(j) the forms of orders to be made under the provisions of this Act relating to courts-martial, (imprisonment for life)[2] and imprisonment;

(k) the constitution of authorities to decide for what persons, to what amounts and in what manner, provisions should be made for dependent under section 99, and the due carrying out of such decisions;

(l) the relative rank of the officers, junior commissioned officers, warrant officers, petty officers and non-commissioned officers of the regular Army, Navy and Air Force when acting together;

(m) any other matter directed by this Act to be prescribed.

NOTES

1. (a) The Central Government is empowered to make rules for the purpose of carrying into effect the provisions of AA. The rules so made must not contain anything contrary to or inconsistent with any provision of the said Act itself. Consequently, if any rule is found to conflict with some section of AA, the section must prevail.

(b) The Army Rules, 1954 have been made in pursuance of this section.

2. Sub-sec 2(m).—See AA.s. 3(xix).

192. Power to make regulations.—The Central Government may make regulations for all or any of the purposes of this Act other than those specified in section 191.

---

[1]Omitted by Act No. 37 of 1992.
[2]See IPC, s 53A.

NOTE

The Regulations made under this section may cover a wider field than the limited purposes for which rules can be framed under AA.s. 191(1).

193. Publication of rules and regulations in Gazette—All rules and regulations made under this Act shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act.

[193A. Rules and regulations to be laid down before Parliament. — Every rule and every regulation made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session in two or more successive sessions, and if, before the expiry of the session immediately following the session, or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation][1].

194. (Repealed)[2].

---

[1]Inserted by Act No. 20 of 1983.
[2]See Act No. 36 of 1957, Sec 2.

CHAPTER XVI

[Omitted][1]

TRANSITORY PROVISIONS [Omitted][1]

195. [Omitted**]**[1]

196. [Omitted**]**[1]

---

[1]Omitted by Act No. 37 of 1992

ARMY RULES, 1954

ARRANGEMENT OF RULES

CHAPTER I

PRELIMINARY

CHAPTER II

ENROLMENT AND ATTESTATION

CHAPTER III

DISMISSAL, DISCHARGE, ETC.

CHAPTER IV

RESTRICTIONS ON FUNDAMENTAL RIGHTS

CHAPTER V

INVESTIGATION OF CHARGES AND TRIAL BY COURT-MARTIAL

SECTION 1.—INVESTIGATION OF CHARGES AND REMAND FOR TRIAL

Power of Commanding Officers

Framing Charges

Preparation for defence by accused persons

SECTION 2.— GENERAL AND DISTRICT COURTS-MARTIAL

Convening the Court

Procedure of Trial—Constitution of Court

Procedure at Trial—Challenge and Swearing

RULES PAGE

Prosecution, Defence and Summing-up.

Finding and Sentence

Confirmation and Revision

Proceedings of General and District Court-Martial

[1]Omitted by SRO 17(E) dated 6th December, 1993

[1] Inserted by SRO. 55/85

RULES PAGE

SECTION 4—GENERAL PROVISIONS

Witnesses and Evidence

Addresses

Insanity

Preservation of Proceedings

[1] Inserted by SRO 17(E), dated 6th December,1993

[2] Omitted by SRO 17(E), dated 6th December,1993

APPENDICES TO THE ARMY RULES

MINISTRY OF DEFENCE

NOTIFICATION

New Delhi, the 27th November, 1954

S.R.O. 484.— In exercise of the powers conferred by Section 191 of the Army Act 1950 (XLVI of 1950), and all other powers enabling in this behalf, and in supersession of the Indian Army Act Rules, and the Army Act Rules, 1950 published with the notifications of the Government of India in the late Army Department No. 911, dated the 3rd November, 1911, and the Ministry of Defence No. S.R.O. 125, dated the 22nd July, 1950, respectively, the Central Government hereby makes the following rules, namely:—

THE ARMY RULES, 1954

CHAPTER—I

PRELIMINARY

1. **Short title**.—These rules may be called the Army Rules, 1954.

2. **Definition**.-In these rules, unless the context otherwise requires,—

(a) "the Act" means the Army Act, 1950 (XLVI of 1950);

(b) "Appendix" means an appendix set forth in these rules;

(c) "Field Officer" includes an officer, not being a general officer, of any rank (including brevet rank) above the rank of Captain;

(cc) [Omitted][1]

(d) "proper military authority", when used in relation to any power, duty, act or matter, such military authority as, in pursuance of these rules or the regulations made under the Act or the usages of the service, exercises or performs that power or duty or is concerned with the act or matter;

(di) [Omitted][2]

(dii) [Omitted][2]

(diii) "reckonable commissioned service" means service from the date of permanent commission, or the date of seniority for promotion fixed on grant of that commission including any ante date for seniority granted under the rules in force on grant of commission:

Provided that periods of service forfeited by sentence of court-martial or by summary award under the Act and periods of absence without leave, shall be excluded but periods during which furlough rates of pay are drawn and periods of captivity on prisoners of war rates of pay shall be included.[3]

(e) "Section" means a Section of the Act;

(f) all words and expressions used in these rules and not defined, but defined in the

[1]Omitted by SRO 216/88
[2]Omitted by SRO 216/88
[3]Omitted by [3]SRO 188 of 04 Jun 1979

Act shall have the same meanings as in the Act.

3. Reports and applications.— Any report or application directed by these rules to be made to a superior authority, or a proper military authority, shall be made in writing through the proper channel, unless the said authority, on account of military exigencies or otherwise, dispenses with the writing.

4. Forms in Appendices. —(1) The forms set forth in the appendices to these rules, with such variations as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if used, shall be sufficient, but a deviation from such forms shall not, by reason only of such deviation, render invalid any charge, warrant, order, proceedings or any other document relevant to these rules.

(2) Any omission of any such form shall not, by reason only of such omission, render any act or thing invalid.

(3) The directions in the notes to, and the instructions in, the forms shall be duly complied with in all cases to which they relate, but any omission to comply with any such directions in the notes or instructions shall not, merely by reason of such omission, render any act or thing invalid.

5. Exercise of power vested in holder of military office.— Any power or jurisdiction given to, and any act or thing to be done by, to or before any person holding any military office for the purpose of these rules may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service.

6. Cases unprovided for.— In regard to any matter not specifically provided for in these rules, it shall be lawful for the competent authority to do such thing or take such action as appears to it to be just and proper.

CHAPTER II

ENROLMENT AND ATTESTATION

7. Enrolling officers.— The following persons shall be the "enrolling officers" for the purpose of section 13, namely :-

(a) all recruiting and assistant recruiting officers including officers of the Indian Navy or of the Air Force, who may be appointed as such,

(b) the officer commanding a regiment, battalion or training or regimental centre, and

(c) any extra assistant recruiting officer or other person who may be appointed as an "enrolling officer" by the Adjutant General.

NOTES

1. For forms of enrolment see Appendix I. Enrolling officer must himself sign the form.

2. For "Corps" see AA.s. 3(vi) and AR 187(1). Every person enrolled under the AA must belong to some corps or department from which he can ordinarily be transferred in accordance with the conditions of his enrolment (if they provide for such transfer) or with his own consent; but see AR 10 and notes thereto. He can be transferred with or without his consent from one portion of his corps or department to another.

3. Direct enrolment into the reserve of a corps can be effected either by the officer commanding the reserve centre or by the ordinary enrolling officers of the corps of which the reserve forms part.

8. Persons to be attested.— All combatants, and other enrolled persons who may be selected to hold non-commissioned or acting non-commissioned rank shall, when reported fit for duty be attested in the manner provided in section 17.

NOTE

See AA.s. 16 and notes thereto.

9. Oath or affirmation to be taken on attestation. — (l) Every person required to be attested under section 16 shall make and subscribe an oath or affirmation in one of the following forms or in such other form to the same purport as the attesting officer ascertains to be in accordance with the religion of the person to be attested, or otherwise binding on his conscience.

Form of Oath

I.....do swear in the name of God that I wiIl bear true faith and allegiance to the Constitution of India as by the law established and that I will, as in duty bound, honestly and faithfully serve in the regular Army of the Union of India and go wherever ordered by land, sea or air, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

Form of Affirmation

I.....do solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will as in duty bound, honestly and faithfully serve in the regular Army of the Union of India and go wherever ordered by land, sea or air, and that 1 will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

(2) The aforesaid oath or affirmation shall whenever practicable, be administered by the commanding officer of the person to be attested (or in the presence of such commanding officer by a person empowered by him in this behalf) in the manner provided in section 17. If it is not so administered, it may be administered by a magistrate or a recruiting officer or an assistant recruiting officer or officer commanding the station.

NOTES

1. AR 9(2) prescribes the persons, in addition to the commanding officers who can attest enrolled persons.

2. See AA. ss. 16 and 17 and notes thereto.

3. The following is a translation into Hindi of the above oath and affirmation:—

"Shapath Patra"

"Main.....Parmatma ki Shapath lekar pratigya karta hun kih main qanun dwara nishchit kie hue Bharat ke Vidhan ka sachche man se wafadar rahunga, aur main apne kartavya ke anusar Bharat ki Regular Army (Sthayi Sena) men imandari aur sachehe man se sewa karunga, aur jahan kahin mujhe prithvi, samundar ya hawa ke raste bheja jaega, main khushi se jaunga. Main, Bharat ke Rashtrapati ki aur us officer ki jo mere upar niyukt kia jae, sab agyaon ko manunga aur unka palan karunga: chahe ismen mujhe apna Jiwan bhi baIidan karna pare".

"Pratigya Patra"

"Main..... drirh pratigya karta hun kih main qanun dwara nishchit kie hue Bharat ke Vidhan ka sachche man se wafadar rahunga, aur main apne Kartavya ke anusar Bharat ki regular Army (Sthayi Sena) men imandari aur sachche man se sewa karunga, aur jahan kahin mujhe prithvi, samundar ya hawa ke raste bheja jaega. main khushi se jaunga. Main Bharat ke Rashtrapati ki aur us officer ki jo mere upar niyukt kia jae, sab agyaon ko manunga aur unka palan karunga; chahe ismen mujhe apna jiwan bhi balidan karna pare."

4. In the case of Sikhs/Muslims the oath will be with "Main..... Sri Guru Granth Sahib/Pak Khudai Taala" etc.

10. Transfer from one corps or department to another.—Where the Central Government by any general or special order published in the Official Gazette so directs, any person enrolled under this Act may, notwithstanding anything to the contrary contained in the conditions of service for which he is enrolled, be transferred to any corps or department by order of an authority exercising powers not less than those of an officer commanding a division.

NOTES

1. See note 2 to AR 7.

2. Enrolment is in the nature of a contract signed by the enrolled person wherein the terms and conditions of his service are specified. By this contract the enrolled person undertakes to serve continuously for a specified period in the particular corps or department in which he is enrolled. Ordinarily he can, therefore, be transferred from the corps in which he is enrolled to another corps, if the conditions of enrolment so permit. Under this rule, an enrolled person may be transferred to any corps or department by order of an authority exercising powers not less than of an officer commanding a division if the Central Government has so directed by any general or special order.

CHAPTER III

DISMISSAL, DISCHARGE, ETC.

11. Discharge not to be delayed.— (1) Every person enrolled under the Act shall, as soon as he becomes entitled under the conditions of his enrolment to be discharged, be so discharged with all convenient speed:

Provided that no person shall be entitled to such discharge, if the Central Government has, by notification suspended the said entitlement to discharge for the whole or a part of the regular Army.

(2) The discharge of a person, validly sanctioned by a competent authority, may, with the consent of the discharged person, be cancelled by any authority superior to the authority who sanctioned the discharge either without any conditions or subject to such conditions as such discharged person accepts.

NOTES

1. See notes 2 and 3 to AA.s. 22. For the prescribed authorities competent to authorise discharge see AR 13 and table annexed thereto.

2. The discharge of a person who is under the conditions of his enrolment entitled to be discharged must be authorised by the competent authority, and completed with all convenient speed by the proper authorities. See ARs 13 and 18. Until the persons discharge is completed, he remains subject to AA but any undue delay in carrying out the discharge would give him good ground for complaint.

12. Discharge Certificate.—(1) A certificate required to be furnished under the provisions of section 23 is hereinafter called a "discharge certificate".

(2) A discharge certificate may be furnished either by personal delivery thereof by or on behalf of the commanding officer to the person dismissed, removed, discharged or released, or by the transmission of the same to such person by registered post.

NOTES

1. See AA.s. 23 and notes thereto,

2. The proper form to use is IAFY 1964 but any certificate which complies with AA.s. 23 would be legally sufficient. See also Regs Army, Paras 168 and 169.

3. An officer not being an enrolled person is not furnished with a discharge certificate.

4. When a discharge certificate is sent by post, it should be registered.

13. Authorities empowered to authorise discharge.— (1) Each of the authorities specified in column 3 of the Table below shall be the competent authority to discharge from service person subject to the Act specified in column 1 thereof on the grounds specified in column 2.

(2) Any power conferred by this rule on any of the aforesaid authorities shall also be exercisable by any other authority superior to it.

(2A) Where the Central Government or the Chief of the Army Staff decides that any person or class or persons subject to the Act should be discharged from service, either unconditionally or on the fulfilment of certain specified conditions, then, notwithstanding anything contained in this rule, the Commanding Officer shall also be the competent authority to discharge from service such person or any person belonging to such class in accordance with the said decision.

(3) In this table "commanding officer" means the officer commanding the corps or department to which the person to be discharged belongs except that in the case of junior commissioned officers and warrant officers of the Special Medical Section of the Army Medical Corps, the "commanding officer" means the Director of the Medical Services, Army, and in the case of junior commissioned officer and warrant officers of Remounts, Veterinary and Farms Corps, the "Commanding Officers" means the Director Remounts, Veterinary and Farms.

TABLE

Category	Grounds of discharge	Competent authority	Manner of discharge
1	2	3	4
Junior Commissioned Officers.	I.(i)(a) On completion of the period of service or tenure specified in the Regulations for his rank or appointment, or on reaching the age limit whichever is earlier, unless retained on the active list for further specified period with the sanction of the Chief of the Army staff or on becoming eligible for release under the Regulations.	Commanding Officer	
	(b) At his own request on transfer to the pension establishment.	Commanding Officer	
	I. (ii) Having been found medically unfit for further service.	Commanding Officer	To be carried out only on the recommendation of an Invaliding Board.
	I (iii) All other classes of discharge.	(a) In the case of Junior Commissioned Officers granted direct commissions during the first 12 months service Area/ Divisional Commander	If the discharge is not at the request of the Junior Commissioned Officer, the competent authority before sanctioning the discharge shall, if the circumstances of the case permit, give the Junior Commissioned Officer concerned an opportunity to show cause against the order of discharge.
		(b) In the case of JCOs not covered by (a), serving in any Army or Command the General Officer Commanding-in-Chief of that army or command if not below the rank of Lieutenant General.	
		(c) In any other case the Chief of the Army Staff.	

TABLE

Category	Grounds of discharge	Competent authority	Manner of discharge
1	2	3	4
Warrant Officer	II. (i) (a) On completion of the period of service or tenure specified in the Regulations for this rank or appointment, or on reaching the age limit, whichever is earlier, unless retained on the active list for a further specified period with the sanction of the Brigade/Sub Area commander or on becoming eligible to release under the Regulations.	Commanding Officer	
	(b) At his own request on transfer to the pension establishment.	Commanding Officer	
	II. (ii) Having been found medically unfit for further service.	Commanding Officer	To be carried out only on the recommendation of an Invaliding Board.
	II.(iii) All other classes of discharge	Warrant Officer class-I the General Officer Commanding-in-Chief of the Command in which the warrant officer is serving. Other warrant officer – Divisional, Area or Independent Brigade/ Sub Area Commanders	If the discharge is not at the request of the warrant officer the competent authority before sanctioning the discharge shall, if the circumstances of the case permit give the warrant officer an opportunity to show cause against the order of the discharge.
Persons enrolled under the Act who have been attested.	III. (i) On fulfilling the conditions of his enrolment or having reached the stage at which discharge may be enforced.	Commanding Officer and, in the case of a person of the rank of Havildar (or equivalent rank) where such person is to be discharged, otherwise than at his own request and where the commanding officer below the rank of Lieutenant Colonel, the Brigade or Sub Area Commander (SRO 116/65).	
	III. (ii) On completion of a period of army service only, there being no vacancy in the Reserve.	Commanding Officer (in the case of persons unwilling to extend their Army service).	Applicable to person enrolled for both Army service and Reserve service (A person who has the right to extend

TABLE

Category	Grounds of discharge	Competent authority	Manner of discharge
1	2	3	4
			his Army service and wishes to exercise that right cannot be discharged under this head)
	III (iii) Having been found medically unfit for further service	Commanding Officer	To be carried out only on the recommendation of an invaliding Board.
	III (iv) At his own request before fulfilling the conditions of his enrolement.	Commanding Officer	The Commanding officer will exercise the power only when he is satisfied as to the desirability of sanctioning the application and the strength of the unit will not thereby be unduly reduced.
	III (v). All other classes of discharge	Brigade/sub Area Commander	The Brigade or sub area Commander before ordering the discharge shall, if the circumstances of the case permit give to the person whose discharge is contemplated an opportunity to show cause against the contemplated discharge.
Persons enrolled under the Act but not attested	IV. All classes of discharge	Commanding Officer or Officer Commanding Recruit reception Camp or a Recruiting, Technical Recruiting or Deputy Technical Recruiting officer.	In the case of persons requesting to be discharged before fulfilling the conditions of their enrolment, the commanding officers will exercise this power only where he is satisfied as to the desirability of sanctioning the application that the strength of the unit will not thereby be unduly reduced. Recruits who are considered unlikely to become efficient soldiers will be dealt with under this item.

NOTES

1. A CO who considers it desirable to retain on the active list a JCO or WO who is desirous of continuing to serve beyond the date on which he would ordinarily be retired, should forward an application to that effect six months before that date. In all other cases discharge should be carried out in accordance with the provisions of ARs 11 and 12. For definition of CO see AA.s. 3(v).

2. When compulsory discharge of a JCO or WO or OR is sought on grounds of misconduct, the authority competent to sanction the same should satisfy itself that trial by court-martial of such a person is inexpedient or impracticable for reason other than probable failure to establish the charges, and that further retention in service of the individual is undesirable.

In all cases of discharge under items (I), (iii) , II (iii) or III(v) competent authority sanctioning the same must, if the circumstances of the case permit, give the person concerned an opportunity to show cause against the order of discharge.

3. The discharge certificate for a person discharged under item I(iii) will specify the particular cause of discharge—

e.g., On resignation of his commission .

On transfer to the pension establishment for a specified reason.

Compulsory, with gratuity.

Services no longer required.

4. The discharge certificate for a person discharged under item II (iii) will specify the particular cause of discharge

e.g., On resignation of his 'Warrant.

On transfer to the pension establishment for a specified reason.

Compulsory, with gratuity .

Services no longer required.

5. The discharge certificate for a person discharged under items III(v) and IV will specify the particular cause of discharge—

e.g., Irregular enrolment.

Compulsory transfer to pension establishment, or discharge with gratuity, for a special reason.

At his own request before fulfilling the conditions of his enrolment.

Services no longer required.

On completion of army service only, there being no vacancy in the Reserve (in the case of persons willing to extend their army service). Having reached the stage at which discharge may be enforced (in the case of persons of the rank of Havildar, or equivalent rank, otherwise than at their own request).

6. See AR 18 for date from which discharge takes effect.

7 In no case discharge can be made retrospective, AR 18(3), nor can a valid discharge be cancelled without the person's consent [AR 11(2)].

13-A. Termination of service of an officer by the Central Government on his failure to qualify at an examination or course.—

(1) When an officer does not appear at or, having appeared fails to qualify, at the retention examination or promotion examination or any other basic course or examination within the time or extended time specified in respect of that examination or course, the Chief of the Army Staff[1] [or the Military Secretary][1] shall call upon the officer to show cause why he should not be compulsorily retired or removed from the service.

(2) In the absence of any explanation or in the event of the explanation being considered by the Chief of the Army Staff [or the Military Secretary][1] to be unsatisfactory, the matter shall be submitted to the Central Government for orders, together with the Officer's explanation and the recommendation of the Chief of the Army Staff [1] [or the Military Secretary][1] as to whether the officer should be—

(a) called upon to retire; or

(b) called upon to resign.

[1] Inserted by SRO 235 of 1991.

(3) The Central Government, after considering the explanation, if any, of the officer and the recommendation of the Chief of the Army Staff [1] [or the Military Secretary] may call upon the officer to retire or resign, and on his refusing to do so, the officer may be compulsorily retired or removed from the service on pension or gratuity, if any, admissible to him.

14. Termination of service by the Central Government on account of misconduct.— (1) When it is proposed to terminate the service of an officer under Section 19 on account of misconduct. he shall be given an opportunity to show cause in the manner specified in sub-rule (2) against such action:—

Provided that this sub-rule shall not apply :—

(a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court; or

(b) where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an officer's misconduct, the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer by a court-martial is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the Chief of the Army Staff may withhold from disclosure any such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

In the event of the explanation of the officer being considered unsatisfactory by the Chief of the Army Staff, or when so directed by the Central Government, the case shall be submitted to the Central Government, with the officer's defence and the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4).

(3) Where, upon the conviction of an officer by a criminal court, the Central Government or the Chief of the Army Staff considers that the conduct of the officer which has led to his conviction renders his further retention in service undesirable, a certified copy of the judgment of the criminal court convicting him shall be submitted to the Central Government with the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4).

[(4) When submitting a case to the Central Government under the provisions of sub-rule (2) or sub-rule (3), the Chief of the Army Staff shall make his recommendation whether the officer's service should be terminated and if so, whether the officer should be:-

(a) dismissed from the service ; or

(b) removed from the service ; or

(c) compulsorily retired from the service.

5. The Central Government after considering the reports and the officer's defence, if any, or the judgement of the criminal court, as the case may be, and the recommendation of the Chief of the Army Staff, may—

(a) dismiss or remove the officer with or without pension or gratuity; or

(b) compulsorily retire him from the service with pension and gratuity,

if any, admissible to him][1]

[1] Substituted by SRO 17(E), dated 6th December, 1993.

NOTES

1. See AA.ss. 18 and 19 and notes thereto.

2, Action is to be initiated under this rule when the services of an officer are to be terminated on grounds of misconduct. The Central Government or the COAS should be satisfied, before initiating action, that the trial of the officer by court-martial is inexpedient or impracticable for reasons other than probable failure to establish the charges against him, and that his further retention in service is undesirable.

3. For the date from which dismissal or removal takes effect, see AR 18 and notes thereto.

4, The dismissal or removal cannot be made retrospective, nor can such valid dismissal or removal be cancelled without the person's consent.

5. Dismissal under this rule is not a punishment as under AA.s. 71. It merely amounts to termination of an officer's commission/service without his consent. Removal is a less grievous form of dismissal.

6. No show cause notice is required to be given to an officer under this rule if his dismissal/removal is sought on grounds of misconduct for which he has already been convicted by a Criminal Court. Whereas an officer convicted by a court-martial for misconduct, must be given the show cause notice, except when the Central Government considers it inexpedient or impracticable to do so as stipulated in proviso (b) to sub-rule (1).

15. Termination of Service by the Central Government on grounds other than misconduct.—(l) When the Chief of the Army Staff is statisfied that an officer is unfit to be retained in the service due to inefficiency or physical disability the officer—

(a) shall be so informed,

(b) shall be furnished with the particulars of all matters adverse to him, and

(c) shall be called upon to urge any reasons he may wish to put forward in favour of his retention in the services;

Provided that clauses (a), (b) and (c) shall not apply if the Central Government is satisfied that for reasons, to be recorded by it in writing, it is not expedient or reasonably practicable to comply with the provisions thereof.

Provided further that the Chief of the Army Staff [or Military Secretary][1] may not furnish to the officer any matter adverse to him, if in his opinion, it is not in the interest of the security of the State to do so.

(2) In the event of the explanation being considered by the Chief of the Army Staff [or Military Secretary][1] unsatisfactory, the matter shall be submitted to the Central Government for orders, together with the officer's explanation and the recommendation of the Chief of the Army Staff as to whether the officer should be—

(a) called upon to retire; or

(b) called upon to resign.

(3) The Central Government after considering the reports, the explanation, if any, of the officer and the recommendation of the Chief of the Army Staff, may call upon the officer to retire or resign, and on his refusing to do so, the officer may be compulsorily retired or removed from the service on pension or gratuity, if any admissible to him.

NOTES

1. See Notes to AR 14.

2. It would appear that action is to be initiated under this rule when it is intended to terminate the service of an officer on grounds of inefficiency only. When it is intended to terminate his services on grounds of physical disability, action should be initiated under AR 15-A and not under this rule.

[1] Inserted by SRO 17 (E), dated 6th December, 1993

3. For the date from which the termination of services becomes effective, see AR 18 and notes thereto.

4. Services under this rule cannot be terminated with retrospective effect, nor can such termination be cancelled without the officer's consent.

15-A. Release on medical grounds.—(1) An officer who is found by a Medical Board to be permanently unfit for any form of military service may be relased from the service in accordance with the procedure laid down in this rule.

(2) The President of the Medical Board shall, immediately after the Medical Board has come to the conclusion that the officer is permanently unfit for any form of military service, issue, a notice specifying the nature of the disease or disability he is suffering from and the finding of the Medical Board and also intimating him that in view of the finding he may be released from the service; every such notice shall also specify that the officer may, within fifteen days of the date of receipt of the notice, prefer a petition against the finding of the Medical Board to the Chief of the Army Staff through the President of the Medical Board:

Provided that where in the opinion of the medical board the officer is suffering from a mental disease and it is either unsafe to communicate the nature of the disease or disability to the officer or the officer is unfit to look after his interests, the nature of the disease or disability shall be communicated to the officer's next-of-kin who shall have the like right to petition.

(3) If no petition is preferred within the time specified in sub-rule (2), the officer may be released from the service by an order to that effect by the Chief of the Army Staff [or the Adjutant General][1].

(4) If a petition is preferred within the time specified in sub-rule (2), it shall be forwarded to the Central Government together with the records thereof and the recommendation of the Chief of the Army Staff [or the Adjutant General][1]. The Central Government may, after considering the petition and the recommendation of the Chief of the Army Staff [or the Adjutant General] [1], pass such order as it deems fit.

NOTES

l. Action is to be initiated under this rule when the release of an officer is to be initiated on medical grounds or because of physical disability and he is found to be permanently unfit for any form of military service.

2. The COAS would be competent to order the release of an officer under this rule, if no petition is preferred within the time specified in sub-rule (2), either by the officer or his next of kin. Where such a petition is preferred, within the stipulated time, the Central Government alone would be competent to order the release.

16. Release.—A person subject to the Act may be released from the service in accordance with the Release Regulations for the Army or in accordance with any other regulations, instructions or orders made in that behalf.

NOTE

See Release Regulations

16A. Retirement of Officers[2].— (1) Officers shall be retired from service under the orders of the Central Government, or the authorities specified in sub rule (2), with effect from the afternoon of the last date of the month in which they:—

(a) attain the age limits specified in sub-rule (5); or

(b) complete the tenures of appointment specified in sub-rule5 (f) (ii) and (g) (ii) and sub-rule (6), whichever is earlier.

---

[1] Inserted by SRO 61 dated 07 Feb 1991.

[2] Substituted vide SRO 17 (E), dated 6th Dec. 1993

(2) The authorities referred to in sub-rule (1) shall be :

(a) the Director General Armed Forces Medical Services in respect of Officers of the Army Medical Corps, Army Dental Corps and Military Nursing Service ;

(b) the Additional Director General, Remount and Veterinary Corps in respect of officers of that Corps below the rank of Colonel ;

(c) the Deputy Director General of Military Farms in respect of Officers of the Military Farms below the rank of Colonel;

(d) the Military Secretary, Army Headquarters in respect of all other Officers.

(3) The orders shall specify the date from which retirement shall be effective and subject to the provisions of sub-rule (4), the officer shall be relieved of his duties on that date.

(4) An Officer who has attained the age of retirement or has become due for such retirement on completion of his tenure, may be retained in the service for a further period by the Central Government, if the exigencies of the service so requires.

(5) The following shall be the age of retirement for officer :—

(a) of Armoured Corps, Infantry Artillery, Engineers and Signals :

Upto and including the rank of Major	—50 years
Lieutenant Colonel (Time Scale)	—51 years
Lieutenant Colonel (Selection)	—52 years
Colonel	—52 years
Brigadier	—54 years
Major General	—56 years
Lieutenant General	—58 year
General	—60 years

(b) of Army Service Corps (Excluding Food Inspection Organisation), Army Ordnance Corps, Electrical and Mechnical Engineers, Pioneer Corps and Intelligence Corps :

Upto and including the rank of Colonel	—52 years
Brigadier	—54 years
Major General	—56 years
Lieutenant General	—58 years

(c) of Food Inspection Organisation :

Upto and including the rank of Lieutenant Colonel (Time Scale)	—52 years
Lieutenant Colonel (Selection)	—52 years

(d) of Judge Advocate General's Department, Army Education Corps, Military Farms, Special List Officer [Quartermaster, Technical Record Officers] and Army Physical Training Corps (Master-at-Arms) and Remount and Veterinary Corps :

Upto and including the rank of Colonel	—55 years
Brigadier	—56 years
Major General	—57 years
Lieutenant General	—58 years

(e) of Army Medical Corps, Army Dental Corps and Military Nursing Service :

Upto and including the rank of Lieutenant Colonel	—55 years
Colonel	—57 years
Brigadier	—58 years
Major General	— 59 years
Lieutenant General	—60 years
All officers of Army Medical Corps (Non-Technical)	— 55 years

(f) (i) permanently seconded to Defence Research and Development Organisation :

Upto and including the rank of Major General or equivalent	—57 years
Lieutenant General	—58 years

Provided that officers upto the rank of Major General or equivalent shall be given two reviews; one at the age of 52 years and the other at the age of 55 years, carried out well in advance by the Defence Research and Development Organisation Selection Board as per its own laid criteria, to determine the suitability for continuation beyond that age unless the officer volunteers for retirement. The officers found unsuitable for continuation in either of reviews shall retire on attaining the age of 52 years or 55 years, as the case may be.

(ii) the tenure in the substantive rank of Lieutenant General shall be four years.

(g) (i) permanently seconded to Directorate General Quality Assurance :

Upto and including the rank of Major General or equivalent	—57years
Lieutenant General	—58 years

Provided that officers upto the rank of Major General or equivalent shall be given two reviews; one at the age of 52 years and the other at the age of 55 years, carried out well in advance by the Inspection Selection Board as per its own laid criteria, to determine the suitability for continuation beyond that age. The officers found unsuitable for continuation in either of reviews shall retire on attaining the age of 52 years or 55 years, as the case may be.

(ii) the tenure in the rank of Lieutenant General shall be four years.

(h) of Engineers permanently seconded to Survey of India as under the civil rules applicable to them from time to time.

(6) The following shall be the tenures of appointment for the purpose of retirement :

(a) The tenure in the rank of a General shall be a maximum of 3 years

(b) Army Medical Corps Officers holding the rank of Lieutenant General shall serve in that rank for one tenure of 4 years :

Provided an officer holding the appointment of Director General Medical Services (Army) or Director General Medical Services (Navy) or Director General Medical Services (Air) or Commandant Armed Forces Medical College or Commandant Army Medical Corps School and Centre, Lucknow or Additional Director General Armed Forces Medical Services in the rank of Lieutenant General shall, in the event of his being appointed as Director General Armed Forces Medical Services, shall serve for a combined tenure of 5 years.

(c) The tenure of Army Dental Corps Officers of the rank of Major General shall be a maximum of 4 years.

Explanation I— For the purpose of this rule,—

(a) "Lieutenant Colonel" means a Lieutenant Colonel by Selection and includes a Lieutenant Colonel by time scale in the Army Medical Corps, Army Dental Corps and Veterinary Cadre of Remount and Veterinary Corps;

(b) "rank" means a substantive rank.

Explanation II— For the purpose of this rule,—

(a) Age of retirement as specified in sub-rule (5) shall apply to permanent commissioned officers in their respective substantive ranks.

(b) Stipulated age of retirement in the rank of Lieutenant General, Major General in Army Education Corps, Intelligence Corps, Remount and Veterinary Corps, Judge Advocate General's Department, Pioneer Corps, Military Farms and Special List Officers Cadre will be applicable only when these ranks are sanctioned in the Corps, Department or Cadre, as the case may be.

(c) Officers of the Intelligence Corps, Judge Advocate General's Department, Army Education Corps, Remount and Veterinary Corps, and Military Farms who had opted to be governed by the age of retirement prevalent prior to the issue of Government of India. Ministry of Defence, letter Nos A/49453/AG/PS2 (a)/3770S/D (AG) dated 26 Jul 1984 and A/49453/AG/PS2 (a)/Minor Corps-S/D (AG) dated 26 Jul 1985, as applicable, shall continue to be so governed[1].

NOTES

(a) A substantive Lieutenant Colonel (Time Scale) belonging to the Defence Research and Development and Production and Inspection Organisation, Army Medical Corps (Non-Technical), Remount Cadre of Remount and Veterinary Corps and Military Farms, promoted to that rank on completion of 24 years reckonable commissioned service and held against the appointment tenable in the rank of Major will be retained in service in that rank upto 3 years or upto the age of compulsory retirement or upto completion of 27 years commissioned service (rendered as Permanent Commissioned Officer including the period of ante-date of full pay commissioned service of non-regular officers reckoned for purpose of seniority and promotion on grant of Permanent Commission), whichever is the earliest.

(b) Provision contained in Item (a) above shall also continue to apply to such of the officers of Army Service Corps (including Food Inspection Organisation), Army Ordnance Corps, Electrical and Mechanical Engineers, Pioneer Corps, Intelligence Corps, Army Education Corps and Judge Advocate General's Department as were granted the rank of Lieutenant Colonel (Time Scale) prior to the 1st December, 1976 and are held against the appointment tenable in the rank of Major and are adversely affected by the application of the age limits prescribed for retirement for this rank. In the operation of the said provision, the age of compulsory retirement in their case shall be taken as applicable to the rank of Major of their respective Service.

(c) (1) Officers who are not approved for retention in service beyond the minimum age of retirement or the minimum period of service specified to earn full pension, if that occurs after attaining the minimum age of retirement, shall be retired.

(2) Cases for retention in service beyond the minimum age, of retirement or the minimum period of qualifying service (reckonable commissioned service in the case of Defence Research and Development and Production and Inspection Organisations and Army Medical Corps) required to earn full pension shall be assessed by the appropriate Selection Board sufficiently in advance of the attainment of that age or completion of that period. Retention in service shall be subject to the following conditions, namely :—

(i) an officer shall not be in a medical classification lower than Grade 1 in 'S' factor and 2 in any one of the other SHAPE factors in the case of Army Medical Corps and Army Dental Corps, and S1 H1 A1 P1 E1or S1 H2 A1 P1 E1 or S1 H1 A1 P1 E2 in the case of Defence Research and Development and Production and Inspection Organisation. In other cases, an officer shall be in an acceptable Medical Classification. Colonels of the Remount and Veterinary Corps and Military Farms in Medical Classification lower than S1 H1 A1 P1 E1 or S1 H2 A1 P1 E1 or S1 H1 A1 P1 E2 may also be retained in service provided that—

(A) such retention would be in public interest;

(B) an officer of the Armoured Corps, Artillery, Engineers, capable of performing the normal active service duties of the rank in which he is being retained;

(C) any defect, disability or disease from which officer is suffering is not likely to be aggravated by service conditions;

(ii) the officer's efficiency for his rank shall be of a sufficiently high standard in the cases of Armoured Corps, Artillery, Engineers, Signals, Infantry, Army Service Corps (excluding Food Inspection Organisation). Army Ordnance Corps, Electrical and Mechanical Engineers and Pioneer Corps, and of a specially high standard in the case of others;

(iii) an officer found fit for further promotion but not so promoted for want of vacancies in the higher rank shall be preferred;

(iv) an officer shall not block (seriously block in the case of Armoured Corps, Artillery, Engineers, Signals, Infantry, Army Service Corps (excluding Food Inspection Organisation), Army Ordnance Corps, Electrical and Mechanical Engineers and Pioneer Corps) the promotion prospects of deserving junior officers;

(v) an officer of the Armoured Corps, Artillery, Engineers, Signals, Infantry, Army Service Corps (excluding Food Inspection Organisation), Army Ordnance Corps, Electrical and Mechanical Engineers and Pioneer Corps, whose performance or medical fitness deteriorates during the period of his retention in service shall be retired from service.

16-B. Retirement of an officer at his own request.—(1) The retirement of an officer at his own request before he becomes liable to [ ][1] retirement under rule 16A shall require the sanction of the Central Government.

(2) An officer whose request to retire is granted may, before he is retired, apply to the Central Government for withdrawal of his request. The Central Government may, at its discretion, grant such withdrawal of his application.

16-C. Resignation of Commission.—(1) An officer shall have no right to resign his commission but may submit an application to the Central Government to resign his commission. He shall not be relieved of his duties until the Central Government has accepted his resignation.

(2) An officer whose application to resign his commission has been accepted may, before he is relieved of his duties, apply to the Central Government for withdrawal of the said application. The Central Government may, at its discretion, grant withdrawal of his application.

17. Dismissal or removal by Chief of the Army Staff and by other officers.—Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court, or a court-martial, no person shall be dismissed or removed under sub-section (1) or sub-section (3), of section 20, unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service :

Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may, after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.

NOTES

1. A show cause notice is required to be given under this rule to the individual whose dismissal or removal from service is contemplated, except when the authority competent to order such dismissal or removal considers it inexpedient or impracticable to give such notice as stipulated in the proviso to the rule.

Show cause notice will not be necessary when the dismissal or removal is sought on grounds of misconduct for which the person has already been convicted by a criminal court or court-martial..

2. When dismissal or removal of a person is sought on grounds of misconduct for which he has not been convicted by a criminal court or a court-martial, the authority competent to order such dismissal or removal should satisfy itself that trial by court-martial of such a person is inexpedient or impracticable for reasons other than probable failure to establish the charges, and that further retention in service of the individual is undesirable.

3. All cases of dismissal/removal under this rule where the prescribed procedure has not been followed are to be reported to the Central Government.

[1] Omitted by SRO. 17(E), dated 6th December, 1993

18. Date from which retirement, resignation, removal, release, discharge or dismissal otherwise than by sentence of court-martial takes effect.-(1) The dismissal of an officer under Section 19 or the retirement, resignation, release or removal of such officer shall take effect from the date specified in that behalf in the notification of such dismissal, retirement or removal in the Official Gazette.

(2) The dismissal of a person subject to the Act, other than an officer whose dismissal otherwise than by sentence of a court-martial is duly authorised or the discharge of a person so subject whose discharge, if duly authorised, shall be carried out by the commanding officer of such person with all convenient speed. The authority competent to authorise such dismissal or discharge may, when authorising the dismissal or discharge, specify any future date from which it shall take effect :

Provided that if no such date is specified, the dismissal or discharge shall take effect from the date on which it was duly authorised or from the date on which the person dismissed or discharged, ceased, to perform military duty, whichever is the later date.

(3) The retirement, removal, resignation, release, discharge or dismissal of a person subject to the Act shall not be retrospective.

NOTES

1. See ARs 11 and 12 and notes thereto. As to cashiering and dismissal awarded by court-martial,- see AR 168 and notes thereto.

2. In the case of a person serving in India with his unit it will generally be convenient for authorities authorising the dismissal or discharge not to specify any date but permit the CO to relieve the person of military duty on the most convenient date. In other cases, it may sometimes be more convenient for the authority to specify the date.

3. The competent authority cannot make the dismissal or discharge retrospective. Moreover, he must if he desires to specify a date, specify it at the time he authorises the dismissal or discharge. There is no legal objection to the "future date" being specified in suitable cases, e.g., "date of disembarkation"; but whenever possible a precise date should be specified. For dismissal or discharge when out of India, see AAs. 24 and notes thereto.

4. If the dismissal or discharge of a person is found to be illegal, e.g., if it was not authorised by a competent authority, that person will be entitled to pay from the date of his illegal discharge although he performed no military duty. Also see AR 11(2).

CHAPTER IV

RESTRICTIONS OF FUNDAMENTAL RIGHTS

19. Unauthorised organisation.—No person subject to the Act shall, without the express sanction of the Central Government—

(i) take official cognisance of, or assist or take any active part in, any society, institution or organisation, not recognised as part of the Armed Forces of the Union; unless it be of a recreational or religious nature in which case prior sanction of the superior officer shall be obtained;

(ii) be a member of, or be associated in any way with, any trade union or labour union, or any class of trade or labour unions.

NOTES

1. See Army Act Section 21 and notes thereto.

2. The fundamental right to form associations or unions enjoyed by every citizen under Art. 19(1)(c) of the Constitution is abrogated in its application to members of the regular Army under this rule. Similarly under ARs 20 and 21 the fundamental rights to freedom of speech and expression and asembly enjoyed by every citizen under Art. 19(1)(a) and (b) are abrogated in their application to members of the regular Army. The aforesaid rights have been so abrogated because of the nature of duties performed by the members of the regular Army and for the maintenance of discipline among them.

3. Contravention of any of the ARs 19 to 21 would be punishable under AA.s. 63.

20. Political and non-military activities.—(1) No person subject to the Act shall attend, address, or take part in, any meeting or demonstration held for a party or any political purposes, or belong to or join or subscribe in the aid of, any political association or movement.

(2) No person subject to the Act shall issue an address to electors or in any other manner publicly announce himself or allow himself to be publicly announced as a candidate or as a prospective candidate for election to Parliament, the Legislature of a State or a local authority, or any public body or act as a member of a candidate's election committee, or in any way actively promote or prosecute a candidate's interests.

NOTE

See notes to AA.s. 21 and AR 19.

21. Communications to the Press, Lectures, etc.—No person subject to the Act shall—

(i) publish in any form whatever or communicate directly or indirectly to the Press any matter in relation to a political question or on a service subject or containing any service information, or publish or cause to be published any book or letter or article or other document on such question or matter or containing such information without the prior sanction of the Central Government, or any officer specified by the Central Government in this behalf; or.

(ii) deliver a lecture or wireless address, on a matter relating to a political question or on a service subject or containing any information or views on any service subject without the prior sanction of the Central Government or any officer specified by the Central Government in this behalf.

Explanation.—For the purposes of this rule, the expression "service information" and "service subject" include information or subject, as the case may be, concerning the forces, the defence or the external relation of the Union.

NOTE

See notes to AA.s. 21 and AR 19.

CHAPTER V

INVESTIGATION OF CHARGES AND TRIAL BY COURT-MARTIAL

SECTION I—INVESTIGATION OF CHARGES AND REMAND FOR TRIAL

Power of Commanding Officers

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

Provided that where the charge against the accused arises as a result of investigation by a court of inquiry, wherein the provisions of rule 180 have been complied with in respect of that accused, the commanding officer may dispense with the procedure in sub-rule (1).

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

Provided that the commanding officer shall not dismiss a charge which he is debarred to try under sub-section (2) of Section 120 without reference to superior authority as specified therein.

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

(a) dispose of the case under section 80 in accordance with the manner and form in Appendix III; or

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

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

(d) if the accused is below the rank of warrant officer, order his trial by a summary court-martial;

Provided that the commanding officer shall not order trial by a summary court-martial without a reference to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender unless -

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

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

(4) Where the evidence taken in accordance with sub-rule (3) of this rule discloses an offence other than the offence which was the subject of the investigation, the commanding officer may frame suitable charge (s) on the basis of the evidence so taken as well as the investigation of the original charge.][1]

Explanation-where an officer, other than the commanding officer, proposes to proceed against an accused under Sec 80 of the Act, the provisions of sub rules (1) to (3) of this rule shall, in so far as they are applicable, may be complied with by such officer[2].

NOTES

1. Under AA.s. 135 police and other civilian witnesses may be summoned to attend before a CO if it is considered desirable to compel their attendance by the service of summons. Witnesses cannot be sworn or affirmed.

---

[1] Subs by SRO 17(E), dated 6th December, 1993

[2] Inserted by SRO 258/2002

2. As to procedure where a criminal court and court-martial each have jurisdiction, in respect of a civil offence, see AA.ss. 125 and 126 and notes thereto and AR 197-A. See also Regs Army para 418.

3. Every offence which a person subject to AA can commit, is an offence under the said Act, because it is either a military offence specified in the Act or a civil offence under AA.s. 69.

In deciding whether a charge under AA.s. 63 should be proceeded with, the CO must consider whether the alleged offence is prejudicial to good order and military discipline; if in his opinion. it is not, the charge must be dismissed. He must also consider whether having regard to the limitation of time prescribed by AA.s. 122, the accused is liable to be proceeded against.

4. The CO must dismiss the charge if there is no evidence of any offence under the AA having been committed or if the accused has been previously acquitted or convicted of the alleged offence by any Court, military 'or civil, or has been summarily dealt with under sections 80, 83, 84 or 85 or the charge has previously been dismissed [AA.s. 121 and AR 53(1)(a)]. He may dismiss it, if he considers that the evidence is doubtful or the case is trivial, or, in the exercise of his discretion, for any reason, e.g., the good character of the accused.

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

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

7. There is no offence which a CO is compelled by the AA or AR to send before a court-martial and each case should be considered on its merits. A CO, however, has no power to punish an officer summarily.

8. A summary of evidence is to be made in every case where it is intended to remand the accused for trial by a GCM or DCM or where the accused is an officer, JCO or WO for summary disposal of the charge under AA. ss. 83, 84 or 85. In the case of SCM, a summary of evidence need not be made, if it is intended to try the accused forthwith without reference to superior authority either because the charge admits of this or because of such grave necessity as is referred to in proviso (b) to AR 22(3). The offences which a CO must (except in cases of grave necessity falling under the above proviso) refer to superior authority before ordering trial by SCM are detailed in AA.s. 120(2). All other offences can be tried by SCM without such reference.

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

10. A person subject to AA has no right to elect to be tried by court-martial except as provided in AA.s. 84(a).

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

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

13. For "proper military authority" see AR 2 (d).

23. Procedure for taking down the summary of evidence.—.(1) Where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs.

(2) The accused may put in cross-examination such questions as he thinks fit to any witness, and the questions together with the answers thereto shall be added to the evidence recorded.

(3) The evidence of each witness after it has been recorded as provided in the rule when taken down, shall be read over to him and shall be signed by him or if he cannot write his name shall be attested by his mark and witnessed as a token of the correctness of the evidence recorded. After all the evidence against the accused has been recorded, the

accused will be asked; "Do you wish to make any 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." Any statement thereupon made by the accused shall be taken down and read over to him, but he will not be cross-examined upon it. The accused may then call his witnesses, including if he so desires, any witnesses as to character.

(4) The evidence of the witnesses and the statement (if any) of the accused shall be recorded in the English language. If the witness or accused, as the case may be, does not understand the English language, the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.

(5) If a person cannot be compelled to attend as a witness, or if owing to the exigencies of service or any other grounds (including the expense and loss of time involved), the attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence purporting to be signed by him may be read to the accused and included in the summary of evidence.

(6) Any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused. The summons shall be in the form provided in Appendix III.

NOTES

1. The adjourned hearing for the purpose of reducing the evidence to writing should, if possible be held on the same day as the investigation. The CO may direct another officer to take down the evidence, but an officer who has given material evidence at the investigation must not be appointed for this purpose. He should be an officer of some experience and with a good knowledge of the vernacular. The adjutant of the accused or squadron or company commander, should usually be detailed (See also note to AR 43). The record of evidence under this rule is called 'the summary of evidence'. The summary of evidence can be ordered only by the CO of the accused. See AR 22(3)(c). When it is recorded under the orders of an officer other than the accused's CO, summary disposal of a charge under AA.ss. 83, 84 or 85 or the trial of the offender by GCM or DCM on the basis of such a summary of evidence may render the proceedings invalid.

2. Summary of evidence cannot be taken on oath or affirmation.

3. The accused cannot claim to be represented by counsel at the taking of summary of evidence.

4. The evidence (so far as it is relevant and admissible) of every witness who gave evidence before the CO must be taken down unless good reason renders if not reasonably practicable to call him. The evidence of witnesses who did not appear before the CO may also be taken for either prosecution or defence, so long as it appears to be relevant. In reducing the evidence to writing immaterial statements may be omitted and all hearsay and irrelevant matter should be excluded.

5. The accused must be allowed to put any reasonable question to a witness, and especially to put questions respecting any variance between the evidence taken down and that given before the CO. If the accused declines to cross-examine any witness the fact should accordingly be stated.

6. The formal caution provided for in sub-rule (3) must be given as soon as the evidence for the prosecution is closed. If it is necessary to take additional summary, the accused must again be formally cautioned before he makes any further statement. The fact that he was duly cautioned should be recorded in the summary. It is advisable to have an independent witness present when the accused is cautioned and when he makes the statement. Such independent witness apart from the officer recording the summary would also be competent to prove the statement of the accused at the trial subsequently, if necessary.

7. The statement of an accused person can only be given in evidence at the trial, if it is voluntary. If it was made voluntarily, the mere fact that the caution was not given will not prevent it being used as evidence, but in no case must he be authoritatively called on to account for his proceedings, or required to make any statement, or cross-examined or asked any questions. Any such statement or the answers to any such questions will not be admissible in evidence against him.

8. The accused may call witnesses on his behalf, and their evidence will be taken down and included in the summary; but he is not bound to call a witness because such witness gave evidence before the CO.

9. The certificate referred to in sub-rule (5) can conveniently be written below the signature of the absent witness on his written statement or abstract of evidence.

10.In many cases, the provisions of sub rule (5) will effect a saving of time and expense, e.g., where a civilian witness is required to prove some fact not really in dispute. Such witness must, however, attend in person at the trial.

11. If it is found necessary to call at the trial some witness for the prosecution whose evidence is not included in the summary, an abstract of the evidence to be given by him should be supplied to the accused as early as possible. See AR 135 and notes thereto.

12. For the issue of summons see AAs.135. For form of summons see Appendix III Part III.

13. For power to dispense with sub-rules (1) to (5) see AR 36.

14. For memoranda for the guidance of officers taking down a summary of evidence, see pages 304 to 307

24. Remand of accused.—(l) The evidence and statement (if any) taken down in writing in pursuance of rule 23 (hereinafter referred to as the "summary of evidence"), shall be considered by the commanding officer, who thereupon shall either—

(a) remand the accused for trial by a court-martial; or

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

(c) if he thinks it desirable, re-hear the case and either dismiss the charge or dispose of it summarily.

(2) If the accused is remanded for trial by a court-martial, the commanding officer shall without unnecessary delay either assemble a summary court-martial (after referring to the officer empowered to convene a district court-martial or on active service a summary general court-martial when such reference is necessary) or apply to the proper military authority to convene a court-martial, as the case may require.

NOTES

1. For memoranda for the guidance of COs see pages 307-309 .

2. For power to dispense with this rule, see AR 36.

3. The evidence in the summary may not correspond with that given at the original investigation and the case may appear in a new aspect. The CO may, therefore, decide to re-hear the case, and, if he thinks fit, dispose it of summarily or try it by SCM, if he has jurisdiction to do so. He can dismiss the case on re-hearing it

4. Where precise information as to the locality of the offence is likely to be of use in understanding a case, a plan drawn to scale should accompany a summary of evidence submitted to superior authority. If it is considered necessary that matters of evidence should be shown on this plan, (e.g., place where the body was found in a murder case or position of accused or a witness) the plan should be in duplicate, and these matters should only appear on one copy, if the plan is subsequently produced at the trial, the unmarked copy will be used, being put in and sworn/affirmed to by the person who made it. These matters of evidence will then (if necessary) be marked on it, in accordance with the evidence given at the trial, and a note to that effect made in the proceedings.

5. Vernacular documents attached to a summary of evidence should be accompanied by a translation in English.

6. The delay in assembling a SCM should be avoided. The accused should be warned for trial at least 96 hours before hand, except on active service when he should be so warned at least 24 hours before the trial commences. See AR 34 and notes thereto.

25. [Omitted][1]

26. Summary disposal of charges against Officer, Junior Commissioned Officer or Warrant Officer.—(1) Where an officer, a junior commissioned officer or a warrant officer is remanded for the disposal of a charge against him by an authority empowered under section 83, 84 or 85 to deal summarily with that charge the summary of evidence [ ][2] shall be delivered to him free of charge, with a copy of the charge as soon as practicable after its preparation and in any case not less than twenty four hours before the disposal.

[1] Omitted by S.R.O 17(E), dated 6th December, 1993
[2] Omitted by S.R.O 17(E), dated 6th December, 1993

(2) Where the authority empowered under section 83, 84 or 85 decides to deal summarily with a charge against an officer, junior commissioned officer or warrant officer, 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 witnesses and make a statement in his defence.

(3) The proceedings shall be recorded as far as practicable in accordance with the form in Appendix IV and in every case in which punishment is awarded, the proceedings together with the conduct sheet, summary [ ][1]of evidence and written consent to dispense with the attendance of witnesses (if any) of the accused shall be forwarded through the proper channel to the superior military authority as defined in section 88.

NOTES

1. The accused should be warned for trial at least 24 hours before his summary trial.

2. An authority can dispose of the case summarily not only if asked to do so, but also if he is asked to convene a court-martial for the trial of the offender. Even if he is asked to deal summarily with a case he can, if he thinks it desirable. convene a Court-martial. If on perusal of the summary [1] of evidence and other documents, he thinks fit, he can at once, without bringing the accused before him order dismissal of the charge, or order a court-martial, or he can decide to hear the evidence with a view to dealing summarily with the case. After hearing the evidence the authority can still dismiss the case or order a court-martial or he can deal summarily with it but if he proposes to award a punishment of forefiture of seniority or service for promotion, the accused has a right to claim trial by court-martial. See AA.s, 84.

3. Form I in apprndix IV Part I is to be used when the accused has given his consent in writing to dispense with the attendance of witnesses at the trial.

4. The oral statement of the accused made in reply to question 4 in Form 1 or 2, will be recorded or a gist thereof prepared and attached. If the accused submits a written statement, it would be attached to the proceedings.

5. Question number 5 in form 1 or Question number 6 in form 2 is to be put to an officer, JCO or WO, if the authority proposes to award a punishment other than reprimand, severe reprimand or stoppages.

6. See Notes to forms 1 and 2 regarding their disposal. After disposal of a charge if the finding is that of guilty, the form accompanied by the conduct sheet (lAFF-3013), in duplicate, Summary of evidence, statement of the accused and written consent of the accused is to be forwarded through the usual channels to the Headquarters of the command concerned, who will show them to the DYJAG of the command. In the case of punishments, awarded by GOC-in-C of a command, these documents will be forwarded to the AG's Branch (PS-I) at Army Headquarters. When the finding is that of not guilty, only the finding will be communicated to Headquarters command concerned in the case of JCOs & WOs and to Army Headquarters in the case of officers.

7. In the case of JCOs and WOs, the form together with the summary of evidence, statement of the accused and written consent of the accused is required to be returned to the unit for attachment to his Regimental conduct sheet (IAFF 3013).

8. Form 2 in Appendix IV Part I is to be used when the accused does not consent to dispense with attendance of witnesses at his summary trial.

9. A statutory review of summary trial proceedings is provided. See AA.ss. 86 to 88.

10. Civilian witnesses cannot be summoned to attend summary trials under AA.ss. 83,84,or 85 See AAs. 135

27. Delay reports.— (1) In every case where a person subject to the Act, who is not on active service, is in military custody for a period longer than eight days without a court-martial for his trial having been ordered to assemble, or without a punishment having been awarded to him under section 80, the Commanding Officer shall make a report in the form specified in Appendix III to the officer empowered to convene a general or a district court-martial for the trial of such person. Such report shall be made to the authority mentioned in

[1] Omitted by SRO 17(E), dated 6 December, 1993

this rule at intervals of every eight days until a court-martial is ordered to assemble, or a punishment is awarded under section 80, or such person is released from custody as the case may be.

(2) A copy of every such report made on or after the forty-eighth day of such custody shall be sent by the commanding officer direct to the Deputy Judge Advocate General of the command in which such person is held in custody.

(3) (i) Detention in military custody beyond two months of a person subject to the Act, who is not on active service and in whose case a court-martial for trial has not been ordered to assemble shall require the sanction of the Chief of the Army Staff, or any officer authorized by him in this behalf with the approval of the Central Government, who may sanction further detention for a specific period, which he may extend from time to time, subject to a total period of detention of three months.

(ii) Any such detention beyond a period of three months shall require the approval of the Central Government.

NOTES

1. See AA.ss. 102 and 103 and notes thereto.

2. For active service, see AA.ss., 3(i) & 9.

3. (i) For military custody, see AA.s. 3(xiii).

(ii) 'any officer authorized by him' in sub rule 3 (i) - The COAS with the approval of Central Government has authorised GOC-in-C of the commands to sanction, subject to the provisions of Army Rule 27(3), detention in military custody beyond two months of a person subject to the Army Act including an officer or a JCO when not on active service and in whose case a court-martial for trial has not been ordered to assemble. (Auth : Army Headquraters letter No. 91515/AG/DV-I dated 11 Jan 1998)

(iii) Arrest whether open or close amounts to military custody.

4. Detention in custody beyond 2 months of a person who is not on active service and in whose case a court-martial is not ordered to assemble, requires the sanction of the COAS. Such detention beyond 3 months requires the sanction of the Central Government.

5. Once a court-martial has been ordered to assemble, e,g., a convening order is issued the sanction of the COAS / GOC-in-C or the Central Government will not be necessary. The requirement of the rule for obtaining sanction should not be circumvented by issue of a convening order far in advance of the date of trial.

6. If necessary an accused person may be released from arrest without prejudice to his re-arrest, if trial cannot be convened within 2 or 3 months. If his detention beyond a period of two or three months is considered necessary, steps should be taken to obtain the sanction well in advance. An accused person should not be kept in such detention in anticipation of a sanction. Detaining an accused in custody beyond two or three months without a sanction, makes such detention illegal and a post-facto sanction obtained would not render such detention legal.

7. Under AR 33(6), an accused person has a right to address a petition to the DYJAG or AJAG of the command concerned if he is kept in custody longer than 48 days without being brought to trial or is not given full liberty for preparing his defence.

8. Unnecessary detention in custody of an accused without bringing him to trial amounts to an offence under AA.s 50(a).

Framing Charges

28. Charge-sheet and charge.— (1) A charge-sheet shall contain the whole issue or issues to be tried by a court-martial at one time.

(2) A charge means an accusation contained in a charge-sheet that a person subject to the Act has been guilty of an offence.

(3) A charge-sheet may contain one charge or several charges.

NOTES

1. The charge-sheet is usually prepared by the CO or adjutant of the accused's unit; but in the case of a trial by GCM or DCM, AR 37 makes the convening officer equally responsible for its correctness. It must be signed by the officer in actual command of the unit to which the accused belongs. If the accused is attached to another unit, the charge-sheet must be signed by the CO of the unit to which he is so attached. The order for the trial must be endorsed at the foot of the charge-sheet and signed by the convening officer. Charge-sheet cannot be endorsed for trial by a staff officer as such.

2. For submission of certain charges to DYJAG or AJAG of the command concerned before trial, see Regs. for the Army para 459.

3. There may be several charge-sheets (see AR 79), but the court can only deal with one charge-sheet at a time. When there are two or more charge-sheets, they must be consecutively numbered.

4. The "charge" referred to in this rule is the formal written charge upon which the accused is to be tried as distinct from the charge or complaint mentioned in AA.s. 101 and ARs 22 and 23, which give rise to the preliminary investigation.

5. All charges, including the alternative charges, must be consecutively numbered. As to insertion of charges in separate charge-sheets see AR 79 and notes thereto.

6. An alternative charge should not be preferred, where a special finding is possible under AA.s. 139 e.g., on a charge of desertion there is no need to prefer a charge of absence without leave as an alternative. See AAs. 139(a).

29. Commencement of charge-sheet.—Every charge-sheet shall begin with the name and description of the person charged and state his number, rank, name and the corps or department (if any) to which he belongs. When the accused person does not belong to the regular Army, the charge-sheet shall show by the description of him, or directly by an express averment, that he is subject to the Act in respect of the offence charged.

NOTES

I. The name or description of a person charged is immaterial so long as the identity is established. See also notes to ARs 32(1), 50(1) and 113. As an officer, JCO, WO or person enrolled in the regular Army is always subject to AA, a statement in the description of the accused that he belongs to a corps of the regular Army will be sufficient to aver and evidence of his so belonging will be sufficient to prove that he is subject to AA, without expressly adding the words.

2. If the accused is subject to AA under specified conditions e.g. an enrolled person of the Territorial Army, the description must contain an averment as to how he is subject to AA. See specimen charge-sheet 'Description of the accused' serials 6 to 8 at page 233 for persons who are subject to AA under specified conditions. See AA.s. 2(1) Clauses (d) to (i).

3. When an accused holding an appointment is brought, to trial by a court-martial he is to be arraigned in his army rank with his appointment shown as under :—

No. ..... Sepoy (Lance Naik)..... Regiment

4. For army ranks see Regs Army para 131.

30. Contents of charge.—(l) Each charge shall state one offence only, and in no case shall an offence be described in the alternative in the same charge.

(2) Each charge shall be divided into two parts—

(a) statement of the offence; and

(b) statement of the particulars of the act, neglect or omission constituting the offence.

(3) The offence shall be stated, if not a civil offence, as nearly as practicable in the words of the Act, and if a civil offence, in such words as sufficiently describe in technical words.

(4) The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect or omission is intended to be proved against him as constituting the offence.

(5) The particulars in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as are so referred, to shall be deemed to form part of the first mentioned charge as well as of the other charge.

(6) Where it is intended to prove any fact in respect of which any deduction from pay and allowances can be awarded as a consequence of the offence charged, the particulars shall state those facts and the sum of the loss or damage it is intended to charge.

NOTES

1. For forms of charges and preliminary note as to their use, see pages 234 to 235 See also memoranda for guidance of courts-martial at page 304

2. The convening officer or in the case of trial by SCM, the CO should seek the advice of DYJAG or AJAG of the command concerned in any case where doubt exists as to the manner in which the charge should be framed. Charges for trial by GCsM and for indecency, fraud, theft (except ordinary theft) and civil offences (except simple assaults) should be referred to the DJAG or AJAG concerned before trial; See Regs Army para 459.

3. A single charge disclosing two separate offences would be bad for duplicity e.g., a charge under AA.s. 40 for using threatening language and insubordinate language to his superior officer or a charge under AA.s. 52 for committing theft of Government property and dishonestly retaining Government property. But the use of the word "and" in the statement of offence is permissible where the charge discloses only one offence e.g., a charge under AA.s. 54(b) for losing by neglect arms, equipment and clothing, the property of the Government because an accused is not charged with two offences but with a single offence, which is constituted by his having lost by neglect the various articles specified in the charge.

4. The rule against duplicity is also applicable to the particulars of the charge e.g., in a charge under AA.s. 36(d) an averment that the accused left his post without orders from his superior officer and remained absent for a specified period, is not permissible as the particulars disclose two separate offences. Similarly in a charge under AA.s. 44, it is not permissible to aver two false answers to two separate questions set forth in the enrolment form or in a charge under AA.s. 40(c) to aver two separate instances of use of insubordinate language.

5. The incidental mention of a separate offence in the particulars, however, would not of itself invalidate the charge e.g., the mention in the particulars of a charge under AA.s. 40(a) for assaulting his superior officer, use of insubordinate language chargeable under AA.s. 40(c) which accompanied a menacing gesture and showed its purport.

6. A single transaction, though technically disclosing more than one offence should not, as a rule be made the subject of more than one charge. For instance where use of criminal force to a superior officer is accompanied by insubordinate language, the use of criminal force alone should be charged (assuming the evidence to be satisfactory), the language being admissible in evidence as to the intent. On the other hand, if it seems desirable, a man can legally be charged in two separate charges with escape, from arrest and absence without leave (following such escape).

7. The statement of the particulars must support the statement of the offence; e.g., if the statement of an offence laid under AA.s. 52(a) alleged that the accused committed theft in respect of property of the Government, particulars stating that the accused dishonestly received, or was in unauthorised possession of, the property would not support the statement of the offence and the charge would be a bad charge, and the fact that the accused pleaded guilty to it would not affect the matter. But a merely technical difference, e.g., where the word assault is used in the statement of offence and the particulars disclose the use of criminal force, would not invalidate the charge, if the statement of offence and the particulars taken together supply the court and the accused with sufficient information of the nature of the offence which the court is to try and the accused to meet.

8. Where the statement of offence discloses an offence under AA and one or more essential elements of that offence are omitted from the particulars e,g., the word "dishonestly" in a charge "dishonestly misappropriating" or the words "knowing it to be stolen" in a charge of receiving, the omission of that element from the particulars would not invalidate 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.

9. When an offence is punished more severely, when committed under particular circumstances, the particulars should contain an averment about such circumstances; e.g., in a charge under AA.s. 41(2) for disobeying a lawful command of his superior officer, an averment to the effect that the offence was committed when on active service, should be made, where necessary, since the said offence when committed on active service is more severely punished than otherwise.

10. The exact or approximate date of the offence should be averred in particulars. Such averment would prima-facie show whether or not the trial in respect of the offence is time barred. See AA.s. 122(1) and notes thereto. If for reasons of security it is considered undesirable to disclose the place of offence, the words "at field" may be averred in the particulars instead of the actual place of offence.

11. When civil offences are tried by court-martial under AA.s. 69, although technical terms need not be used in the charge, the essence of the civil offence must be expressed.

12. The statement of particulars should state shortly in ordinary language what the accused is alleged to have done. All the ingredients necessary to constitute the offence should be specified, *e.g.,* if the charge is under AA.s. 41(2) for disobeying a lawful command, the particulars must state the command, rank and name of the superior officer who gave the command and the fact that the accused disobeyed it. Where a state of mind *e.g.,* intention or knowledge, is an essential ingredient of an offence, such state of mind should be averred in the particulars.

13. Vague statement must be avoided, *e.g.,* in a charge for using insubordinate language to his superior officer or for making a false statement to his CO, it is not sufficient to state that the accused used insubordinate language or made a false statement well knowing the statement to be false; the words alleged to have been spoken or written must be set out in the particulars. Similarly in a charge under AA.s. 42(e) it is not sufficient to state that the accused neglected to obey battalion orders by doing a particular act; the order it is alleged the accused neglected to obey must be set out in the particulars. See specimen charge No 35 on page 257.

14. When particulars in one charge are framed wholly or partially by reference to the particulars in another charge and the accused is convicted of the former but acquitted of the latter, the conviction when recorded should specify the place and date mention in the former charge.

15. Stoppages cannot be awarded under AA.s. 71(1) unless particulars contain a specific averment regarding the value of the loss or damage caused and proved in evidence.

31. Signature on charge-sheet.—The charge-sheet shall be signed by the commanding officer of the accused and shall contain the place and date of such signature.

NOTES

1. See note 1 to AR 28. The charge-sheet must be signed by the CO of the accused. It cannot be signed by any other officer for him.

2. For CO see AA.s. 3(v).

3. The charge-sheet should contain the place and date of signature. If for reasons of security it is inadvisable to disclose the place of signature, it may be shown as "field". The date of signature is of assistance in ascertaining whether or not provisions of AR 34 regarding warning of the accused for trial, have been complied with.

32. Validity of charge-sheet.—(1) A charge-sheet shall not be invalid merely by reason of the fact that it contains any mistake in the name or description of the person charged, provided that he does not object to the charge-sheet during the trial, and that no substantial injustice has been done to the person charged.

(2) In the construction of a charge-sheet or charge, there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included though not expressed therein.

NOTES

1. Although the trial of an offender is not invalid on account of mistake in the name of the accused, such mistakes are dangerous, in so far as they may lead to mistakes of substance. Where, however, a person has been enrolled and is commonly known under an assumed name, he may be described by that name. The court has power to amend the charge by correcting any mistake in the name or description of an accused person, under AR 50 or 113.

2. Sub-rule (2) must not be relied upon as an excuse for carelessness in the preparation of charge-sheets. This sub-rule enables a court-martial, or any authority dealing with the case summarily under AA.s. 80, 83, 84 or 85, to presume matters which, though not stated in the charge, are necessary to support its validity, and can reasonably be implied from it.

Preparation for defence by accused person

33. Rights of accused to prepare defence.—(l) Correspondence between the accused and his legal advisers shall not be liable to be censored. The accused shall inform his commanding officer of the names of such advisers and shall also inform him of any distinctive marks that such correspondence will bear.

(2) An accused person shall have the right to interview any witnesses whom he may wish to call in his defence. The provisions of rule 137 shall apply to procuring the attendance of such witnesses.

(3) If the accused so desires, the commanding officer of the accused shall take such steps as the circumstances of the case permit to obtain a written statement from a witness whom the accused may wish to call in his defence. The statement shall be obtained in a closed envelope which shall be given to the accused person unopened.

(4) If the accused person gives to his commanding officer the name of any person whom he wishes to call in his defence, no person shall interview such witness with reference to the charges against the accused except in the presence of the accused, unless the accused agrees to dispense with his presence in writing. Similarly if the accused wishes to interview a witness whom the prosecutor intends to call, the interview shall be in the presence of an officer detailed by the commanding officer of the accused person.

(5) The commanding officer of the accused person or the officer responsible for his custody shall take adequate precautions so that no conversation which the accused person may have with his legal advisers or witnesses is liable to be overheard.

(6) The accused person shall have the right to address an application to the Deputy or Assistant Judge Advocate General of the command within which he for the time being is, if he is kept under arrest longer than forty-eight days without being brought to trial or is not given full liberty for preparing his defence.

(7) As soon as practicable after an accused has been remanded for trial by a general or district court-martial, and in any case not less than ninety-six hours or on active service twenty-four hours before his trial, an officer shall give to him free of charge a copy of the summary of evidence, [ ][1] and explain to him his rights under these rules as to preparing his defence and being assisted or represented at the trial, and shall ask him to state in writing whether or not he wishes to have an officer assigned by the convening officer to represent him at the trial, if a suitable officer should be available. The convening officer shall be informed whether or not the accused so elects.

NOTES

1. For power to dispense with this rule see AR 36.

2. The freest communication which is consistent with the necessities of discipline and with the safe custody of the accused should be allowed. Failure to give the accused full opportunity of preparing his defence, and free communication with others for the purpose, may invalidate the proceedings. The accused, however, or the defending officer is not entitled to interview witnesses for the prosecution, without special authority. When so authorised, the accused or the defending officer should interview witnesses for the prosecution in the presence of an officer deputed by the CO. An accused is not bound to call as a witness everyone with whom he communicates as a possible witness on his behalf.

3. Neither the accused nor his defending officer or counsel should be permitted to interview for the purpose of general examination or interrogation any witness who has already given evidence for the prosecution at the taking of the summary of evidence, or whose evidence is included in the abstract of evidence as a witness for the prosecution unless the prosecution have, before the trial, definitely decided not to call such witness for the prosecution. If, the accused or his defending officer or counsel desire to put any specific question or questions to such a witness for the prosecution with a view to ascertain some specific fact or facts which it may be of assistance in the preparation of the defence to know, the Convening Officer should permit such question or questions to be put subject to any safeguard such as the presence of a representative of the prosecution as the Convening Officer may think fit. The converse holds good as regards interviews by the prosecution of witnesses for the defence.

4. As to defending officer and friend of accused see AR 95; and as to counsel at GCsM and DCsM, see ARs 96 to 101. As to the right of the accused to consult the JA on any question of law or procedure, see AR 105.

34. Warning of accused for trial.—(1) The accused before he is arraigned shall be informed by an officer of every charge for which he is to be tried and also that, on his giving the names of witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.

The interval between his being so informed and his arraignment shall not be less than ninety-six hours or where the accused person is on active service less than twenty-four hours.

[1] Omitted by SRO 17 (E), dated 6th December, 1993

(2) The officer at the time of so informing the accused shall give him a copy of the charge sheet and shall, if necessary, read and explain to him the charges brought against him. If the accused desires to have it in a language which he understands, a translation thereof shall also be given to him.

(3) The officer shall also deliver to the accused a list of the names, rank and corps (if any), of the officers who are to form the court, and where officers in waiting are named, also of those officers in courts-martial other than summary courts-martial.

(4) If it appears to the court that the accused is liable to be prejudiced at his trial by any non-compliance with this rule, the court shall take steps and, if necessary, adjourn to avoid the accused being so prejudiced.

NOTES

1. For power to dispense with this rule see AR 36.

2. The duty of complying with the provisions of this rule will usually devolve upon the CO in the case of summary and the prosecutor in the case of other courts-martial, who should, in any case, satisfy himself before the trial that it has been properly performed. Even if this rule is dispensed with under AR 36, the accused must have information of the charge, and opportunity of calling his witnesses.

3 As to arraignment, see AR 48 and notes thereto.

4. The duty of procuring attendance of witnesses at GCM and DCM devolves, under AR 137(1) upon the CO or convening officer or after assembly of the court, the presiding officer. The duty of procuring attendance of witnesses at SCM devolves under AR 137(2) upon the CO.

5. The request of an accused person for witnesses to be called on his behalf should only be refused if it is quite clear that their evidence would be immaterial, or if their attendance cannot be secured within a reasonable time. If the request is refused, the refusal and reasons for it should be communicated to the court, who will deal with the matter under sub-rule (4) and AR 138. If an essential witness is absent, the court should always adjourn for the purposes of enabling him to attend or of procuring his examination on commission.

6. For form of summons to witnesses, see Appendix III, Part III.

7. A copy and translation of the charge-sheet must always be given, unless this rule has been dispensed with under AR 36. Even where it is so dispensed with, the charges must be clearly explained to the accused, as otherwise he may not have proper opportunity to prepare his defence. If the accused objects to the charge he will have an opportunity of making his objection when called on to plead (AR 49).

8. The list of names, rank and corps of the members of the court should normally be delivered to the accused, irrespective of any demand on his part, as soon as the names of the members are known.

35. Joint trial of several accused persons.—(l) Any number of accused persons may be charged jointly and tried together for an offence averred to have been committed by them collectively.

(2) Any number of accused persons, although not charged jointly, may be tried together for an offence averred to have been committed by one or more of them and to have been abetted by the other or others.

(3) Where the accused are so charged under sub-rules (1) and (2), any one or more of them may at the same time be charged with and tried for any other offence averred to have been committed individually or collectively, provided that all the said offences are based on the same facts, or form or are part of a series of offences of the same or similar character.

(4) In the cases mentioned above, notice of the intention to try the accused persons together shall be given to each of the accused at the time of his being informed of the charges, and any accused person may claim, either by notice to the authority convening the court or, when arraigned before the court, by notice to the court that he or some other accused be tried separately on one or more of the charges included in the charge-sheet, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him, will be material to his defence, or that otherwise he would be prejudiced or embarrassed in his defence. The convening authority or court, if satisfied that the evidence will be material or that the accused may be prejudiced or embarrassed in his defence as aforesaid, and if the nature of the charge admits of this, shall allow the claim and such accused person, or as the case may be, the other accused person or persons whose separate trial has been claimed, shall be tried separately. Where any such claim has been made and disallowed by the authority convening the court, or by the court, the disallowance of such claim will not be a ground for refusing confirmation of the finding or sentence unless, in the opinion of the confirming authority, substantial miscarriage of justice has occurred by reason of the disallowance of such claim.

NOTES

1. If two accused persons are charged separately with committing the same offence, they cannot, even at their own request, be tried together because they have not been charged jointly.

2. Whether a joint or a separate summary of evidence is recorded against the accused persons, they can still be charged jointly and tried together under the circumstances specified in this rule.

3. As to swearing the court to try several accused persons, see AR 89 and notes, and as to form of proceedings in the case of a joint trial, see para 28 of memoranda on page 311.

4. If one accused pleads guilty and another not guilty, the trial of the latter upto and including the finding must be carried out before the court deals with the case of the accused who has pleaded guilty.

5. To admit of a joint charge and trial, the accused must have acted together with the common purpose of committing the offence charged.

6. The nature of the charge may not admit of a separate trial, e.g., in the case of conspiring to cause or joining in a mutiny, the essence of the charge is combination between the accused persons. Certain offences, on the other hand, cannot from their nature be committed collectively. e.g. intoxication, sentry sleeping upon or leaving his post; malingering; giving false evidence, cowardice, etc. and speaking generally, all offences where a person's individual state of body or mind is the essence of the offence. In case of doubt the accused should be tried separately.

36. Suspension of rules on the ground of military exigencies or the necessities of discipline.—Where it appears to the officer convening a court-martial or to the senior officer on the spot, that military exigencies or the necessities of discipline render it impossible or inexpedient to observe any of the rules 23, 24, [ ][1], 33 and 34 and sub-rule (2) of rule 95, he may, by order under his hand, make a declaration to that effect specifying the nature of such exigencies or necessities, and thereupon the trial or other proceedings shall be as valid as if the rule mentioned in such declaration had not been contained herein; and such declaration may be made with respect to any or all of the rules aforesaid in the case of the same court-martial:

Provided that the accused shall have full opportunity of making his defence, and shall be afforded every facility for preparing it, which is practicable, having due regard to the said exigencies or necessities.

[1] Omitted by SRO 17 (E), dated 6th December, 1993

NOTES

1. For form of declaration see page 286

2. The power conferred by this rule should rarely be exercised except on active service and then only if absolutely necessary. Occasionally it may be necessary to resort to it in the case or embarkation or on the line of march, or possibly in an extreme case where necessities of discipline require speedy trial and punishment.

3. In exercising the powers conferred by this rule, it is not necessary to dispense with all the provisions mentioned, e.g., it may be expedient to comply with the relevant provisions of AR 23 but not with AR 33.

4. If AR 23 is suspended, steps must be taken to inform the accused before hand of the nature of the charge, the names of the witnesses and the effect of their evidence, and the court must take care that the accused is not prejudiced by reason of the suspension, as, for instance; by not having received a summary of evidence.

5. The power of dispensing with AR 33 is only intended to be exercised where it is necessary to try a person before he can communicate with a witness or friend at a distance. The said rule should never be dispensed with except in extreme cases and even then the accused must be allowed free communication with any witness or friend on the spot.

6. Rule 34(3) should always be complied with the sub-rules (1) and (2) of the said rule, if not complied with within the time therein mentioned, should be complied with as long as possible before the court assembles.

7. The accused will not have full opportunity of making his defence unless he receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses evidence, or to acquaint himself with the charge, or requests the postponement of cross-examination of a witness, the court should grant the request, and may adjourn for the purpose. A refusal to do so might be held to be non-compliance with the proviso to the rule and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the accused is not prejudiced by being taken by surprise, either by the charge or the evidence of witnesses.

8. When any of the provisions of ARs 33 or 34 have not been complied with, the accused has a right to ask for an adjournment if he has been prejudiced by such non compliance; or on the ground that he did not have sufficient opportunity to prepare his defence; see AR 56 (1) and (2).

SECTION 2— GENERAL AND DISTRICT COURTS-MARTIAL

Convening the Court

37. Convening of General and District Court-Martial.— (l) An officer before convening a general or district court-martial shall first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Act, and that the evidence justifies a trial on those charges, and if not so satisfied, shall order the release of the accused, or refer the case to superior authority.

(2) He shall also satisfy himself that the case is a proper one to be tried by the kind of court-martial which he proposes to convene.

(3) The officer convening a court-martial shall appoint or detail the officers to form the court and, may also appoint or detail such waiting officers as he thinks expedient. He may also, where he considers the services of an interpreter to be necessary, appoint or detail an interpreter to the court.

(4) The officer convening a court-martial shall furnish to the senior member of the court with the original charge-sheet on which the accused is to be tried and, where no judge-advocate has been appointed, also with a copy of the summary [ ][1] of evidence and the order for the assembly of the court-martial. He shall also send, to all the other members, copies of the charge sheet and to the judge-advocate when one has been appointed, a copy of the charge sheet and a copy of the summary [ ][1] of evidence.

NOTES

1. With respect to the duties of the convening officer, see paras 10 to 13 of memoranda at page 309 to 310. The convening officer must ensure that he holds the necessary court-martial warrant empowering him to convene the description of court martial that he considers appropriate. A court martial convened by an officer who is not empowered to do so will lack jurisdiction.

2. Where the convening officer finds it impracticable to follow the ordinary rules as to appointing members from different corps [AR 40(1)], or as to the, rank of members [AR 40(2)], he should state his opinion in the convening order.

[1] Omitted by SRO 17 (E), dated 6th December, 1993

3. The declaration as to military exigencies dispensing with certain rules (AR 36), should he in a separate order. For form of declaration see page 286.

4. Under AA.s. 117(1) a court-martial, which, after commencement of the trial, is reduced below the legal minimum, is dissolved. If, therefore, the trial is likely to be prolonged, the number of members detailed to serve should be in excess of the legal minimum required. Additional members should also be detailed to serve in doubtful or complicated cases.

5. It will usually be desirable, in the case of both GCM and DCM to add two or more waiting members, in order to fill the places of officers retiring on challenge, or unable to attend owing to illness, etc.

6. In almost every case an interpreter in the language of the accused person will be necessary and should be detailed; see AR 91 and note.

7. Where several persons are to be tried separately by the same court, a copy of convening order should be prepared for each accused. The original charge-sheet and convening order will subsequently be annexed to the proceedings.

8. The object of sub-rule (4) is to enable the presiding officer and members of the court-martial to have an idea of the charge/charges on which the accused is to be arraigned. If any amendment to the' charge(s) is considered necessary by the presiding officer, he should communicate his views to the convening officer before the trial begins. Only when a JA is not appointed, a copy of the summary of evidence and convening order is to be sent to the presiding officer. A copy of the summary of evidence sent to the presiding officer should have the portions of evidence which, being inadmissible or irrelevant, are not being led at the trial, completely expurgated. The JA is responsible to inform the convening officer of any informality or defect in the charge or in the constitution of the court; see AR 105(3).

9. The summary of evidence must be read in court if the accused pleads guilty, and may be used for determining the sentence. [AR 54(3)]. It may be used at the trial for the purpose of showing that a witness had previously made a particular statement, or is giving evidence which differs from that given by him when the summary was taken. Any statement of the accused contained in the summary may be read to the court as evidence at the close of the prosecution case, but before reading such statement formal proof should be given that it was made voluntarily; see AR 23(3). Except in the above instances, the summary cannot he used as evidence.

10. During the trial the presiding officer should compare the evidence given by each witness with his statement contained in the summary of evidence and, if there is any material variation, should question him thereon.

11. Members of the court must take care that they are not unduly influenced by any statement appearing in the summary of evidence, though they will naturally have regard in testing the credibility of a witness to the fact that his evidence given at the trial is contradictory to his statement at the summary. It is usually expedient that the presiding officer alone should refer to the summary.

12. Where the accused pleads guilty, the summary of evidence is to be annexed to the proceedings [AR 54(3) and form of proceedings at page 292]. If the accused pleads ''not guilty'', the summary should be enclosed with the proceedings when sent to the confirming officer, but it should only be annexed to the proceedings if it has been used in evidence.

38. Adjournment for insufficient number of officers.— (1) If, before the accused is arraigned, the full number of officers detailed are not available to serve by reason of non-eligibility, disqualification, challenge or otherwise, and if there are not a sufficient number of officers in waiting to take the place of those unable to serve, the court shall ordinarily adjourn for purpose of fresh members being appointed, but if the court is of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn, it may, if not reduced in number below the legal minimum, proceed, after recording their reasons for so doing.

(2) If the court adjourns for the purpose of the appointment of fresh members, whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

NOTES

1. A GCM for which, say seven members have been detailed, should not ordinarily begin the trial with less than seven. It may be assumed that the convening officer in detailing seven members when five would have legally sufficed, had in view the possible prolongation of the trial or the desirability, in the circumstances of the case, of submitting the issues to be decided to the arbitration of a larger tribunal. But under this rule the court may proceed, unless reduced below the legal, minimum (see notes to AR 37).

2. No court can be formed if the number of officers is, from whatever cause, below the legal minimum, nor can the proceedings, even if properly commenced, be continued. In either case, a report of the circumstances must be made to the convening officer by the senior officer present. For legal minimum, see AA.ss. 113 and 114.

3. After the trial has once begun, fresh members cannot be appointed in any circumstances. See AA.s. 117(1). The trial is said to have commenced when the accused is arraigned.

39. Ineligibility and disqualification of officers for court-martial.— (1) An officer is not eligible for serving on a court-martial if he is not subject to the Act.

(2) An officer is disqualified for serving on a general or district court-martial if he—

(a) is an officer who convened the court; or

(b) is the prosecutor or a witness for the prosecution; or

(c) investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the squadron, battery, company, or other commander, who made preliminary inquiry into the case, or was a member of a previous court-martial which tried the accused in respect of the same offence; or

(d) is the commanding officer of the accused, or of the corps to which the accused belongs; or

(e) has a personal interest in the case.

(3) The provost-marshal or assistant provost-marshal is disqualified from serving on a general court-martia1 or district court-martial.

NOTES

1. The term "eligible" is used with reference to an officer being subject to AA and of the necessary standing; that is to say, it refers to the status of the officer and involves no personal considerations.

2. The term "disqualified" is used with reference to the personal qualification of an officer. Except so far as is provided by AR 40, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial.

3. The term "personal interest" will extend to even a remote or very small interest, e.g., in a charge relating to the theft of a sum of money, however small, belonging to an officers' mess, or a club, every officer of that mess or club has a personal interest, and is therefore disqualified. A merely technical interest has been held to disqualify a person from holding a judicial position. e.g., a person who holds, as trustee or otherwise on behalf of others money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that money.

4. An officer should not be detailed to sit on any court-martial until regarded by his CO as competent to perform so important a duty.

40. Composition of General Court-martial.— (l) A general court-martial shall be composed, as far as seems to the convening officer practicable, of officers of different corps or departments, and in no case exclusive of officers of the corps or department to which the accused belongs.

(2) The members of a court-martial for the trial of an officer shall be of a rank not lower than that of the officer unless, in the opinion of the convening officer, officers of such rank are not, having due regard to the exigencies of the public service, available. Such opinion shall be recorded in the convening order.

(3) In no case shall an officer below the rank of captain be a member of a court-martial for the trial of a field officer.

NOTES

1. There is no similar restriction as to the composition of district courts- martial, which may, therefore, when necessary, be composed wholly of officers of the corps or department to which the accused belongs; but where possible they should not be so composed.

2. The expression of the convening officer's opinion justifying a departure form general rule should be inserted in the convening order.

Procedure at Trial—Constitution of Court

41. Inquiry by court as to legal constitution.—(1) On the court-assembling, the order convening the court shall be laid before it together with the charge-sheet and the summary of evidence or a true copy thereof, and also the ranks, names and corps of the officers appointed to serve on the court; and the court shall satisfy itself that it is legally constituted; that is to say—

(a) that so far as the court can ascertain, the court has been convened in accordance with the provisions of the Act and these rules;

(b) that the court consists of a number of officers, not less than the minimum required by law and, save as mentioned in rule 38, not less than the number detailed;

(c) that each of the officers so assembled is eligible and not disqualified for serving on that court-martial; and

(d) that in the case of general court-martial, the officers are of the required rank.

(2) The court shall further, if it is a general or district court-martial to which a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed and is not disqualified for sitting on that court-martial.

(3) The court, if not satisfied with regard to the compliance with the aforesaid provisions shall report its opinion to the convening authority, and may adjourn for that purpose.

NOTES

1. The inquiries necessitated by this and the following rule should he conducted in closed court. The court is not "open" at this stage, and the accused has not yet been brought before it.

2. The convening order, charge-sheet and the summary of evidence are to be placed before the Court. .

3. Where members are detailed by rank and corps and not by name, then only officers of the actual rank and corps stated in the convening order can serve as members.

4. It is essential that the court should ascertain. as far as it lies in its power, that it has jurisdiction. For form of convening order see page 272.

5. In the case of a GCM or DCM, the convening order must be signed by the convening officer. The absence of a properly signed convening order is a fatal flaw although an order for trial is endorsed on the charge-sheet. Apart from the specific requirements of this rule, the court must be satisfied that it is constituted strictly in accordance with the convening order.

6. The court, in considering whether it is convened in accordance with the AA and AR, can only look at the convening order. The convening officer is responsible that he holds the necessary court-martial warrant, empowering him to convene the court, and the court is not required to satisfy itself in this respect.

7. For legal minimum and for rank of members of the court, see AA.s. 113 and 114 and AR 40. (Also see Regs Army para 460).

8. For eligibility and disqualification, see AA.ss. 113 and 114 and AR 39.

9. When a court of inquiry has been held respecting a matter upon which a charge against the accused is founded, the presiding officer should insert and sign the certificate shown in the note on page 223.

10. For the appointment of JA, see AA.s. 129 and AR 103. For disqualification of JA. see AR 102.

42. Inquiry by court as to amenability of accused and validity of charge.— (1) If, the court is satisfied that the requirements of rule 41 have been complied with, it shall further satisfy itself in respect of each charge about to be brought before it—

(a) that it appears to be laid against a person subject to the Act, and subject to the jurisdiction of the court, and

(b) that each charge discloses an offence under the Act and is framed in accordance with these rules, and is so explicit as to enable the accused readily to understand what he has to answer.

(2) The court, if not satisfied on the above matters, shall report its opinion to the convening authority and may adjourn for that purpose.

NOTES

1. The inquiry by the court under this and the preceding rule should be in closed court.

2. For amenability to military law, i.e. to the AA, see AA.s. 2 and notes thereto.

3. As to validity of charge see ARs 28 to 32.

Procedure at Trial—Challenge and Swearing

43. Appearance of prosecutor and accused.— When the court has satisfied itself that the provisions of rules 41 and 42 have been complied with, it shall cause the accused to be brought before the court, and the prosecutor, who must be a person subject to the Act, shall take his due place in the court.

NOTES

1. The duty of appointing the prosecutor devolves on the convening officer who ordinarily selects the adjutant of the accused persons unit; but the convening officer should not appoint himself to be the prosecutor. The prosecutor cannot confirm the finding and sentences of a court-martial. See AR 74. In trials by GCM and in complicated cases a prosecutor should be specially selected for his experience and knowledge of military law and should be as far as possible, relieved from ordinary military duty, so that he may be enabled fully to master the case. In ordinary cases one of the officers mentioned in AR 39(2) may suitably be detailed to act as prosecutor.

2. As to duties of the prosecutor, see ARs 56 to 59 and 77 and memoranda at page 312 to 314.

3. As to counsel, see ARs 96 to 101.

44. Proceedings for challenges of members of court :—The order convening the court and the names of the presiding officer and the members of the court shall then be read over to the accused and he shall be asked, as required by section 130, whether he has any objection to being tried by any officer sitting on the court. Any such objection shall be disposed of in accordance with the provisions of the aforesaid section:

Provided that—

(a) the accused shall state the name of all the officers constituting the court in respect of whom he has objection, before any objection is disposed of,

(b) the accused may call any person to give evidence in support of his objection and such person may be questioned by the accused and by the court,

(c) if more than one officer is objected to, the objection to each officer shall be disposed of separately, and the objection in respect of the officers of the lowest in rank shall be disposed of first; and on an objection to an officer, the remaining officers of the court shall, in the absence of the challenged officer, vote on the disposal of such objection, notwithstanding that objections have also been made to any of those officers,

(d) when an objection in respect of an officer is allowed, that officer shall forthwith retire, and take no further part in the proceedings,

(e) when an officer so retires or is not available to serve owing to any cause, which the court may deem to be sufficient, and there are any officers in waiting detailed as such, the presiding officer shall appoint one of such officers to fill the vacancy. If there is no officer in waiting available, the court shall proceed as required by rule 38.

(f) the eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy shall be ascertained by the court, as in the case of other officers appointed to serve on the court.

NOTES

1. See AAs. 130 and notes thereto.

2. Each member should answer to his name as it is called, so that the accused can identify each member who is to try him.

3. The accused must make each objection separately. He cannot object to the court collectively, except upon a plea to the jurisdiction, under AR 51. If the accused persists in objecting to the court collectively, the court should treat the objection as made to all the members individually, and the procedure provided by this rule should be strictly followed. In practice an objection to a member may be equivalent to a plea to the jurisdiction, as for example when on the trial of a field officer one of the members is objected to because he is below the rank of Captain. In such a case the objection should be dealt with under this rule, although it might more properly have been raised under AR 51.

4. The accused has no right to object to the prosecutor or JA.

5. An officer objected to on the ground of personal enmity, prejudice, or malice or for having formed and expressed an opinion on the case, should, unless the objection is obviously groundless, request and be permitted to retire. An officer successfully objected to on the ground of personal interest is disqualified from serving as a member. See AR 39(2)(e).

6. The court may be closed to consider each objection.

7. The witnesses called by the accused in support of his plea cannot be examined on oath or affirmation since the court is not yet sworn or affirmed, but provisions of AR 141 will substantially apply.

8. The officer objected to must not be present in the closed court when the objection in his respect is being considered by the court, but all the other members present, i.e. who have not retired upon objections to them being allowed, must vote on the disposal of the objection.

9. Clause (e) prescribes the manner of filling a vacancy created either by a successful objection or through non-attendance of an officer detailed. Where any waiting members are detailed, it is the duty of the presiding officer to appoint one of those members to fill a vacancy. He is not required to take the first on the list; ordinarily he should select one of corresponding rank to the retiring or absent officer. If the presiding officer is himself successfully objected to the senior remaining member will take his place (A.A.s 128) and will then proceed to fill the vacancy in the court in the manner indicated above.

10. If there is no officer in waiting available and the court is reduced in number below the legal minimum, it must adjourn for the purpose of appointment of fresh members; and though not so reduced, it should ordinarily adjourn unless it is of opinion that, in the interests of justice and for the good of the service, it is not expedient to do so. (AR 38).

11. It is desirable to ascertain before the accused is brought before the court whether a waiting member is eligible and qualified to serve if called upon. An objection to a waiting member called upon to serve will be dealt with immediately, if he is junior to any other officers who have been objected to; if he is not, the objections to junior officers will first be disposed of and he will have to vote on such objections.

12. In a doubtful case an objection should always be allowed. It is very important that the court should not only be impartial, but be believed by the accused and his comrades to be so.

45. Swearing or affirming of members.—As soon as the court is constituted with the proper number of officers who are not objected to, or objections in respect of whom have been over-ruled, an oath or affirmation shall be administered to every member in one of the following forms or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

Form of Oath

"I ..... swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection and if any doubt shall arise, then, according to my conscience, the best of my understanding and the custom of war in the like cases; and I do further swear that I will not on any account at any time, whatsoever, disclose, or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial in due course of law".

Form of Affirmation

"I do solemnly, sincerely and truly declare and affirm that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best my understanding, and the custom of war in the like cases; and I do further solemnly, sincerely and truly declare and affirm that I will not, on any account at any time, whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial in due course of law".

NOTES

1. Christians and Sikhs are generally sworn, the former on the New Testament or some book containing it, and the latter on the Guru Granth. Hindus and Muslims are generally affirmed. Jews are sworn on the Old Testament.

2. As to the person to administer the oath or affirmation, see AR 47.

3. As to swearing the court to try several persons, see AR 89.

4. A person taking the oath will hold the book (New Testament, Old Testament or Guru Granth) in his uplifted hand and will say or repeat the oath after the person administering it. The oath must be administered and taken with solemnity. It is not necessary to kiss the book. Members may be sworn separately or collectively.

5. If a person desires to be sworn in the Scottish form, no question as to his religious belief is to be asked nor is he required to hold or kiss the Bible while being sworn. He will be sworn standing and holding up his right hand, and the oath will commence in these terms "I swear by Almighty God as I shall answer to God at the Great Day of Judgement....."

6. Affirmations are repeated by the person making affirmation after the person administering it.

7. In addition to providing a prescribed form of oath or affirmation, the rule permits an oath or affirmation to be administered to the person to be sworn or affirmed in such form to the same purport as the court ascertains to be according to his religion or otherwise, binding on his conscience.

8. The oath or affirmation taken by the members implies that, as a general rule, the opinions of the individual members ought not to be stated, and consequently the court ought not to disclose whether the decision was unanimous or by a majority. The decision is the decision of the court as a whole and the fact of its being unanimous or not is usually immaterial. The qualification at the end of the oath or affirmation, "unless required to give evidence thereof etc.", only applies to such cases where members of the court are charged individually with partiality or bribery, and thus in a court of justice or a court-martial it would, or might, be necessary to make disclosures regarding individual votes to the court trying the members so charged.

46. Swearing or affirming of judge-advocate and other officers.—After the members of the court are all sworn or have made affirmation, an oath or affirmation shall be administered to the following persons or such of them as are present at the court-martial, in such of the following forms as shall be appropriate, or in such other form to the same purport as the court ascertains to be according to the religion or otherwise binding on the conscience of the person to be sworn or affirmed :—

(A) JUDGE ADVOCATE

Form of Oath

"I . . . . . swear by Almighty God that 1 will to the best of my ability carry out the duties of Judge Advocate in accordance with the Army Act, and the rules made thereunder and without partiality, favour or affection, and I do further swear that I will not on any account at anytime whatsoever, disclose or discover the vote or opinion on any matter of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or, a court-martial in due course of law."

Form of Affirmation

"I ..... do solemnly, sincerely and truly declare and affirm that I will to the best of my ability carry out the duties of Judge Advocate in accordance with the Army Act and the rules made thereunder and without partiality, favour or affection, and I do further solemnly, sincerely and truly declare and affirm that I will not on any account at any time, whatsoever, disclose or discover the vote or opinion on any matter of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial in due course of law."

(B) OFFICER ATTENDING FOR THE PURPOSES OF INSTRUCTION

Form of Oath

"I ..... swear by Almighty God that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

Form of Affirmation

"I ..... do solemnly, sincerely and truly declare and affirm that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial; unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

(C) SHORTHAND WRITER

Form of Oath

"I ..... swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as I may be required, and will, when required, deliver to the court a true transcript of the same."

Form of Affirmation

"I ..... do solemnly, sincerely and truly declare and affirm that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as I may be required, and will, when required, deliver to the court a true transcript of the same."

(D) INTERPRETER

Form of Oath

"I ..... swear by Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial.

Form of Affirmation

"I ..... do solemnly, sincerely and truly declare and affirm that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

NOTES

1. Notes to AR 45 apply, mutatis mutandis, to this rule.

2. The form of oath and affirmation for a witness are set out in AR 140.

3. The accused has a right of objection to the shorthand writer or Interpreter, who may be sworn/ affirmed at any time during the trial (AR 90); he has no right of objection to the JA or to the officers under instruction.

47. Persons to administer oaths and affirmations.—All oaths and affirmations shall be administered by the Judge-Advocate (if any), a member of the court, or some other person empowered by the Court to administer such oath or affirmation.

NOTES

1. Oaths and affirmations may be administered by any of the persons mentioned in this rule. Their being of the same religion as the person affirmed or sworn is immaterial.

2. It will generally be convenient for the JA to administer the oath or affirmation to the presiding officer and members, or if there is no JA, for the presiding officer to first administer the oath and affirmation to the members and then be himself sworn or affirmed by one of them. The oath or affirmation to the JA may be administered by the presiding officer.

Prosecution, Defence and Summing-up

48. Arraignment of accused. — (l) After the members of the court and other persons are sworn or affirmed as abovementioned, the accused shall be arraigned on the charges against him.

(2) The charges upon which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

NOTES

I. The accused should be arraigned by the presiding officer or JA (if any).

2. "Arraignment" consists of (a) calling upon the accused by his number (if any), Rank, Name and Description as given in the charge-sheet and asking him "Is that your number, rank, name and unit (or description)"; (b) reading the charge to him; and (c) asking him whether he is guilty or not guilty.

3. Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and until after the finding tried upon the first charge-sheet, before arraigned upon the second or subsequent charge-sheet; see AR 79.

4. The charge-sheet, containing the charges as settled by the convening officer, will be in the possession of the presiding officer (AR 37(4)), who will lay the charge-sheet before the court immediately before arraignment, and the charge-sheet will then be annexed to the proceedings.

5. The plea of the accused must he taken on all the charges in a charge-sheet. This applies to alternative charges if the accused has been arraigned upon them, but see AR 52(3).

49. Objection by accused to charge.— The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules. The court after hearing any submission which may be made by the prosecutor or by or on behalf of the accused, shall consider the objection in closed court and shall either disallow it and proceed with the trial, or allow it and adjourn to report to the convening authority or, if it is in doubt, it may adjourn to consult the convening authority.

NOTES

1. A charge laid under AA.s. 54(b) for losing by neglect the property of a comrade would not disclose an offence under that section of the Act.

2. As to framing of charges see ARs 28 to 32.

3. As to joint charges see AR 35 and notes thereto.

4. For procedure where it appears that the accused is, by reason of insanity, unfit to stand his trial, see AR 145.

50. Amendment of charge.—(l) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.

(2) If, on the trial of any charge, it appears to the court at any time before it has begun to examine the witnesses, that in the interest of justice any addition to, ommission from, or alteration in, the charge is required, it may report its opinion to the convening authority, and may, adjourn and the convening authority may either direct the new trial to be commenced, or amend the charge, and order the trial to proceed with such amended charge after due notice to the accused.

NOTES

I. A mistake in name or description wil1 only be amended, if it is clear to the court that the accused is the person intended to be charged in the charge-sheet, and that, he is not prejudiced in his defence by the mistake having been made.

2. The court may act under sub-rule (1) whether the objection to the charge is taken by the accused or by the JA, or by a member of the court, and either before or after the arraignment of the accused; see ARs 42 and 49.

3. The witnesses referred to in sub-rule (2) are the ones on the substance of the charge and not those who are called as to objections to the members, or with respect to a special plea to the jurisdiction, under AR 51.

4. If the addition, omission, or alteration can be met by means of a special finding under AR 62(4) (as for instance, by omitting from the finding some of the articles alleged to have been stolen or lost by neglect, or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended; but if the date is material or if any addition, requires to be made to the particulars of the charge, it will be safer for the court to adjourn and apply for the amendment. If the charge appears not to disclose an offence under the AA, the court must adjourn; see AR 49.

51. Special plea to the jurisdiction.—(1) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court, and if he does so, and the court considers that anything stated in such plea shows that the court has no jurisdiction it shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by or on behalf of the accused and reply by the prosecutor in reference thereto.

(2) If the court overrules the special plea, it shall proceed with the trial.

(3) If the court allows the special plea, it shall record its decision, and the reasons for it, and report it to the convening authority and adjourn; such decision, shall not require any confirmation and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(4) If the court is in doubt as to the validity of the plea, it may refer the matter to the convening authority, and may adjourn for that purpose or may record a special decision with respect to such plea, and proceed with the trial.

NOTES

1. A plea to the general jurisdiction, that is, to the right of the court generally to try the accused on any charge at all, is here kept distinct from any plea which relates only to the particular charge on which the accused is brought before the court. Under the former, he may plead, for example, that court is improperly constituted in respect of the number of the members, or that he is not amenable to the court, either as not being subject to AA or not subject to that description of the court; as for instance in the case of a JCO being brought for trial before a DCM.

2. A plea relating to the particular charge, and raising the defence of previous conviction or acquittal by a court-martial or criminal court, summary punishment by the CO, pardon of the offence or its condonation by the deliberate act of competent military authority or of the lapse of more than three years since the date of the offence (AA.s. 122) will be raised by way of plea in bar of trial, under AR 53.

3. Evidence must be taken on oath or affirmation.

4. The confirmation of the finding, after a plea to the jurisdiction has been overruled, will have the effect of confirming the decision of the court in overruling the plea. If, however, the confirming officer is of opinion that the plea is valid and should have been allowed, he must refuse to confirm the finding of the court, and another court may legally be convened.

5. If the court allows the plea, the decision of the court cannot be over-ruled, but another court may legally be convened.

6. If a special plea to the jurisdiction is raised, e.g., on the ground that the accused is not subject to AA, and the court is in doubt as to the validity of the plea, it may record a special decision to that effect, and state that it has nevertheless decided to proceed with the trial. This procedure, in effect, transfers the decision as to the validity of the plea to the confirming officer, who should act as if the plea has been over-ruled.

52. General plea of "guilty" or "not guilty".-—(1) If no special plea to the general jurisdiction of the court is offered, or if such plea being offered, is overruled, or is dealt with by a special decision under sub-rule (4) of rule 51, the accused person's plea 'Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or other a plea of "Not guilty'') shall be recorded on each charge.

(2) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but before it is recorded, the presiding officer or judge advocate on behalf of the court, shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead "Not guilty".

[(2A) Where an accused pleads Guilty, such plea and the factum of compliance of sub-rule (2) of this rule, shall be recorded by the court in the following manner :—

Before recording the plea of Guilty of the accused, the court explained to the accused the meaning of the charge(s) to which he had pleaded Guilty and ascertained that the accused had understood the nature of the charge(s) to which he had pleaded Guilty. The court also informed the accused the general effect of the plea and the difference in procedure, which will be followed consequent to the said plea. The court having satisfied itself that the accused understands the charge(s) and the a effect of his plea of Guilty accepts and records the same. The provisions of rule 52 (2) are thus complied with.][1]

(3) Where an accused person pleads "Guilty" to the first of two or more charges laid in the alternative, the prosecutor may, after sub-rule (2) has been complied with by the court and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto and a record to that effect shall be made upon the proceedings of the court.

(4) A plea of "Guilty" shall not be accepted in cases where the accused is liable, if convicted to be sentenced to death, and where such plea is offered, a plea of "Not Guilty" shall be recorded and the trial shall proceed accordingly.

NOTES

1. If the accused pleads in some language not understood by the court, or inarticulately, he will not have pleaded intelligibly, and a plea of "Not guilty" will be entered.

2. Sub-rule (2) is qualified by sub-rule (4).

3. The object of sub-rule (2) is to prevent the accused from pleading guilty under a misapprehension; e.g., a man charged with wilfully injuring Government property may, under a misapprehension, plead guilty because the property has been actually injured, though not wilfully; or a man charged with receiving property, knowing it to have been stolen may, under a misapprehension, plead "guilty" because the property was infact stolen, though when he received it, he did not know it to have been stolen. So again, on a charge for desertion, the plea "Guilty, but I intended to return" amounts to a plea of "Not guilty", as the intention not to return is generally an essential element in the offence of desertion. In such cases the presiding officer must explain to the accused that he must plead "Not guilty".

4. A plea of "Guilty" is to be taken to the extent to which it is pleaded. Thus a sepoy arraigned upon a charge of losing by neglect a number of articles, who pleads guilty in respect of some of those articles only, must be taken to have offered a "qualified" plea of guilty. The court may accept such a qualified plea of guilty, if it is satisfied of the justice of such course and if the concurrence of the convening officer is signified by the prosecutor, and come to a special finding under AR 62 (4) and (5) subject to the exceptions in relation to the articles to which he has not pleaded guilty, see AR 62 (9).

5. If the accused pleads guilty, a statement that the requirements of AR 52 (2) have been complied with must be recorded in terms of AR 52 (2A).

6. It must be recollected that there is nothing untrue in a person pleading not guilty even though he committed the offence, as the plea merely amounts to a claim, which he is entitled to make, that the charge against him shall be formaIly proved. Indeed; where the accused, while admitting the offence, wishes to show that it was committed under circumstances of great provocation and does not deserve severe punishment, he must plead 'Not guilty' if he wishes to prove the existence of such provocation out of the mouth of witnesses for the prosecution, who would not be called to give evidence if he pleaded 'Guilty'; (see, however, AR 54 (7) as to the power of the court).

7. As to procedure where it appears at a later stage of the proceeding that the plea of guilty was offered under a misapprehension. see AR 54 (5).

8. If the prosecutor adopts the procedure provided by sub-rule (3), the accused will not be entitled to a verdict on the alternative charges, as he will not have been arraigned upon them. The convening officer must take care that the most serious of two or more alternative charges are placed first in the charge-sheet. As to the procedure to be followed in other cases where there are alternative charges, see AR 54 (1).

9. Sub-rule (4) is intended to ensure that a person charged with an offence for which death penalty can be awarded shall not he convicted without a full trial.

53. Plea in bar.—(1) The accused, at the time of his general plea of "Guilty" or "Not Guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that—

[1] Inserted by SRO 17 (E), dated 6th December, 1993

(a) he has been previously convicted or acquitted of the offence by a competent criminal court or by a court-martial, or has been dealt with summarily under sections 80, 83, 84 and 85, as the case may be, for the offence, or that a charge in respect of the offence has been dismissed as provided in sub-rule (2) of rule 22; or

(b) the offence has been pardoned or condoned by competent military authority; or

(c) [the period of limitation for trial as laid down in section 122 has expired][1]

(2) If he offers such plea in bar, the court shall record it as well as his general plea, and if it considers that any fact or facts stated by him are sufficient to support the plea in bar, it shall receive any evidence offered, and hear any address made by or on behalf of the accused and the prosecutor in reference to the plea.

(3) If the court finds that the plea in bar is proved, it shall record its finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed with the trial of the accused on that charge.

(4) If the finding that the plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(5) If the court finds that the plea in bar is not proved, it shall proceed with the trial, and the said findings shall be subject to confirmation like any other finding of the court.

NOTES

1. AA provides that a man shall not be liable to trial for an offence, of which he has been convicted or acquitted by a court-martial or by a criminal court, or for which he has been dealt with summarily (AA.s. 121), or which was committed more than three years before the date of his trial to be computed in accordance with AA.s. 122 (1), unless the offence was mutiny, desertion or fraudulent enrolment. Mutiny or desertion on active service, may be tried at any time. Desertion at other times or fraudulent enrolment is not to be tried, if the offender, not being an officer, has served for 3 years subsequently in an exemplary manner in any portion of regular Army (AA.s. 122).

2. The accused may also offer a plea in bar on the ground that a charge in respect of the offence has been dismissed as provided in AR 22 (2), i.e., that he has been acquitted, or the offence has been condoned, by his CO.

3. It has long been recognised as a custom of the service that a military offence can be condoned. For the purpose of barring a trial condonation means such conduct on the part of a competent authority i.e., an authority having power to determine that the charge should not be proceeded with-as is inconsistent with subsequently trying the offender, and as would make it inequitable to do so; it must be a deliberate and intentional act, done with full knowledge of all material facts. If, with full knowledge of the facts, competent authority removes an officer, or allows him to resign, he should not afterwards be tried by court-martial for his offence.

4. The evidence on the plea is to be taken on oath or affirmation.

5. If the finding on the plea, where the court allows it is confirmed, it amounts to an acquittal and is final. It must be noted that the finding of the court upon a plea in bar of trial whether in favour of or against the plea is subject to confirmation.

54. Procedure after plea of "Guilty".— (1) Upon the record of the plea of "Guilty", if there are other charges in the same charge-sheet to which the plea is "Not Guilty", the trial shall first proceed with respect to the latter charges, and after the finding on those charges, shall proceed with the charges on which a plea of "Guilty" has been entered, but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge or may subject to sub-rule (2), instead of trying him, record a finding of "Guilty" upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not Guilty" upon all the other alternative charges.

(2) Where alternative charges are preferred and the accused pleads "Not Guilty" to the charge which alleges the more serious offence and "Guilty" to the other, the court shall try him as if he had pleaded "Not guilty" to all the charges.

---

[1] Subs by SRO 17 (E), dated 6th December, 1993

(3) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall receive any statement which the accused desires to make in reference to the charge, and shall read the summary [ ][1] of evidence, and annex it to the proceedings or if there is no such summary [ ][1] shall take and record sufficient evidence to enable it to determine the sentence and the confirming officer to know all the circumstances connected with the offence. This evidence shall be taken in the manner provided in these rules in the case of plea of "Not Guilty".

(4) After evidence has been so taken, or the summary [ ][1] of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character.

(5) If from the statement of the accused or from the summary [ ][1] of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty", the court shall alter the record and enter a plea of "Not Guilty", and proceed with the trial accordingly.

(6) If a plea of "Guilty" is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under sub-rule (3) and (4) shall take place when the findings on the other charges in the same charge-sheet are recorded.

(7) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

NOTES

1. An accused person cannot be found guilty upon more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilt upon the alternative charge or charges. See AR 62 (7).

2. Where two alternative charges are preferred and the accused pleads "Not guilty" to the charge which alleges the more serious offence and "Guilty" to the other, the court should try him as provided by sub-rule (2), as if he has pleaded "Not guilty" to both charges. Having regard to AR 52(3), the most serious of two or more, alternative charges should always be placed first in a charge-sheet.

3. For procedure when statement made by the accused with reference to the charge is inconsistent with his plea; see notes 5 and 6.

4. The accused will always be asked, in case of a plea of "Guilty", whether he desires to call witness to character.

5. The statement referred to in sub-rule (5) includes a statement made by the accused under sub-rule (3) in reference to the charge, as well as a statement made in mitigation under sub-rule (4).

6. The following examples are given of cases in which a plea of "Guilty" should be altered to a plea of "Not guilty" under sub-rule (5) : —

(a) Sepoy A, charged with desertion (not being desertion to avoid a particular service), states "I always meant to come back".

(b) Sepoy B, charged with using criminal force to his superior officer, states, "I only did it to defend myself after he had struck me".

(c) Sepoy C, is charged with sleeping upon his post when a sentry. He makes no Statement with reference to the charge. On the reading of the summary of evidence, it is found that all the witnesses stated that Sepoy C was beyond the confines of his post when found asleep.

(d) Naik D is charged with disobeying a lawful command given by Naik E, his superior officer, and makes no statement with reference to the charge. He calls a witness as to character, who states incidentally that Naik E is junior to Naik D. In this case the action of the court in altering the plea of the accused would be founded upon the words "or otherwise" in sub-rule (5).

7. The test to be applied in all such cases is not whether the court believes the statement, but whether, if the statement was true, it would be a valid defence to the charge. In doubtful cases, the plea of "Guilty" should be altered to a plea of "Not guilty".

---

[1] Omitted by SRO 17 (E), dated 6th December, 1993

8. If the court fails to act under the provisions of sub-rule (5), the confirming officer should refuse confirmation and can order a new trial. If he confirms, the finding will be set aside.

9. Where the accused alleges provocation for the offence, it may be desirable to record a plea of "Not guilty"; see note 6 to AR 52.

10. In any case where the court is empowered to come to a special finding under the provisions of AA.s. 139 or AR 62(4) and (5), the court may accept a qualified plea of guilty in respect of an offence; see AR 62(9).

11. Although under sub-rule (7) the permission of the court is required to enable the accused to call witnesses in extenuation of the offence, and consequent mitigation of punishment, such permission should always be given.

12. For procedure in case of joint trials where one accused pleads 'Guilty' and the other 'Not guilty', see note 4 to AR 35.

55. Withdrawal of plea of "Not Guilty" subject to compliance with sub-rules (2) and (4) of Rule 52.—The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not Guilty" and plead "Guilty", and in such case the court will at once, subject to a compliance with sub-rules (2) and (4) of rule 52, record a plea and finding of "Guilty" and shall so far as is necessary, proceed in manner directed by rule 54.

NOTE

If the accused proposes to withdraw his plea of 'Not guilty', the court must inform him in terms of AR 52(2A) of the general effect of his withdrawal, and of the difference in the procedure, in the same manner as if he pleaded guilty under AR 52.

56. Plea of "Not Guilty", application for adjournment, and case for the prosecution.— After the plea of "Not Guilty" to any charge is recorded, the trial shall proceed as follows, that is to say:—

(1) the court shall ask the accused whether he wishes to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence, and shall record his answer;

(2) if the accused shall make any such application, the court shall hear any statement of evidence which he may desire to adduce in support thereof, and any statement of the prosecutor or evidence in answer thereto; and if it shall appear to the court that the accused has been prejudiced by any non-compliance with any of such rules relating to procedure or that he has not had sufficient opportunity of preparing his defence, it may grant such adjournment as may appear to it in the circumstances to be proper;

(3) the prosecutor may, if he desires and shall, if so required by the court make an opening address, and shall 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;

(4) the evidence for the prosecution shall then be taken;

(5) if it should be necessary for the prosecutor to give evidence for the prosecution on the facts of the case, he shall give it after the delivery of his address (if any), and he must be sworn or affirmed, as the case may be, and give his evidence in detail; and

(6) he may be cross-examined by or on behalf of the accused and afterwards may make any statement which might be made by a witness on re-examination.

NOTES

1. As to the rights of the accused to prepare his defence, see AR 33 and notes thereto. As to warning of accused for trial see AR 34 and notes thereto.

2. For adjournment see AR 82. The court must adjourn if it appears to it that the accused is likely to be prejudiced by non-compliance with any of the rules relating to procedure before trial or that he did not have sufficient time to prepare his defence.

3. As to the duties of the prosecutor see. AR 77 and notes, and memoranda on page 312 to 314.

4. In case of complexity, the prosecutor should always make an opening address, so that the members of the court may be enabled to understand the general nature of the allegations. He must be careful to refrain from making any assertions which he does not propose to substantiate by evidence. The address of the prosecutor may be in writing, in such a case it should be read by him and handed to the court for attachment to the proceedings. If the address is made orally, see AR 92(4).

5. For general provisions as to witnesses and evidence, see ARs 134 to 143. The evidence will be taken by question and answer, or the witness may be asked to tell his own story, questions being subsequently asked to make good any omissions, see AR 92 (2).

It is the duty of the prosecutor to conduct the examination of the witnesses for the prosecution and to see that all facts essential to constitute the offence are proved; e.g., on a charge laid under AA.s. 56(a) for making a false accusation against Havildar A, it must be proved :—

(a) that the accused made the accusation in question against Havildar A;

(b) that it was false;

(c) that the accused made it knowing it to be false.

The prosecutor must be careful, in examining his witnesses, to avoid putting leading or suggestive questions.

6. Documentary evidence will be read by the presiding officer or JA; it will then be marked with a distinguishing figures and attached to the proceedings. As a rule, it will be sufficient to attach copies of documents which must, however, be compared with the originals by the court and certified under the hand of the presiding officer to be true copies; see note 3 to AR 67.

7. For the duties of the presiding officer, see AR 76.

8. If the same person gives evidence in more than one case tried by the same court, he must be sworn (or affirmed) as a witness in each case, even if all such cases are tried on a single day.

9. The prosecutor should never give evidence for the prosecution, unless it be evidence of a merely formal nature, or for the purpose of producing documents which are in his possession. In exceptional cases, however (e.g., active service), no prosecutor may be available except an officer who is a material witness as to the facts for the prosecution. In such a case the prosecutor must give his evidence before any other witness for the prosecution, and must not, after delivering an address, be allowed to answer generally as to the truth of the statements contained in such address.

10. When counsel appears on behalf of the prosecutor, sub-rule (5) and (6) of this rule do not apply.

11. As to questions by the court see ARs 142 and 143.

[57. Plea of no case.—(1) At the close of the case for the prosecution, the accused may offer a plea that the evidence given on behalf of the prosecution, in respect of any one or more charges, has not established a prima-facie case against him and that he should not, therefore be called upon to make his defence to that charge or charges.

(2) Where the accused takes such a plea, the prosecutor may address the court in answer thereto and the accused may reply.

(3) The court shall consider the plea in closed court and shall not allow the plea unless satisfied that :—

(a) the prosecution has not established a prima-facie case on the charge or charges as laid; and

(b) it is not open to it on the evidence adduced to make a special finding either under section 139 or sub-rule (4) of rule 62.

(4) If the court allows the plea, it shall record a finding of "Not Guilty" on the charge or charges, to which the plea relates, and shall announce the finding forthwith in open court as subject to confirmation.

(5) If the court over rules the plea, it shall proceed with the trial.

(6) If the court has any doubt as to the validity of the plea, it may refer the matter to the convening authority, and adjourn for that purpose.

(7) The court may, of its own motion, after the close of the case for the prosecution, and after hearing the prosecutor find the accused "Not Guilty" of the charge, and announce the finding forthwith in open court as subject to confirmation.

(8) The court shall record brief reasons while arriving at the finding on the plea, in accordance with sub-rule (1) of rule 62.][1]

[1] Sub vide SRO 17 (E), dated 6th December, 1993

NOTE

It is open to the accused, his counsel or defending officer, at the close of the case for the prosecution, to submit that the evidence given for the prosecution has not established a prima facie case against him and that he should not, therefore, be called upon for his defence. The court will consider this submission in closed court and, if it is satisfied that it is well founded, must acquit the accused. The submission may be made in respect of any one or more charges in a charge-sheet.

[58. Examination of the accused and defence witnesses.—(1) (a) In every trial, for the purpose of enabling the accused personally to explain any circumstances appearing in evidence against him, the court or the Judge Advocate:—

(i) may at any stage, without previously warning the accused, put such questions to him as considers necessary;

(ii) shall, after the close of the case for the prosecution and before he is called on for his defence, question him generally on the case.

(b) No oath shall be administered to the accused when he is examined under clause (a).

(c) The accused shall not render himself liable to punishment by refusing to answer questions referred in clause (a) above, or by giving answers to them which he knows not to be true.

(2) After the close of the case for the prosecution, the presiding officer or the judge advocate, if any, shall explain to the accused that he may make an unsworn statement, orally or in writing, giving his account of the subject of the charge(s) against him or if he wishes, he may give evidence as a witness, on oath or affirmation, in disproof of the charge (s) against him or any person charged together with him at the same trial:—

Provided that —

(a) he shall not be called as a witness except on his own request in writing;

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the court or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) if he gives evidence on oath or affirmation, he shall be examined as first witness for defence and shall be liable to be cross-examined by the prosecutor and to be questioned by the court.

(3) The accused may then call his witnesses including, if he so desires, any witnesses as to character. If the accused intends to call witnesses as to the facts of the case other than himself, he may make an opening address before the evidence for defence is given.][1]

NOTES

1. The question as to the calling of witnesses will be put by the JA, or if there is none, by the presiding officer.

2. The presiding officer or the JA may question the accused for the purpose of enabling him (accused) to explain any circumstance appearing in his statement or in the evidence against him. Such questions may be put even though the accused has made no statement. The questions and the accused's answers thereto should, as far as possible, be recorded verbatim.

3. The questions should not be put in the way of cross-examination or for testing his defence or for supplementing the prosecution case. The accused does not render himself liable to punishment for refusing to answer such questions or giving answers to them which he knows not to be true.

4. The accused has the privilege of making statements which are unsupported by evidence. Any statement of the facts, though not on oath, upon which the accused relies for his defence, must be taken into consideration by the court, who may draw its inferences from it. If made orally, it should be taken down verbatim, so far as it states facts which are within the personal knowledge of the accused and upon which he relies for his defence. If made in writing it shall be read and attached to the proceedings.

---

[1] Substituted by SRO 17(E), dated 6th December,1993

5. The fact that the accused has stated that he does not intend to call any witnesses to the facts of the case does not prevent him from doing so before the evidence for the defence is completed if, for example, unexpected witnesses become available.

6. As to calling and recalling witnesses in reply see AR 143.

7. It is the duty of counsel for the defence or defending officer (if any) or the accused to conduct the examination of the witnesses for the defence.

8. As to counsel and defending officer, see ARs 95 to 101.

9. The utmost liberty consistent with the interests of parties not before the court and with the dignity of the court itself should be allowed to the accused in making his defence [see AR 77(3)], and the court should, if necessary, adjourn to allow him time for its preparation.

10. For procedure when two or more persons are tried together, see AR 78.

[59. Closing Addresses.—After the examination of the witnesses, the prosecutor may make a closing address and the accused or his counsel or the defending officer, as the case may be, shall be entitled to reply;

Provided that where any point of law is raised by the accused, the prosecutor may, with the permission of the court, make his submission with regard to that point.][1]

NOTES

1. The prosecutor's address may be in writing, and in such a case it should be read by the prosecutor and handed to the court for attachment to the proceedings. If the address is made orally; see AR 92(4).

2. Counsel for the defence may not state as a fact any matter which has not been proved in evidence (AR 100) and the same restriction is placed upon a defending officer (AR 95(3)).

3. In his closing address, the prosecutor must confine his remarks to the evidence given by the witnesses for the prosecution and defence; he must not strain or overstate that view of the facts which it is his duty to present to the court. He must not state any new fact which has not been given in evidence. Any deviation in these respects on the part of the prosecutor, or any want of moderation, may lead to the setting aside of the proceedings; if it appears that injustice has been done thereby to the accused. It is the duty of the court, as far as possible, to prevent the prosecutor from transgressing in any of these respects.

59-A. [Omitted][2]

60. Summing up by the judge-advocate.—(l) The judge-advocate (if any) shall sum up in open court the evidence and advise the court upon the law relating to the case.

(2) After the summing up of the judge-advocate, no other address shall be allowed.

NOTES

1. A summing up by JA is obligatory under sub-rule (1). It may be given orally or in writing; see AR 144; but in practice it should invariably be in writing.

In his summing up the JA should explain the charges and the law relating to them, the issues raised by the charges and briefly recapitulate the evidence on such issues. He must be careful not to indicate to the court any opinion he may have formed regarding the facts of the case.

2. For the powers and duties of JA, see AR 105 and notes thereto.

Finding and sentence

61. Consideration of finding.—(1) The court shall deliberate on its finding in closed court in the presence of the judge-advocate.

---

[1] Subs by SRO 17 (E), dated 6th December, 1993

[2] Omitted by SRO 17 (E), dated 6th December, 1993

(2) The opinion of each member of the court as to the finding shall be given by word of mouth on each charge separately.

NOTES

1. For sitting in closed court see AR 80.

2. The presiding officer or the judge advocate (if any) should initiate the deliberations of the court by a statement of the questions to be considered and the order in which they should be considered. If, for example, the charge is laid under AA.s. 41(2), he will ask the members to discuss the bearing of the evidence upon the following questions;

(a) was a command given? (b) was it a lawful command ? (c) was it given by the superior officer of the accused? (d) was it disobeyed by the accused? (e) did the accused know that the person giving the order was his superior officer?

Similarly, where the charge laid is under AA.s. 63, the questions to be considered should be:

(a) have the facts alleged in the particulars of the charge been proved in evidence? if they have,

(b) do such facts amount to an act (or omission) prejudicial to good order and military discipline?

3. If the court is doubtful whether the actual offence charged is proved or whether the particulars of the charge have been satisfactorily established in evidence, they must consider their powers of making a special finding, either under AA.s. 139 or under AR 62(4).

4. The members of courts-martial must remember that (a) it is a fundamental rule of criminal law followed in India that an accused person is presumed to be innocent until he has been proved to be guilty, and (b) that their finding must be based upon the evidence given before them. See AR 45 for form of oath/ affirmation for members. Any statement made by the accused, even if not on oath must be carefully considered. Though not given on oath and not subject to the test of cross-examination, it will often be of value particularly if it is in any respect corroborated by evidence from other sources (see note 4 to AR 58).

5. At any time before the finding has been arrived at the court may be reopened to enable a witness to be called or recalled and examined by it through the presiding officer or JA, see AR 143(4).

6. As to form and record of finding, see AR 62.

7. The opinions of members must be given orally. As to taking opinions, see AR 87 and notes thereto.

62. Form, record and announcement of finding. —[(1) The finding on every charge upon which the accused is arraigned shall be recorded and, except as provided in these rules, shall be recorded as finding of 'Guilty' or 'Not Guilty'. After recording the finding on each charge, the court shall give brief reasons in support thereof. The judge advocate or, if there is none, the presiding officer shall record or cause to be recorded such brief reasons in the proceedings. The above record shall be signed and dated by the presiding officer and the judge advocate, if any.][1]

(2) Where the court is of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the court shall acquit the accused of that charge.

(3) If the court doubts as regards any charge whether the facts proved show the accused to be guilty or not of the offence charged or of any offence of which he might under the Act legally be found guilty on the charge as laid, it may, before recording a finding on that charge, refer to the confirming authority for an opinion, setting out the facts which it finds to be proved, and may if necessary, adjourn for that purpose.

(4) Where the court is of opinion as regards any charge that the facts which it finds to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not guilty", record a special finding.

[1] Subs by SRO 17 (E), dated 6th December, 1993

(5) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

(6) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "Not Guilty" on that charge.

(7) The court shall not find the accused guilty on more than one of two or more charges laid down in the alternative, even if conviction upon the charge necessarily connotes guilty upon the alternative charge or charges.

(8) If the court thinks that the facts proved constitute one of the offences stated in two or more of the alternative charges, but doubts which of those offences the facts do at law constitute, it may, before recording a finding on those charges, refer to the confirming authority for an opinion, setting out the facts which it finds to be proved and stating that it doubts whether those facts constitute in law the offence stated in such one or other of the charges and may, if necessary, adjourn for that purpose.

(9) In any case where the court is empowered by section 139 to find the accused guilty of an offence other than that charged, or guilty of committing an offence in circumstances involving a less degree of punishment, or where it could, after hearing the evidence, have made a special finding of guilty subject to exceptions or variations in accordance with sub-rules (4) and (5) it may, if it is satisfied of the justice of such course, and if the concurrence of the convening officer is signified by the prosecutor, accept and record a plea of guilty of such other offences or of the offence as having been committed in circumstances involving such less degree of punishment or of the offence charged subject to such exceptions or variations:

Provided that failure to obtain the concurrence of the convening officer as aforesaid shall not invalidate the proceedings when confirmed notwithstanding such failure.

(10) The finding on each charge shall be announced forthwith in open court as subject to confirmation.

NOTES

1. Sub-rule (1) is applicable to all charges including alternative charges, except in those cases which fall within AR 52(3).

2. In the case of an acquittal on every charge the presiding officer must date and sign the proceedings. The JA, if any, must also sign; see AR 63.

3. Where a person is charged with dishonestly receiving property, knowing it to be stolen and the facts show, that although the property was in fact stolen the accused was unware that it was stolen property, the court must acquit as provided by sub-rule (2) as the accused would not have committed the offence charged.

4. For special findings in respect of the statement of offence, see AA.s. 139.

5. Before referring to the confirming authority as provided under sub-rule (3), the Court must have arrived at a decision as to the facts which it finds to be proved and the opinion of the confirming authority will be sought as to whether, upon the facts so found to be proved, the accused can legally be found guilty. The court cannot refer to the confirming authority for any opinion as to the facts, as to which it is the sole judge. The reason for the reference should be recorded, The opinion of the confirming officer should be read upon re-assembly of the court and attached to the proceedings.

6. The special finding referred to in sub-rule (4) relates only to the particulars of the charge and not to the statement of the offence, as to which see AA.s. 139 and notes. Before recording a special finding under this sub-rule, the court must be satisfied that the facts which it finds to be proved, subject to certain exceptions and variations, amount to the substance of the charge; otherwise they must acquit; e.g.,

(a) On a charge against a sepoy for losing by neglect a great coat and a waist belt; the court may properly find the accused "guilty of the charge except that he did not lose a waist belt, but it cannot legally find him "guilty of the charge except that he made away with and did not lose the articles in question".

(b) An immaterial variation of date may be made by special finding, but in case of desertion or absence without leave, the substitution of a date which would have the effect of lengthening the period of absence alleged in the charge, would not be permissible.

(c) On a charge of using criminal force to his superior officer (Havildar A) by striking him with his fist in the face, the court could properly except the words , "in the face", but it cannot make a special finding substituting Havildar B for Havildar A.

(d) On a charge of dishonestly misappropriating Rs.100, a special finding that the sum misappropriated was Rs. 50 would be permissible; but a special finding omitting from the particulars the word "dishonestly" would tantamount to an acquittal.

7. For general procedure in respect of sub-rule (8) see note 5 above.

8. Sub-rule (9) provides that where the court is empowered to come to a special finding under the provisions of A.A.s. 139 or AR 62 sub-rules (4) and (5), it may accept a qualified plea of guilty, if it is satisfied of the justice of such course and the concurrence of the convening officer is signified by the prosecutor and record a special finding. For example, if an accused charged with desertion pleads guilty to absence without leave, or if an accused charged with losing by neglect a number of articles pleads guilty in respect of some of those articles only, the court may accept such qualified plea and record a special finding accordingly.

63. Procedure on acquittal.— If the finding on all the charges is "Not Guilty", the presiding officer shall date and sign the finding and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge-advocate (if any) shall be at once transmitted for confirmation.

NOTE

Even the finding of "Not guilty" by a GCM, DCM or SGCM requires confirmation and is not valid until so confirmed; see AA.s. 153.

64. Procedure on conviction.— (1) If the finding on any charge is "Guilty" then, for the guidance of the court in determining its sentence, and of the confirming authority in considering the sentence, the court, before deliberating on its sentence, shall, whenever possible, take evidence of and record the general character, age, service, rank and any recognised acts of gallantry or distinguished conduct of the accused, any previous convictions of the accused either by a court-martial or a criminal court, any previous punishments awarded to him by an officer exercising authority under sections 80, 83, 84 or 85, as the case may be, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled.

(2) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books respecting the accused and identifying the accused as the person referred to in that summary.

(3) The accused may cross-examine any such witness, and may call witnesses to rebut such evidence; and if the accused so requests, the regimental books, 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 regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if it finds it is not in accordance there-with, shall cause the summary to be corrected.

(4) When all the evidence on the above matters has been given, the accused may address the court thereon and in mitigation of punishment.

NOTES

1. See AA.s. 144 and notes thereto.

2. The court will always take evidence as to character, unless the circumstances render it impracticable to do so, in which case, it will record upon the proceedings the reasons for such impracticability.

3. Evidence upon the matters referred to in this rule should not be given by a member of the court.

4. The court cannot take oral evidence that the accused is of bad character; this should be proved in the manner shown in sub-rule (2); but oral evidence of good character is always permissible. If the accused calls witnesses as to his good character, they may be cross-examined by the 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.

5. The court will also consider the length of time during which the accused has been in arrest awaiting trial upon the present charge or charges.

6. If by reason of the nature of the service of the accused, the finding of the court renders him liable to any exceptional punishment in addition to that to be awarded by the sentence of the court, the prosecutor should call the attention of the court to the fact, and the court should enquire into the nature and amount of such additional punishment.

7. For definition of "Military reward", see AA.s. 3(xiv).

8. Previous conviction of the accused will be proved by the production of a verbatim extract from the regimental books (IAFD-905) duly completed by the officer-in-charge of these books (see note 10 below and AA.s. 142(3) and (4)). The term 'regimental books' includes departmental books of the same nature as those maintained by Corps, e.g., sheet roll or a court-martial book, but does not include departmental business books. If the accused challenges the correctness of the regimental books, see sub-rule (3). If there is any reason to doubt the correctness of the entry in the regimental books of a civil conviction, such conviction may be proved by an extract certified by the person having the custody of the records of the court in which the accused was convicted.

9. The witness producing the extract from the regimental books 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 (see note to AR 56). He must be sworn as any other witness and may be cross-examined by the accused and questioned by the court.

10. The copy of the material entries in the regimental book must be certified by the officer having custody of the original book (AA.s. 142(4)); custody includes temporary custody for the purpose of the trial.

65. Sentence.— The court shall award a single 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 offence 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.

NOTES

1. This rule applies whether the charges on which the offender has been tried are contained in one or several charge-sheets.

2. As to postponement of sentence where several persons are tried separately for offences arising out of the same transaction; see AR 89(4).

3. The sentence must be a sentence authorised by the AA (see AA ss. 71 to 76) e.g., a court-martial cannot award a sentence of confinement to lines, or sentence an offender to restore stolen property. But a court-martial may under AA.s. 151(1) make a separate order for the disposal of property. Such an order should be recorded below the signature of the presiding officer to the sentence and should be separately dated and signed by the presiding officer.

4. For procedure in voting upon the sentence, see AR 87 and notes thereto.

5. The object of the later portion of this rule is to prevent legal objection to the validity of the sentence. If, for example, an offender has been found guilty by a GCM on a charge of desertion on active service, and also upon a charge under A.A..s. 54(a) for making away with arms and equipment, a sentence of death in respect of the first charge will be valid, although a sentence of 10 years imprisonment is the maximum sentence which could have been awarded upon the second charge.

6. Sentence, unless for one or more years exactly, should if for one month or upwards, be recorded in months. Sentence consisting partly of months and partly of days should be recorded in months and days. A month means a calendar month.

7. Even if the accused is considered by the medical officer, who examines him before trial, unfit to undergo rigorous imprisonment, the court can sentence him to it as it is the duty of the medical officer of the prison, or place of military custody, to decide what severity of labour he can undergo.

8. Sentence of simple imprisonment is inexpedient and inconvenient of execution.

66. Recommendation to mercy.—(1) If the court makes a recommendation to mercy, it shall give its reasons for its recommendation.

(2) The number of opinions by which the recommendation to mercy mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

NOTES

1. A recommendation to mercy will be appended to the sentence; it forms part of the proceedings of the court.

2. In view of the discretion of the court in the matter of awarding sentence, 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 as venial one, thinks that, owing to the offender's character or other exceptional circumstances, he should not suffer the full penalty which the offence would ordinarily demand. As a rule the court will be able to adjust the sentence according to what, in its judgement, 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.

3. 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 states its opinion that the accused "did not intend to strike", it must be treated as an acquittal, the intent being an element of the offence.

4. Recommendation to mercy is a matter which the court has to decide under AR 87 (1).

67. Announcement of sentence and signing and transmission of proceedings.— (1) The sentence together with any recommendation to mercy and the reasons for any such recommendation will be announced forthwith in open court. The sentence will be announced as subject to confirmation.

(2) Upon the court awarding the sentence, the presiding officer shall date and sign the sentence and such signature shall authenticate the whole of the proceedings and the proceedings upon being signed by the Judge-Advocate (if any), shall at once be transmitted for confirmation.

NOTES

I. It is essential that the date of the sentence should be inserted as under AA.s. 167 a term of imprisonment is reckoned to commence on the day on which the sentence and proceedings were signed by the presiding officer. When, however, the presiding officer after recording the finding and sentence, omits to either sign or date the proceedings, he can, even after confirmation, sign them and date his signature as of the true date of the decision. The proceedings must not be signed by the members of the court other than the presiding officer.

2. The signature authenticates the whole of the proceedings, including the documentry evidence produced at the trial.

3. When an original document is produced in evidence, it will rarely be necessary to annex it to the proceedings. A certified copy should be produced to the court, together with the original, the former being attached to the proceedings, and the latter returned to its proper custodian. Documents, the actual appearance of which is material to the case (e.g., alleged forgeries), shall always be attached in original.

Confirmation and Revision

[68. Revision.—(1) Where the finding is sent back for revision under section 160, the court shall re-assemble in open court, the revision order shall be read, and if the court is directed to take fresh evidence, such evidence shall also be taken in open court.

(2) Except where the court is directed to take fresh evidence, no fresh evidence shall be adduced.

(3) The court may, on a request from the prosecutor, in the interest of justice, allow a witness to be called or re-called for the purpose of rebutting any material statement made by a witness for the defence during revision.

(4) After the revision order has been read in open court, whether the revision is of finding or sentence and the evidence, if any, in accordance with sub-rules (1), (2) and (3) has been taken, the prosecutor and the accused shall be given a further opportunity to address the court in the order as laid down in rule 59. If necessary, the judge-advocate, if any, may sum up the (additional) evidence and advise the court upon the law relating to the case. The court shall then deliberate on its finding or the sentence, as the case may be, in closed court.

(5) Where the finding is sent back for revision and the court does not adhere to its former finding, it shall revoke the finding and sentence, and record the new finding, in the manner laid down in rule 62, and if such new finding involves a sentence, pass sentence afresh after complying with rule 64.

(6) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(7) After the revision, the presiding officer shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate, if any, shall at once be transmitted for confirmation.]¹

¹ Subs by SRO 17 (E), dated 6th December, 1993

NOTES

1. Under the military law in force, a finding of acquittal can be revised and the accused found guilty and sentenced, a sentence can be increased on revision, the fresh evidence can (if so ordered) be taken on revision.

2. A court cannot be re-assembled more than once for revision, whether of finding or of sentence.

3. The object of revision will generally be to cure defects in the finding or sentence, or both. The confirming officer, however, by partial confirmation or by exercising his powers under AR 72 (1) or 73 can often correct mistakes made by the court, and thus obviate the inconvenience of reassembling the court for revision.

4. If the sentence originally awarded by the court is wholly illegal, e.g., a sentence of rigorous imprisonment awarded to a WO by a DCM, or a sentence of reduction to ranks awarded to a lance-naik, or a sentence of confinement to lines awarded to a sepoy, it is null (see note 2 to AR 73), and the court, on revision, may award any legal sentence; in such a case the confirming officer cannot pass a valid sentence; but see AA.s. 163 for alteration of sentence after confirmation.

5. Where a special finding should have been recorded under AA.s. 139 or AR 62(4), the finding should be sent back for revision. A confirming officer cannot substitute a special finding on any charge for the court's finding; but see AA.s. 163 for subtitution of a finding after confirmation.

6. If a court brings in a finding of "not guilty" against the weight of evidence, the court may be re-assembled and the confirming officer may give his views on the evidence, directing the attention of the court to any special points which it appears to have failed, to appreciate.

7. A finding of insanity may also, be sent back for revision.

8. A confirming officer cannot send back part of a finding or sentence; if he thinks that a part only requires revision, he must return the whole, pointing out the part which, in his opinion, requires revision.

9. The court should be re-assembled as soon as practicable. If the court upon reassembly is reduced, by death or otherwise, below the legal minimum [see AA.s. 160(2) and (3)], it cannot proceed with the revision, and the proceedings must be returned to the confirming authority. In such a case, as no revision has taken place, the original finding and sentence will stand and will be dealt with by the confirming authority.

10. Under AA.s. 167, the term of imprisonment commences on the date of original sentence. Also see notes to AA.s. 167.

11. **[to be omitted].**

12. If the revised finding is an acquittal or a finding of insanity, no sentence is involved. If a court, on revision revokes its original finding on any charge, the original sentence, if any, automatically falls to the ground and, if the revised finding entails a sentence, the court must pass sentence afresh; if the court omits to do so the accused is not legally under any sentence and the confirming officer may return the proceedings with directions to the court to complete the revision and pass sentence. This will not be a second revision, which is prohibited by AA.s. 160(1).

13. If the original finding was acquittal and the revised finding is "Guilty", the court will (whether ordered to take fresh evidence or not) proceed as directed by AR 64. The evidence referred to in sub-rule (1) is evidence of the facts relating to the charge, and must not be taken on revision unless specially ordered as per AA.s. 160(1).

69. Review of court-martial proceedings.— The proceedings of a general court-martial shall be submitted by the judge-advocate at the trial for review to the deputy or assistant judge-advocate general of the command who shall then forward it to the confirming officer. The proceedings of a district court-martial shall be sent by the presiding officer or the judge-advocate direct to the confirming officer who must, in all cases, where the sentence is dismissal or above, seek advice of the deputy or assistant judge-advocate general of the command before confirmation.

NOTE

This rule provides for a statutory review of all GCM proceedings and in DCM proceedings where the sentence awarded is dismissal or above.

70. Confirmation.—Upon receiving the proceedings of a general or district court-martial, the confirming authority may confirm or refuse confirmation or, reserve confirmation for superior authority, and the confirmation, non-confirmation, or reservation shall be entered in and form part of the proceedings.

NOTES

1. See AA.ss. 153 to 159 and ARs 72 to 74. As to confirmation of SGCM proceedings, see AA.s. 157 and AR 162.

2. The minute of reservation should be entered in the proceedings.

3. Sentence of death must be reserved for confirmation by the Central Government. See warrants A-2 and A-3 for confirmation of GCM proceedings and AA.s. 156 and notes thereto.

4. Confirmation is complete when proceedings are promulgated to the accused.

71. Promulgation.—The charge, finding, and sentence, 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 sentence shall not be held to have been confirmed until they have been promulgated.

NOTES

1. For the date from which a sentence of cashiering or dismissal takes effect, see AR 168.

2. In the absence of any direction by the confirming authority, the usual custom of the service as to promulgation will be followed, but a written notice to the offender of the charge, etc., will be sufficient promulgation under this rule. Also see Regs for the Army para 473.

3. As to committal to a civil prison or to military custody of persons sentenced to imprisonment, see AA.s. 169; as to action in exceptional cases, see AA.s. 171.

4. For forms of committal warrants, see Appendix IV, Part II to AR.

5. As to the suspension of sentences of imprisonment, see AA.ss. I82 to 190.

72. Mitigation of sentence on partial confirmation.— (1) Where a sentence has been awarded by a court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of such charges, that authority shall take into consideration the fact of such non-confirmation and shall, if it seems just, mitigate, remit, or commute the punishment awarded accordingly as it seems just, having regard to the offences in the charges in respect of the findings which are confirmed.

(2) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and anyone of such charges or the finding thereon is found to be invalid, the authority having power to mitigate, remit, or commute the punishment awarded by the sentence shall take into consideration the fact of such invalidity and if it seems just, mitigate, remit or commute the punishment awarded accordingly as it seems just, having regard to the offences in the charges on which the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences.

NOTES

1. As to the meaning of the terms mitigation, remission and commutation, see notes to AA.s. 158.

2. Where a sepoy has been convicted of (a) desertion on active service under AA.s. 38(1) and (b) of theft of Government property under AA.s. 52(a), and has been sentenced to rigorous imprisonment for 14 years; and the confirming officer confirms the finding on the second charge but not that on the first charge, which alone justified the sentence of 14 years rigorous imprisonment, he is bound under this rule to remit the sentence at least to rigorous imprisonment for 10 years, which is the maximum sentence under AA.s. 52 (a). If, however, the confirming officer confirms the finding of the first charge and not that on the second, he may mitigate or commute it to some less punishment, if he considers that a sentence of rigorous imprisonment for 14 years on the first charge alone is, in the circumstances, too severe.

3. Sub-rule (2) gives to the authority prescribed under AA.s. 179 similar powers to do after confirmation which under sub-rule (1) the confirming officer may do before confirmation. But it will be noted that the prescribed authority is only required to act under sub-rule (2) where anyone of the charges or the finding thereon, is found to be invalid and has been set aside. The prescribed authority derives the ordinary powers of mitigation etc., from AA.s. 179.

4. As to substitution of a valid for an invalid sentence, see AA.s. 163.

73. Confirmation notwithstanding informality in or excess of punishment.— If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorised by law, the confirming authority may vary the sentence so that the sentence shall not be in excess of the punishment authorised by law; and the confirming authority may confirm the finding and the sentence, as so varied, of the court-martial.

NOTES

1. The object of this rule is to prevent the proceedings of courts-martial from being rendered invalid when they cannot be sent back for revision without great inconvenience to the public service. It will not exonerate from blame the presiding officers and members of courts-martial who award sentences which are informal or in excess of their powers. If confirming officers decide to act under this rule, instead of ordering a revision of the sentence, they should call the attention of the members of the court to the informality or irregularity of the sentence.

2. The confirming authority cannot under this rule vary a sentence which is illegal in its character and therefore null e.g., a sentence of imprisonment awarded by a DCM to a WO or a sentence of reduction awarded to a lance-naik, or a sentence of confinement to lines awarded to a sepoy. In such cases the court must be reassembled for the purpose of passing a valid sentence.

74. Member or prosecutor not to confirm proceedings.— A member of a court-martial, or an officer who has acted as a prosecutor at a court-martial shall not confirm the finding or sentence of that court-martial and where such member or prosecutor becomes confirming officer, he shall refer the finding and the sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of court-martial.

NOTE

If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null and it is open to the proper authority to confirm them.

Proceedings of General and District Court-Martial

75. Seating of members.— The members of a court-martial shall take their seats according to their army rank.

76. Responsibility of presiding officer.— (1) The presiding officer is responsible for the trial being conducted in proper order and in accordance with the Act, rules made thereunder and in a manner befitting a court of justice.

(2) It is the duty of the presiding officer to see that justice is administered, that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance, or of his incapacity to examine or cross-examine witnesses or otherwise.

NOTES

1. The court should always have at its disposal the AA, AR, Regs for the Army and any other official books or orders which are necessary for the purpose of its proceedings. For this purpose, the court-martial box containing books and publications as laid down in order issued from time to time will be made available to the Court.

2. The presiding officer should be careful to safeguard the dignity of the court and the solemnity of its proceedings.

3. If any person, other than the accused, interrupts the proceedings, he should ordinarily be excluded from the court. The court has, however, further powers under AR 150 for dealing with persons who interrupt its proceedings. (See also AA.s. 152 and notes thereto). The trial of a person cannot proceed in his absence, even though he interrupts the proceedings.

4. If the accused is not represented by counsel or defending officer, the presiding officer should assist him in putting forward his defence, and take care that he is not prejudiced by his inability to put proper questions to the witnesses or bring out clearly the points upon which he relies. If there is a JA, he has a similar duty [AR 105(7)] but the presence of a JA does not relieve the presiding officer of his responsibility under this rule. If a witness gives evidence different from that given by him when the summary of evidence was taken, he should be questioned as to the difference.

5. The presiding officer should always put to the witnesses any questions which appear to him necessary or desirable for the purpose of eliciting the truth; see AR 143 and notes thereto.

77. Power of court over address of prosecutor and accused.— (1) It is 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 favour of, the accused.

(2) The prosecutor may not refer to any matter, not relevant to the charge or charges then before the court, and it is the duty of the court to stop him from so doing and also restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.

(3) The court shall allow great latitude to the accused in making his defence; he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and the motives of the witnesses and the prosecutor, and charge other persons

with blame and even criminality, subject, if he does so, to any liability which he may thereby incur. The court may caution the accused as to the irrelevance of his defence, but shall not, unless in special cases, stop his defence solely on ground of such irrelevance.

NOTES

1. As to the duties of the prosecutor, see memoranda on page 312. As to the addresses by the prosecutor, see ARs 56, 58, 59 and 78.

2. The prosecutor is an officer whose duty, it is to see that justice is done and not a partisan intent on securing a conviction independently of the justice of the case. He should, therefore, put before the court facts which show the true character of the offence, and must be careful to prove affirmatively any facts tending to show the innocence of the accused or extenuate his offence, e.g., he should himself produce any available evidence of provocation which might mitigate punishment.

3. It occasionally happens that a sepoy charged with desertion was to the knowledge of the prosecutor, arrested or rendered an involuntary absentee at a date earlier than the termination of his absence as alleged in the particulars of the charge. In such circumstances it is the duty of the prosecutor, although he has no direct evidence to prove the earlier termination of the absence, to tell the court the information which he possesses, and to invite them to act upon such information by recording a special finding under AR 62(4).

4. The prosecutor must not introduce matters of aggravation into the evidence against the accused unless they are relevant to the charge against him. Generally speaking, anything which tends to show that the accused committed the offence charged, or to show the true character of the offence, is relevant.

5. As to the latitude to be given to the accused in making his defence, see notes to AR 58. If the accused charges other persons with blame or criminality, the court should caution him that he may be incurring a liability to be charged subsequently with knowingly making a false accusation. [AA.s. 56(a)].

6. The case must be very special indeed to justify the court in stopping the accused in his defence, or in excluding on the ground of irrelevancy, evidence offered by him, or to justify any further proceedings against him on account of his defence.

78. Procedure on trial of accused persons together.— Where two or more accused persons are tried together and any evidence as to the facts of the case is tendered by anyone or more of them, the evidence and addresses on the part of or on behalf of all the accused persons shall be taken before the prosecutor replies, and the prosecutor shall make one address only in reply as regards all the accused persons.

79. Separate charge-sheets.— (1) The convening officer may direct any charges against an accused person to be inserted in different charge-sheets, and when he so directs, the accused shall be arraigned and unti1 after the finding tried, upon each charge-sheet separately, and the procedure in rules 48 to 62, both inclusive, shall, until after finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused.

(2) The trials upon the several charge-sheets shall be in such order as the convening officer directs.

(3) When the court have tried the accused upon all the charge-sheets they shall, in the case of the finding being "Not guilty" on all the charges, proceed as directed by rule 63, and in case of the finding on any one more of the charges being "Guilty" proceed as directed by rules 54 and 64 to 67, both inclusive, in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.

(4) If the convening officer directs that in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such event may, without trying the accused upon any of the subsequent charge-sheets, proceed as provided in sub-rule (3).

(5) Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and in such case the court, unless they think his claim unreasonable, shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.

(6) If a plea of "Guilty", to any charge in a charge-sheet has been recorded as the finding of the court, the provisions of sub-rules (3) and (4) of rule 54 shall not be complied with until after the court had arrived at its findings on all the charge-sheets.

NOTES

1. Most of the ordinary cases which come before courts-martial are so simple in their facts that an accused person is not likely to be embarrassed by being tried upon several charges at the same time. But if the charges are complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different charges, embarrassment is likely to arise, and in such cases the convening officer should cause the charges to be inserted in separate charge-sheets, numbered consecutively in the order in which he directs them to be tried.

2. It is difficult to lay down for the guidance of convening officers any definite rules as to the placing of the charges in different charge-sheets; much will depend upon the circumstances of each particular case. But the following general principles may be laid down:-

(a) Alternative charges must not be placed in different charge-sheets.

(b) A series of offences forming part of one escapade should normally be placed in a single charge-sheet, e.g., escape from custody followed by resistance to escort upon re-arrest and gross insubordination to the guard commander after recommittal to confinement. Multiplicity of charges arising out of the same transaction should, however, be avoided, though in some cases it is necessary to allege a series of offences, e.g., to prove some particular intent, or to guide the court in determining the proper punishment to be awarded.

(c) Repeated instances of offences of the same or similar character should be included in a single charge-sheet; e.g., a series of barrack-room thefts from comrades during a short span of time.

(d) Offences of different description 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, e.g., where a soldier is charged with desertion and with using criminal force to his superior officer after he had been handed over to the escort, the charges should normally be inserted in separate charge-sheets, unless the facts are simple. But if immediately before the alleged desertion, the accused made away with his Army clothing, a charge in respect of the latter offence is relevant to the intent of the accused in leaving his unit and should be inserted in the same charge-sheet as the charge of desertion.

3. Even if the convening officer has directed all charges to be inserted in a single charge-sheet, the accused under sub-rule (5) has the right to apply for separate trial.

4. Where the accused is arraigned on separate charge-sheets, the court must arrive at its finding upon one charge-sheet before the next charge-sheet is proceeded with.

5. Where any evidence given upon the trial of an accused on one charge-sheet is required to be given on the trial of the same accused person on a subsequent charge-sheet, it must be given afresh, but the witness giving such evidence need not be sworn/affirmed again, but he should be reminded of his previous oath/ affirmation.

6. Generally speaking, the convening officer will regulate the order for the trial of different charge-sheets according to the date of the respective offences. But where the gravity of the various offences differ, it may be desirable to insert the charge involving the gravest offence in the first charge-sheet, as, if the accused is convicted, he will be sufficiently punished without trying him in respect of the minor offences; see sub-rule (4). Occasionally it will be desirable to direct that a charge which necessitates the calling of a large number of witnesses should be inserted in the first charge-sheet, so that the attendance of such witnesses can be dispensed with after the trial on that charge-sheet has been completed.

7. After the finding of the court upon all the charge-sheet, has been arrived at, the procedure will be the same as if all the charges had been inserted in one charge-sheet. Unless, the convening officer directs that the accused need not be tried upon any subsequent charge-sheet, the court will not proceed to sentence until it has arrived at a finding on all the charge-sheets, and will then award one sentence in respect of all of them.

8. It will often be unnecessary, if the accused is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the other charge-sheets. On the other hand, it may be desirable to try the accused upon the other charge-sheets in order that a more severe sentence may be awarded, if justified.

9. The powers given to the convening officer under sub-rule (4) cannot be exercised by the prosecutor on his own initiative or by the court.

10. The court should always, unless it thinks the claim to be unreasonable, accede to a demand to be tried separately in respect of any particular charge.

11. Under sub-rule (6), where an accused has pleaded guilty to a charge entered in one of several charge-sheets, the summary of evidence relating thereto and any statement which he may make in reference to the charge or in mitigation of punishment will not be read or recorded until after the finding of the court on all the charge-sheets has been arrived at. But for this provision, the fair trial of the accused upon the other charge-sheets might be prejudiced, especially if he stated, in mitigation of punishment, anything which might point to his guilt on any charge in a charge-sheet which has not yet been tried.

80. Sitting in closed court.— (1) A court-martial shall, where it is so directed by these rules, and may in any other case on any deliberation amongst the members, sit in closed court.

(2) No person shall be present in closed court except the members of the court, the judge-advocate (if any) and any officers under instruction.

(3) For the purpose of giving effect to the foregoing provisions of this rule, the court-martial may either retire or cause the place where they sit to be cleared of all other persons not entitled to be present.

(4) Except as hereinbefore mentioned all proceedings, including the view of any place, shall be in open court and in the presence of the accused subject to sub-rule (5).

(5) The court shall have the power to exclude from the court any witness who has yet to give evidence or any other person, other than the accused, who interferes with its proceedings.

NOTES

1. If more convenient, the court may withdraw for deliberations.

2. All the members of the court, and the JA, where one is appointed, must be present in the closed court. The officers under instruction should also be present. If for any reason, an officer under instruction, is not present to attend the deliberations in closed court, his absence will not affect the validity of such deliberations.

3. All the members of the court, the JA, where one is appointed, and the accused must be present at the "view of any place". The prosecutor and the defence counsel or defending officer should also be present.

4. This rule does not affect the power of the court to exclude any person, other than the accused, who interferes with the proceedings ; a power which every court possesses for the proper conduct of its proceedings. A court-martial has inherent power to sit "in camera" if necessary for the proper administration of justice. A court-martial may sit "in camera" if evidence of a secret or top secret nature is led at the trial.

[80-A Courts Martial to be public.— Subject to rule 80, the place in which a court-martial is held for the purpose of trying an offence under the Act shall be deemed to be an open court to which the public generally may have access, so far as the same can conveniently contain them;

Provided that, if the court is satisfied that it is necessary or expedient in the public interest or for the ends of justice so to do, the court may at any stage of the trial of any particular case order that the public generally or any portion thereof or any particular person shall not have access to, or be or remain in the place in which the court is held][1].

81. Hours of sitting.— (1) A court-martial may sit at such times and for such period between the hours of six in the morning and six in the afternoon as may be directed by the proper superior military authority, and so far as no such direction extends, as the court from time to time determines but no court shall sit for more than six hours in any one day.

(2) If the court consider it necessary to continue the trial after six in the afternoon or to sit for more than six hours in any one day, it may do so but if it does so, should record in the proceedings the reason for so doing.

(3) In cases requiring an immediate example or when the convening officer certifies under his hand that it is expedient for the public service, trials may be held at any hour.

(4) If the court or the convening officer or other superior military authority thinks that military exigencies or the interests of discipline require the court to sit on Sunday or on any other day declared as a holiday in Army or Command Orders, the court may sit accordingly, but otherwise the court shall not sit on any of those days.

NOTES

1. Reasons for longer sittings of the court or for sittings outside the hours specified in sub-rule (1) should be recorded in the proceedings.

2. When the court sits on a Sunday or a gazetted holiday, the reasons for so doing should also be recorded in the .proceedings.

82. Continuity of trial and adjournment of court.— (1) When a court is once assembled and the accused has been arraigned, the court shall continue the trial from day to day, in accordance with rule 81, unless it appears to the court that an adjournment is necessary for the ends of justice or that such continuance is impracticable.

(2) A court may adjourn from time to time and from place to place and may, when necessary, view any place.

---

[1] Inserted by SRO 55 dated 22 Feb, 1985.

(3) The senior officer on the spot may also, for military exigencies, adjourn or prolong the adjournment of the court.

(4) A court-martial, in the absence of a judge-advocate (if such has been appointed for that court-martial) shall not proceed, and shall adjourn.

(5) If the time to which an adjournment is made is not specified, the adjournment shall be until further orders from the proper military authority; and, if the place to which an adjournment is made, is not specified, the adjournment shall be to the same place or to such other place as may be specified in further orders from the proper military authority.

NOTES

1. It is very important that a trial, once begun should proceed without interruption to its conclusion. This rule, therefore, requires the court to sit from day to day unless an adjournment is necessary for the ends of justice.

2. Apart from specific provisions under the AR, an adjournment should be allowed for obtaining the opinion of the confirming authority or of the DJAG/AJAG of the command on any point of law or procedure, for enabling the accused to prepare his defence, the prosecutor to prepare his reply or the JA to prepare his summing-up.

3. The court should not, as a rule, permit an adjournment to enable the prosecutor to call new witnesses, unless the necessity for their presence at the trial could not reasonably have been foreseen. The court should adjourn if it considers that the accused has not had sufficient opportunity for procuring the attendance of any witnesses whom he desires to call, or where it would be unjust to the accused not so to adjourn.

4. The reasons for any adjournment must be entered in the proceedings, and either announced in court in presence of the accused, or communicated to the prosecutor and accused.

5. Prolonged sittings unduly strain the attention of members of the court and may operate unfairly upon the accused, who should never be required to make his defence at the close of a prolonged sitting. See AR 81.

6. Where civilian witnesses are present, the court should, if reasonably possible, complete their evidence before adjourning.

7. Sub-rule (2) meets the case where a "view" is necessary, or where a court-martial is held on the line of march, or where an adjournment to a hospital for the purpose of taking the evidence of a sick witness is rendered necessary.

8. As to "view", see AR 80 and notes thereto.

9. The military exigencies referred to in sub-rule (3) can seldom occur except on active service.

10. As to procedure on death of JA or his inability to attend, see AR 104. Where the absence of the JA is due to temporary causes, the court should adjourn until he is able to attend.

83. Suspension of trial.— (1) Where, in consequence of anything arising while the court is sitting, the court is unable by reason of dissolution as specified in section 117, or otherwise, to continue the trial, the presiding officer or, in his absence, the senior member, present, will immediately report the facts to the convening authority.

(2) Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before award of the sentence, the entire proceedings before the court-martial shall be null and the accused may be tried before another court-martial.

NOTES

1. See AA.s. 117 and notes thereto.

2. As to substitution of JA, see AR 104.

3. When a court is dissolved under sub-rule (2), every member thereof will be disqualified to sit as a member of the fresh court convened for the trial of the accused; see AR 39 (2) (c).

84. Proceedings on death or illness of accused.— In case of the death of the accused, or of such illness of the accused as renders it impossible to continue the trial, the court shall ascertain the fact of the death or illness by evidence, and record the same and adjourn, and transmit the proceedings to the convening authority.

NOTES

1. See AA.s. 117 (2). "Impossible to continue" means to continue within a reasonable time having regard to all the circumstances.

2. Oral evidence of the fact of the death or illness will be taken on oath or affirmation. Also, a medical certificate should always, where possible, be obtained, stating that the illness of the accused renders his presence in court impracticable, or dangerous to himself or others, and also the time when, in the opinion of the medical officer, the accused will be able to be present.

85. Death, retirement or absence of presiding officer.— In the case of the death, retirement on challenge or unavoidable absence of the presiding officer, the next senior officer shall take the place of the presiding officer and the trial shall proceed if the court is still composed of not less than the minimum number of officers of which it is required by law to consist.

NOTE

See AA.s. 117 and notes thereto.

86. Presence throughout of all members of court.— (1) A member of a court who has been absent while any part of the evidence on the trial of an accused person is taken, shall take no further part in the trial by that court of that person, but the court will not be affected unless it is reduced below the legal minimum.

(2) An officer shall not be added to a court-martial after the accused has been arraigned.

NOTES

1. See AA.s. 117 and notes thereto.

2. As to arraignment, see AR 48 and notes thereto.

87. Taking of opinions of members of court.— (1) Every member of a court must give his opinion by word of mouth on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal.

(2) The opinion of the members of the court shall be taken in succession, beginning with the member lowest in rank.

NOTES

1. Opinions must be given orally; see AR 61(2). The oath or affirmation taken by members of the court operates, save as therein provided, to prevent the opinions of individual members from being disclosed; see AR 45.

2. AA.s. 132(1) requires all decisions to be passed by an absolute majority, except in the case of a sentence of death passed by a GCM which requires a two-third majority (AA.s. 132(2)) and a sentence of death passed by SGCM which requires the concurrence of all the members (AAs. 132(3)). The presiding officer has no second or casting vote in the case of a sentence of death; nor where there is an equality of votes on a challenge, finding or sentence.

3. In order to obtain an absolute majority in respect of the sentence, every member must vote, even if he had voted for an acquittal on the finding. It is desirable that the nature of the punishment to be awarded should first be considered.

The procedure to be adopted will best be illustrated by the following example:

> At a GCM consisting of seven members, three are in favour of a sentence of imprisonment for life, two in favour of imprisonment, and two in favour of dismissal (without imprisonment), the most lenient punishment will be first put to the vote and will be rejected by 5 votes to 2. The next most lenient punishment will then be put to the vote, viz., imprisonment. All seven members must vote again and the two members who had previously voted in favour of dismissal will naturally give their votes for imprisonment rather than imprisonment for life. The result will be an absolute majority of 4 votes to 3 in favour of imprisonment. The quantum or length of the imprisonment to be awarded will be arrived at in the same manner, the most lenient proposal being put to the vote first.

4. It is improper to strike an average between the various sentences suggested by the members of the court, but it may often happen that, in the course of further discussion, members who had originally made different proposals will arrive at a unanimous decision as to the proper sentence to be awarded.

5. The opinion of each member on the finding must be taken separately upon each charge upon which the accused is arraigned (see AR 61(2)).

6. "lowest in rank" means lowest in the rank in which members take their seats; see AR 75.

88. Procedure on incidental questions.— If any objection is raised on any matter of law, evidence, or procedure by the prosecutor or by or on behalf of the accused during the trial, the prosecutor or the accused or counsel or the defending officer (as the case may be) shall have a right to answer the same and the person raising the objection shall have a right of reply.

NOTE

This rule will apply to such questions as to the admissibility of evidence, the propriety of any question or the recalling of a witness. It will also apply to a submission, which may always be made by or on behalf of the accused at the close of the case for the prosecution, that no case has been made out justifying the court in putting the accused upon his defence; see note to AR 57.

89. Swearing of court to try several accused persons.— (1) A court may be sworn or affirmed at one time to try any number of accused persons then present before it, whether those persons are to be tried collectively or separately, and each accused person shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

(2) In the case of several accused persons to be tried separately, the court, upon one of those persons objecting to a member, may, according as it thinks fit, proceed to determine that objection or postpone the case of that person and swear or affirm the members of the court for the trial of the others alone.

(3) In the case of several accused persons to be tried separately, the court when sworn or affirmed shall proceed with one case postponing the other cases, and taking them afterwards in succession.

(4) Where several accused persons are tried separately by the same court upon charges arising out of the same transaction, the court may, if it considers it to be desirable in the interests of justice postpone consideration of any sentence to be awarded to any one or more of such accused persons until the trials of all such accused persons have been completed.

NOTES

1. Notwithstanding that, under this rule the members of the court, are sworn only once to try the persons before them, they will constitute a separate court for the trial of each case, and the swearing of the court will be mentioned in the proceedings of each case.

2. When, in consequence of an objection raised by one or several persons jointly charged, a new officer serves, the other accused persons, who had previously raised no objection to the members of the court, will have the right to object to the new officer.

3. Where two or more accused persons are tried separately by the same court and the objection of one accused to a member is allowed, that member must still sit as a member of the court for the trial of the accused who did not object to be tried by him.

4. The finding and sentence (except where the court decides to act under sub-rule (4)) must be arrived at before the next case is tried.

5. It is very desirable that the court should, where several persons are separately tried and convicted in respect of the same transaction, be in a position to apportion the proper sentences to be awarded to all the accused persons.

6. In as much as a sentence of imprisonment will under AA.s. 167 commence upon the day upon which it is eventually signed, the court, in awarding sentence, should take into consideration in favour of an accused person any postponement of sentence which has been occasioned through the operation of sub-rule (4).

90. Swearing of interpreter and shorthand writer.— (1) At any time during the trial an impartial person may, if the court thinks it necessary and shall, if either the prosecutor or the accused requests it on any reasonable ground, be sworn or affirmed to act as interpreter.

(2) An impartial person may at any time of the trial if the court thinks it desirable, be sworn or affirmed to act as a shorthand writer.

(3) Before a person is sworn or affirmed as an interpreter or shorthand writer the accused shall be informed of the person who is proposed to be sworn or affirmed, and may

object to the person as not being impartial or for any reasonable course; and the court, if it thinks that the objection is reasonable, shall not swear or affirm that person as interpreter or shorthand writer.

NOTES

1. An interpreter or shorthand writer is usually sworn or affirmed at the commencement of the trial.

2. For the occasions when an interpreter must be employed, see AR 91.

3. An interpreter may either be appointed by the convening authority (AR 37(3)) or by the court under this rule. If a member of the court is appointed interpreter, he must take the interpreter's oath or affirmation in addition to the oath/affirmation prescribed for a member of the court in AR 45. A member or JA should not normally act as an interpreter where the trial is likely to be prolonged.

4. For form of oath and affirmation, see AR 46.

5. The accused has a right to object to the shorthand writer or the interpreter. When such an objection is raised, the same procedure will be followed as in the case of an objection to a member of the court.

91. Evidence when to be translated.— When any evidence is given in a language which any of the officers composing the court, the judge-advocate, the prosecutor or the accused, or his defending officer or counsel does not understand, that evidence shall be interpreted to such officer or person in a language which he does understand. If an interpreter in such language has been appointed by the convening officer, and duly sworn or affirmed, the evidence shall be interpreted by him. If no such interpreter has been appointed and sworn or affirmed, an impartial person shall be sworn or affirmed by the court as required by rule 90. When documents are put in for purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

NOTE

As the charge-sheet and documentary evidence as to character will be in English, an interpreter in the language of the accused person should be appointed in every case in which the accused does not know enough English to understand these documents. Whoever interprets any evidence must be sworn or affirmed as an interpreter before doing so. See AR 90 and notes thereto.

92. Record in proceedings of transactions of court-martial.— (1) At a court-martial the judge-advocate, or if there is none, the presiding officer shall record, or cause to be recorded [in the Hindi or English language][1] all transactions of that court, and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings) and if the judge-advocate is called as a witness by the accused, the presiding officer shall be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate.

(2) The evidence shall be taken down in a narrative form in as nearly as possible the words used, but in any case where the prosecutor, the accused person, the judge-advocate, or the court considers it material, the question and answer shall be taken down verbatim.

(3) Where an objection has been taken to any question or to the admission of any evidence or to the procedure of the court, such objection shall, if the prosecutor or accused so requests or the court thinks fit, be entered upon the proceedings together with the grounds of the objection and the decision of the court thereon.

(4) Where any address by, or on behalf of, the prosecutor or the accused, is not in writing, it shall not be necessary to record the same in the proceedings further or otherwise than the court thinks proper, except that—

(a) the court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge the reply made by, or on behalf of, the accused to each charge against him; and

(b) the court shall also record any particular matters in the address by or on behalf of, the prosecutor or the accused which the prosecutor or the accused, as the case may be, may require.

(5) The court shall not enter in the proceedings any comment or anything not before the court, or any report of any fact not forming part of the trial, but if any such comment or

[1] Substituted vide SRO 17 (E), dated 6th December, 1993

report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the presiding officer.

NOTES

1. The record, where no shorthand writer is employed, must be taken in a clear and legible hand and should be typed. Interlineations and corrections must be avoided as much as possible; if made they should be initiated by the presiding officer or JA, if any. If desired, a typed copy may be substituted for the original manuscript record; if so substituted it must be checked with the original by the officer responsible for the accuracy of the proceedings. The pages should be numbered and the various sheets fastened together, sheets not used being removed. Sufficient space must be left below the signature of the presiding officer for the decision of the confirming authority. The place and date of the signing of the sentence by the presiding officer must be inserted.

2. No corrections or additions may be made to the proceedings of a court-martial after promulgation. When an obvious oversight has been made in the record, such as the omission of the words, "the presiding officer and members are duly sworn/affirmed", a certificate, signed by the presiding officer, to the effect that they were duly sworn/affirmed should be attached. But see note 1 to AR 67 as to signing and dating the sentence after promulgation.

3. While recording evidence in the narrative form, the material effect of the question and answer will be written down: *e.g.*, where the question is "What did the accused do next"? and the answer is "He left the room"; the evidence as recorded, should read, "The accused then left the room".

4. Documentary evidence will be read by the presiding officer or JA if any; it should then be marked with a distinguishing letter or figure and attached to the proceedings. In many cases, it will be sufficient to attach copies of documents which must, however, be compared with the originals by the court and certified under the hand of the presiding officer to be true copies (see note 3 to AR 67).

5. If a shorthand writer is employed, the evidence is usually taken down verbatim by him. If the evidence of a witness is not given in English, the material effect of question and answer interpreted in English will be recorded.

6. Sub-rule (2) applies to questions and answers given in examination-in-chief, cross-examination, re-examination as well as questions by the court.

7. The court can make in a separate document any remark it thinks proper on the conduct of any person who appeared before it, or on the manner in which a particular witness has given his evidence, or on the manner in which the prosecution has been conducted; also, if it thinks the evidence shows that the accused has committed some offence not charged; *e.g.*, if he is charged with desertion in August, and the evidence shows that he deserted in June, it must acquit him, but may report separately the offence of June.

8. The court can scarcely be too guarded in expressing censure on individuals not before it for trial; indeed, cases justifying such expression will be rare and exceptional.

9. It will usually be desirable to make a separate note at the time of any matter upon which the court intends to make any such comments or report, although it will not be correct to enter such matter in the proceedings.

93. Custody and inspection of proceedings.— The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or, if there is none, of the presiding officer but may, with proper precaution for their safety, be inspected by the members of the court, the prosecutor and accused, respectively, at all reasonable time before the court is closed to consider the finding.

94. Transmission of proceedings after finding.— The proceedings shall be at once sent by the person having the custody thereof to such person as may be directed by the order convening the court, or, in default of any such direction, to the confirming officer.

NOTES

1. As to custody of the proceedings, see AR 93.

2. For procedure where a member of the court has become confirming authority, see AR 74.

3. The proceedings of court-martial, when despatched by post, should invariably be sent under registered cover, see Regs for the Army Para 470.

Defending Officer, Friend of Accused and Counsel

95. Defending Officer and friend of accused.— (1) At any general or district court-martial, an accused person may be represented by any officer subject to the Act who shall be

called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of the accused".

(2) It shall be the duty of the convening officer to ascertain whether an accused person desires to have a defending officer assigned to represent him at his trial and if he does so desire, the convening officer shall use his best endeavours to ensure that the accused shall be so represented by a suitable officer. If owing to military exigencies, or for any other reason, there shall in the opinion of the convening officer, be no such officer available for the purpose, the convening officer shall give a written notice to the presiding officer of the court-martial, and such notice shall be attached to the proceedings.

(3) The defending officer shall have the same rights and duties as appertain to counsel under these rules and shall be under the like obligations.

(4) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he shall not examine or cross-examine the witnesses or address the court.

NOTES

1. Under AR 33 the accused, after he has been ordered to be tried by court-martial is to be allowed free communication with his friend, defending officer, or legal adviser.

2. As to the duties of the defending officer, see memoranda on page 314 to 315

3. Every effort should be made to secure the services of a competent officer as a defending officer, and he should be allowed time and opportunity for properly preparing the defence of the accused.

4. AR 36 empowers dispensing with sub-rule (2) in the event of military exigencies, etc.

5. The defending officer must conduct the case as representing the accused, see ARs 97(3), 99 and 100.

[96.—Counsel allowed in general and district courts-martial.— In every general and district court-martial, counsel shall be allowed to appear on behalf of the prosecutor as well as the accused :

Provided that convening officer may declare that it is not expedient to allow the appearance of counsel thereat and such declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial, and may be made subject to such reservation as to cases on active service, or otherwise, as deemed expedient.][1]

NOTE

1. For qualifications of counsel, see AR 101 (2).

2. There is no restriction as to the number of counsels engaged in a case. Counsel for the defence, though not bound to such strict impartiality as the prosecutor, must nevertheless recollect that he is assisting in the administration of justice and must not be guilty of any unfairness or want of candour in his conduct of the case. In his address he will have the same liberty as the accused [see AR 77(3)]; but he should exercise more restraint in commenting on the acts of persons not before the court.

97. Requirements for appearance of counsel.— (1) An accused person intending to be represented by a counsel shall give to his commanding officer or to the convening officer the earliest practicable notice of such intention and, if no sufficient notice has been given, the court may, if it thinks fit, on the application of the prosecutor, adjourn to enable him to obtain a counsel on behalf of the prosecutor at the trial.

[1] Subs by SRO 17 (E), dated 6th December, 1993

(2) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice referred to in sub-rule (1) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the accused to obtain counsel to assist him at the trial.

(3) The counsel, who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person and in such case that person shall not have the right himself to do any of the aforesaid matters except as regards the statement allowed by clause (a) of sub-rule (2) of rule 58 and clause (b) of rule 59 or except so far as the court permits him so to do.

(4) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness and sub-rules (5) and (6) of rule 56 shall not apply.

NOTE

When the convening officer intends to appoint or apply for the services of an officer of the JAG's Department or an officer holding legal qualifications to act as prosecutor, similar notice should be given to the accused to enable him, if he so desires, to obtain counsel to represent him at the trial.

98. Counsel for prosecution.— The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped or restrained by the court in the manner provided in sub-rule (2) of rule 77.

NOTE

Counsel appearing on behalf of the prosecutor should always 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 unnecessary details.

99. Counsel for accused.—The counsel appearing on behalf of the accused has the like rights, and is under the like obligations as are specified in sub-rule (3) of rule 77 in the case of the accused.

NOTE

If the court asks counsel for the accused a question as to any witness or matter, he may decline to answer, but he must not give to the court any answer or information which is misleading.

100. General rules as to counsel.— Counsel, whether appearing on behalf of the prosecutor or of the accused, shall conform strictly to these rules and to the rules of criminal courts in India relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of a counsel.

NOTES

1. Counsel should not state as a fact any matter which is not proved, or which he does not intend to prove in evidence, nor should he state what is his own opinion as to any matter of fact before the court. In a question to a witness he should not assume that facts have been given in evidence which have not been so given, or that particular answers have been given contrary to the fact.

2. Counsel should treat the court and JA with due respect, and should while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.

101. Qualifications of counsel.— (1) Neither the prosecutor nor the accused has any right to object to any counsel if properly qualified.

(2) Counsel shall be deemed properly qualified if he is a legal practitioner authorised to practice with right of audience in a Court of Sessions in India, or if, he is recognised by the convening officer in any other country where the trial is held as having in that part, rights

and duties similar to those of such legal practitioner in India and as being subject to punishment or disability for a breach of professional rules.

Judge-Advocate

102. Disqualification of judge-advocate.— An officer who is disqualified for sitting on a court-martial, shall be disqualified for acting as a judge advocate at that court-martial.

NOTES

1. As to the appointment of a JA, at a GCM or DCM, see AA.s. 129. Omission to appoint a JA at a GCM will invalidate the proceedings.

2. As to disqualification of a JA, See AR 39(2).

3. A JA should be free of all suspicion of bias or prejudice. He should have had experience of the practice and procedure of courts-martial and a knowledge of the general principles of law and of the rules of evidence.

103. Invalidity in the appointment of judge-advocate.— A court-martial shall not be invalid merely by reasons of any invalidity in the appointment of the judge-advocate officiating thereat, in whatever manner appointed, if a fit person has been appointed and the subsequent approval of the Judge-Advocate General or Deputy Judge-Advocate General obtained, but this rule shall not relieve from responsibility the person who made the invalid appointment.

NOTE

See notes to AA.s. 129.

104. Substitute on death, illness or absence of judge-advocate. — If the judge-advocate dies, or from illness or from any cause whatever is unable to attend, the court shall adjourn, and the presiding officer shall report the circumstances to the convening authority; and a fit person not disqualified to be judge advocate may be appointed by that authority, who shall be sworn or affirmed, and act as judge-advocate for the residue of the trial or until the judge-advocate returns.

NOTES

1. The court will in no circumstances proceed in the absence of a JA who has been duly appointed.

2. This rule permits substitution of a JA in case of his death or illness, by any other fit person not disqualified to be a JA. Such person may be, appointed for the residue of the trial or until return of the JA first appointed.

3. For duties of JA see AR 105.

4. See also AA.s. 117(2) and notes thereto.

105. Powers and duties of judge-advocate.—The powers and duties of a judge-advocate are as follows:—

(1) The prosecutor and the accused, respectively, are, at all times after the judge-advocate is named to act on the court, entitled to his opinion on any question of law related to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court.

(2) At a court-martial, he represents the Judge-Advocate-General.

(3) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he shall inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and shall give his advice on any matter before the court.

(4) Any information or advice given to the court, on any matter before the court shall, if he or the court desires it, be entered in the proceedings.

(5) At the conclusion of the case, he shall sum up the evidence and give his opinion upon the legal bearing of the case, before the court proceeds to deliberate upon its finding.

(6) The court, in following the opinion of the judge-advocate on a legal point, may record that it has decided in consequence of that opinion.

(7) The judge-advocate has, equally with the presiding officer, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may, for that purpose, with the permission of the court, call witnesses and put questions to witnesses, which appear to him necessary or desirable to elicit the truth.

(8) In fulfilling his duties, the judge-advocate must be careful to maintain an entirely impartial position.

NOTES

1. For the documents to be forwarded to JA by the convening officer see AR 37(4).

2. As to summing up, see AR 60 and notes thereto.

3. Upon any point of law or procedure which arises at the trial, the court should be guided by the opinion of the JA, and not disregard it, except for very weighty reasons. The court is responsible for the legality of its decision, but it must consider the grave consequences which may result from its disregard to the advice of the JA on any legal point. If a court-martial, acting without jurisdiction or in excess of jurisdiction, convicts a person subject to AA, the members of the court may be held liable in damages by a civil court and such liability—or at least the amount of the damages—may depend upon the question whether they exercised a bonafide judgment, and the fact that they accepted the advice of the JA, even if such advice was held to be wrong, might practically exonerate the members from liability.

4. For the duty of presiding officer, see AR 76(2).

5. Permission to call and question witnesses should never be refused unless the court considers that the JA is acting improperly or in such a manner as to obstruct the proceedings. The court should record its reason for refusing permission.

SECTION 3—SUMMARY COURTS-MARTIAL

106. Proceedings.— (1) The officer holding the trial hereinafter called the court, shall record, or cause to be recorded, in [the Hindi or English language][1], the transactions of every summary court-martial.

(2) The evidence shall be taken down in a narrative form in as nearly as possible the words used; but in any case where the court considers it material, the question and answer shall be taken down verbatim.

NOTE

See AR 92 and notes thereto which apply mutatis mutandis to this rule.

107. Evidence when to be translated. — When any evidence is given in a language which the court or the accused does not understand, that evidence shall be interpreted to the court or officers or junior commissioned officers attending the proceedings in accordance with sub-section (2) of section 116 or the accused as the case may be in a language which it or he does understand. The court shall, for this purpose, either appoint an interpreter, or shall itself take the oath or affirmation prescribed for an interpreter at a summary court-martial. When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

NOTES

1. See note to AR 91.

2. Any evidence not understood by the persons attending the trial should also be translated to them. For person attending the trial, see A.A..s. 116(2). .

3. The CO should, as a general rule, take the interpreter's oath or affirmation himself, in addition to the oath or affirmation prescribed in AR 109 for the court. In the rare cases where the CO does not know the language of the accused he should appoint a competent interpreter. Whoever interprets any evidence must be sworn or affirmed as an interpreter before his doing so; but see AR 149.

108. Assembly.— When the court, the interpreter (if any), and the officers or junior commissioned officers attending the trial are assembled, the accused shall be brought before the court, and the oaths or affirmation prescribed in rule 109 taken by the persons therein mentioned.

[1] Inserted by SRO 17 (E), dated 6th December, 1993

NOTE

The accused cannot object to the court or interpreter.

109. Swearing or affirming of court and interpreter.—(1) The court shall make oath or affirmation in one of the following forms or in such other form to the same purport as may be according to its religion or otherwise binding on its conscience.

Form of Oath

"I . . . . . , swear by Almighty God that I will well and truly try the accused (or accused persons) before the court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases."

Form of Affirmation

"I . . . . . , do solemnly, sincerely and truly declare and affirm that I will well and truly try the accused (or accused persons) before the court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection; and if any doubt shall arise, then according to my conscience the best of my understanding, and the custom of war in the like cases."

(2) After which the court, or some person empowered by it, shall administer to the interpreter (if any), an oath or affirmation in one of the following forms, or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

Form of Oath

"1 . . . . . , swear by Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

Form of Affirmation

"I . . . . . , solemnly, sincerely and truly declare and affirm that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial."

(3) After the oaths and affirmations have been administered, all witnesses shall withdraw from the court.

NOTES

1. See notes to AR 45 and 47 which apply mutatis mutandis to the oaths and affirmations referred to in this rule.

2. The "court" is the officer holding the trial. Two other officers or JCOs or one of either must attend the trial, but they do not form part of the court and are not as such sworn or affirmed; see AA.s. 116(2).

110. Swearing of court to try several accused persons.—(l) A summary court-martial may be sworn or affirmed at one time to try any number of accused persons then present before it whether those persons are to be tried collectively or separately.

(2) In the case of several accused persons to be tried separately, the court, when sworn or affirmed, shall proceed with one case postponing the other cases and taking them afterwards in succession.

(3) Where several accused persons are tried separately upon charges arising out of the same transaction, the court may, if it considers it to be desirable in the interests of justice, postpone consideration of any sentence to be awarded to anyone or more such accused persons until the trials of all such accused persons have been completed.

NOTE

See notes to AR 89 which apply mutatis mutandis to this rule.

111. Arraignment of accused.—(l) After the court and interpreter (if any) are sworn or affirmed as above mentioned, the accused shall be arraigned on the charges against him.

(2) The charges on which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

NOTES

1. As to framing charges, see ARs 28 to 32 and notes thereto. Where under AA.s. 120(2), the sanction of superior authority is necessary for the trial of a charge by SCM, such sanction should be entered at the foot of the charge-sheet and signed by the superior authority or a staff officer.

2. "Arraignment" consists of (a) calling upon the accused by his number, rank, name, and description as given in the charge-sheet and asking him "Is that your number, rank, name and unit (or description)?" (b) reading the charge to him; and (c) asking him whether he is guilty or not guilty.

3 Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and tried upon the first charge-sheet before arraignment upon the second or subsequent charge-sheets; see ARs 79 and 126.

4, The charge-sheet, after being read to the accused, will he annexed to the proceedings.

5, The plea of the accused must be taken on all the charges in a charge-sheet. This applies to alternative charges if the accused has been arraigned upon them [see however, AR 115(3)]. The plea on each charge should be recorded as "guilty" or "not guilty".

112. Objection by accused to charge.—The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules.

NOTES

1. A charge laid under AA.s. 54(b) for losing by neglect the property of a comrade would not disclose an offence under that section of the Act.

2. For framing of charges, see ARs 28 to 32.

3. For procedure where it appears that the accused is, by reason of insanity, unfit to stand his trial. see AR 145. .

113. Amendment of charge.—(l) At any time during the trial if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, it may amend the charge-sheet so as to correct that mistake.

(2) If on the trial of any charge it appears to the court at any time before it has begun to examine the witnesses, that in the interests of justice any addition to, omission from or alteration in, the charge is required, it may amend such charge and may, after due notice to the accused, and with the sanction of the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the accused if the amended charge requires such sanction, proceed with the trial on such amended charge.

NOTES

1. See notes to AR 50.

2. See AA.s. 120(2) and notes thereto. If the amended charge is one requiring reference to superior authority and the officer holding the trial considers that there is grave reason for immediate action and that such reference cannot be made without detriment to discipline, he should attach an explanatory memorandum (AR 130) to the proceedings and after giving the accused sufficient notice of the amendments, proceed with the trial.

114. Special pleas.—If a special plea to the general jurisdiction of the court, or a plea in bar of trial, is offered by the accused, the procedure laid down for general and district courts-martial when disposing of such pleas shall, so far as may be applicable, be followed, but no finding by a summary court-martial on either of such pleas shall require confirmation.

NOTE

See ARs 51 and 53 and notes thereto.

115. General plea of "Guilty" or "Not guilty".—(1) The accused person's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.

(2) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty.

[2(A) where an accused pleads Guilty, such plea and the factum of compliance of sub-rule (2) of this rule, shall be recorded by the court in the following manner:—

Before recording the plea of Guilty of the accused, the court explained to the accused the meaning of the charge(s) to which he had pleaded Guilty and ascertained that the accused had understood the nature of the charge(s) to which he had pleaded Guilty. The court also informed the accused the general effect of the plea and the difference in procedure which will be followed consequent to the said plea. The court having satisfied itself that the accused understands the charge(s) and the effect of his plea of Guilty, accepts and records the same. The provisions of rule 115 (2) are thus complied with.][1]

(3) Where an accused person pleads guilty to the first of two or more charges laid in the alternative, the court may, after sub-rule (2) of this rule has been complied with and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto, and a record to that effect shall be made upon the proceedings of the court.

NOTE

See notes to AR 52 which apply *mutatis mutandis* to this rule,

116. Procedure after plea of "Guilty".—(l) Upon the record of the plea of "Guilty", if there are other charges in the same charge-sheet to which the plea is "Not guilty", the trial shall first proceed with respect to the latter charges, and, after the finding of those charges, shall proceed with the charges on which a plea of "Guilty" has been entered; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not guilty" upon all the other alternative charges.

(2) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges), the court shall read the summary of evidence, and annex it to the proceedings or if there is no such summary, shall take and record sufficient evidence to enable it to determine the sentence, and the reviewing officer to know all the circumstances connected with the offence. The evidence sha1l be taken in like manner as is directed by these rules in case of a plea of "Not guilty".

(3) After such evidence has been taken, or the summary of evidence has been read, as the case may be, the accused may address the court in reference to the charge and in mitigation of punishment and may call witnesses as to his character.

(4) If from the statement of the accused, or from the summary of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty", the court shall alter the record and enter a plea of "Not guilty", and proceed with the trial accordingly.

(5) If a plea of "Guilty" is recorded and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under sub-rules (2) and (3) shall take place when the findings on the other charges in the same charge-sheet are recorded.

(6) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

---

[1]Inserted by SRO 17 (E), dated 6th December, 1993

(7) In any case where the court is empowered by section 139 to find the accused guilty of an offence other than that charged, or guilty of committing an offence in circumstances involving a less degree of punishment, or where it could, after hearing the evidence, have made a special finding of guilty subject to exceptions or variations in accordance with sub-rule (3) of rule 121, it may if it is satisfied of the justice of such course, accept and record a plea of guilty of such other offence, or of the offence as having been committed in circumstances involving such less degree of punishment, or of the offence charged subject to such exceptions or variations.

NOTES

1. See notes to AR 54.

2. Sub-rule (7) provides for acceptance by the court of a qualified plea of guilty; see note 9 to AR 62. The court may accept the qualified plea of guilty, if it is satisfied of the justice of such a course.

117. Withdrawal of plea of "Not guilty".—The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty" and plead "Guilty", and in such case the court shall at once, subject to a compliance with sub-rule (2) of rule 115, record a plea and finding of "Guilty", and shall, so far as may be, proceed in the manner provided in rule 116.

118. Procedure after plea of "Not guilty".—After the plea of "Not guilty" to any charge is recorded, the evidence for the prosecution shall be taken. At the close of the evidence for the prosecution, the accused shall be asked if he has anything to say in his defence, and may address the court in his defence, or may defer such address until he has called his witnesses. The court may question the accused on the case for the purpose of enabling him to explain any circumstances appearing in his statement or in the evidence against him. The accused shall not render him liable to punishment by refusing to answer such questions, or by giving answers to them which he knows not to be true; [***][1]. No oath shall be administered to the accused.

The accused may then call his witnesses, including also witnesses to character.

NOTES

1. For general provisions as to witnesses and evidence, see ARs 134 to 143.

2. As to the record in the proceedings of transactions of the court, see generally AR 92.

3. The evidence will be taken by question and answer, or the witness may be asked to tell his own story, questions being subsequently asked to make good any omissions. It will, as a rule, be recorded in a narrative form; but where the accused or the court considers it material, the question and answer will be taken down verbatim. The material effect only of the question and answer will be written down, *e.g.*, where the question is "what did the accused do next?" and the answer is "he left the room", the evidence as recorded would read "the accused then left the room". Documentary evidence after being read should be marked with a distinguishing letter or figure and attached to the proceedings; see also note 3 to AR 67.

4. It is open to the accused, at the close of the case for the prosecution, to submit that the evidence given for the prosecution has not established a *prima facie* case against him and that he should not, therefore be called upon for his defence. If the court is satisfied that it is well founded, the accused must be acquitted; see AR 57 and notes thereto.

5. The utmost liberty consistent with the interests of parties not before the court and with the dignity of the court itself should be allowed to the accused in making his defence (see AR 77 (3)) and the court should, if necessary, adjourn to allow him time for its preparation. He has the privilege of making statements which are unsupported by evidence (see note 10 to AR 58).

6 It should be remembered that an accused cannot give evidence on oath and therefore any statement made by him must be carefully considered. 'Though not given on oath and subject to the test of cross-examination, it will often be of value, particularly if it is in any respect corroborated by evidence from other sources.

7. As to questioning of accused by court, see note 3 to AR 58.

119. Witnesses in reply to defence.—The court may, if it thinks it necessary in the interest of justice, call witnesses in reply to the defence.

---

[1] Omitted by SRO 17(E), dated 6th December, 1993

NOTES

1. This is an extreme measure and should only be resorted to when the accused has made or elicited from his witnesses some statement material to the defence, which could not reasonably have been foreseen when the case for the prosecution was being investigated; see also note to AR 143.

2. As to reference by accused to a Government officer at a trial for desertion etc., see AA.s. 143.

120. Verdict.-After all the evidence, both for prosecution and defence, has been heard, the court shall give its opinion as to whether the accused is guilty or not guilty of the charges.

NOTES

1. The court need not be closed and the finding may be pronounced at once. On the other hand the officer holding the trial may clear the court to consider the evidence, or to discuss any point with the officers/ JCOs attending the trial, or may adjourn the court to allow himself time for further consideration or reference as to any doubtful point.

2. See also notes to AR 61 which apply mutatis mutandis to this rule.

121. Form and record of finding.—(l) The finding on every charge upon which the accused is arraigned shall be recorded, and except as mentioned in these rules, such finding shall be recorded simply as a finding of ''Guilty", or of "Not guilty".

(2) When the court is of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the court shall acquit the accused of that charge.

(3) When the court is of opinion as regards any charge that the facts found to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not guilty" record a special finding.

(4) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

(5) The court shall not find the accused guilty on more than one of two or more charges laid down in the alternative, even if conviction upon one charge necessarily connotes guilty upon the alternative charge or charges.

NOTE

See notes to AR 62.

122. Procedure on acquittal.—If the finding on each of the charges in a charge-sheet is "Not guilty", the court shall date and sign the proceedings, the findings shall be announced in open court, and the accused will be released in respect of those charges.

123. Procedure on conviction.—(l) If the finding on any charge is 'Guilty", the court may record of its own knowledge, or take evidence of and record, the general character, age, service, rank, and any recognised acts of gallantry or distinguished conduct of the accused, and previous convictions of the accused either by a court-martial, or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 80, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled.

(2) If the court does not record the matters mentioned in this rule of its own knowledge, evidence on these matters may be taken in the manner provided in rule 64 for similar evidence at general and district court-martial.

NOTE

See notes to AR 64.

124. Sentence. —The court shall award one sentence in respect of all the offences of which the accused is found guilty.

NOTES

1. See notes to AR 65.

2. Sentences, unless for one year exactly, should, if for one month or upwards, be recorded in months. Sentences consisting partly of months and partly of days should be recorded in months and days. A month means a calendar month.

3. When a SCM awards a sentence of imprisonment for a period not exceeding three months, to which no sentence of dismissal is added, the court should enter a direction, which should form part of the sentence, that the imprisonment will be carried out by confinement in military custody (AA.s. 169(3)). Unless such a direction is given, the offender has to be committed to a civil prison, which is most undesirable in the case of a person who is to return to duty after undergoing his punishment. On active service, however, the officer commanding the forces in the field can, under, AA. s. 169 (4), appoint places in which sentence of imprisonment of any length may be carried out.

4. For the date a sentence of dismissal awarded by a court-martial takes effect, see AR 168. Sentences of imprisonment combined with dismissal should, as a rule, be carried out by confinement in a civil prison.

5. Sentences of simple imprisonment are inexpedient and inconvenient of execution.

6. As to suspension of sentences of imprisonment, see AA.s. 182 and notes thereto.

125. Signing of proceedings.—The court shall date and sign the sentence and such signature shall authenticate the whole of the proceedings.

NOTE

It is essential that the date of sentence should be inserted, as under AA. s. 167 a term of imprisonment is reckoned to commence on the day on which the sentence and proceedings were signed by the court.

126. Charges in different charge-sheets.—When the charges at a trial by summary court-martial are contained in different charge-sheets, the procedure laid down for general and district courts-martial when trying charges contained in different charge-sheets shall, so far as may be applicable, be followed.

NOTE

As to insertion of charges in separate charge-sheets and procedure, see AR 79 and notes thereto.

127. Clearing the court.—(l) The officer holding the trial may clear the court to consider the evidence or to consult with the officers or .junior commissioned officers, attending the trial.

(2) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court, and in the presence of the accused.

NOTE

See notes to AR 80. Apart from the officer holding the trial and the accused, the officers or JCOs attending the trial must also be present at the "view".

128. Adjournment.—A summary court-martial may adjourn from time to time and from place to place, and may, when necessary, view any place.

NOTE

See generally notes to ARs 81 and 82.

129. Friend of accused.—In any summary court-martial, an accused person may have a person to assist him during the trial, whether a legal adviser or any other person. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the court.

130. Memorandum to be attached to proceedings.—An explanatory memorandum is to be attached to the proceedings when a summary court-martial tries, without reference, an offence which should not ordinarily be so tried.

NOTE

See AA.s. 120(2) and notes. This explanation should invariably be attached. If the officer holding the trial loses sight of the law and tries without reference any of the offences mentioned in AA. s. 120(2) without considering whether grave reasons for immediate action exist or not, the trial is illegal.

131. Promulgation.—The sentence of a summary court-martial shall (except as provided in rule 132) be promulgated, in the manner usual in the service, at the earliest opportunity after it has been pronounced and shall be carried out without delay after promulgation.

NOTE

See generally notes to AR 71.

132. Promulgation to be deferred in certain circumstances.—When the officer holding the trial has less than five years' service, the sentence of a summary court-martial shall not (except on active service) be carried out until approved by superior authority as provided in sub-section (2) of section 161.

NOTES

1. The officer to whom the sentence is referred cannot in any way alter the finding or remit, mitigate. or commute the sentence, but if he considers the sentence too severe he should inform the officer holding the trial of his views and direct him to modify the sentence, which order should be obeyed as a matter of discipline. The original sentence must not be carried out until the case is finally settled.

2. The provisions of this rule do not affect the date from which the sentence takes effect; see AA.s. 167 and AR 168.

133. Review of proceedings.—The proceedings of a summary court-martial shall, immediately on promulgation, be forwarded (through the Deputy Judge-Advocate General of the command in which the trial is held) to the officer authorised to deal with them in pursuance of section 162. After review by him, they will be returned to the accused person's corps for preservation in accordance with sub-rule (2) of rule 146.

NOTE

See AA.s. 162. The proceedings of an SCM will not be set aside on merely technical grounds. The words "merits of the case" refer to cases where the charge discloses no offence, or where the evidence is insufficient to support the charge, or where there is some material irregularity in procedure which, in the opinion of the reviewing authority has led to injustice. But where the accused is not misled by any defect in the charge and the statement of offence and the particulars taken together disclose an offence under the AA and supply the accused with sufficient information of the particulars of the charge, which he has to meet, the evidence on which the accused is convicted is given on oath or affirmation and is legally admissible and reasonably sufficient to support the charge, and the accused has not been prejudiced by any irregularity in procedure and has been allowed to call his witnesses and to cross-examine the witnesses against him, the proceedings may legally be upheld, the irregularities calling for no more than a remark for future guidance.

SECTION 4 - GENERAL PROVISIONS

Witnesses and Evidence

134. Calling of all prosecutor's witnesses.—The prosecutor or, in the case of a trial by summary court-martial, the court is not bound to call all the witnesses for the prosecution whose evidence is in the summary [***][1] of evidence or whom the accused has been informed he or it intends to call, but he or it should ordinarily call such of them as the accused desires, in order that he may cross-examine them, and shall, for this reason, so far as practicable, secure the attendance of all such witnesses.

NOTES

1. As to giving to the accused the summary of evidence, see AR 33(7).

2. It will be noted that the prosecutor is not required to call any witness at the trial who was called by the accused at the taking of summary of evidence.

3. It is not necessary for the prosecutor to examine at length a witness for the prosecution called at the request of the accused and tendered for cross-examination under this rule.

[1] Omitted by SRO 17(E), dated 6th December, 1993

135. Calling of witness whose evidence is not contained in summary.—If the prosecutor, or, in the case of a summary court-martial, the court intends to call a witness whose evidence is not contained in any summary [***][1] of evidence given to the accused, notice of the intention shall be given to the accused a reasonable time before the witness is called together with an abstract of his proposed evidence; and if such witness is called without such notice [***][1] having been given the court shall, if the accused so desires it, either adjourn after taking the evidence of the witness, or allow the cross-examination of such witness to be postponed and the court shall inform the accused of his right to demand such adjournment or postponement.

NOTE

It will be noted that this rule applies only in the case of witnesses called for the prosecution and not in the case of witnesses called by the accused or by the court under AR 143(4).

136. List of witnesses of accused.—The accused shall not be required to give to the prosecutor or court a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary [***][1] and for whose attendance the accused has not requested steps to be taken as provided by sub-rule (1) of rule 34.

NOTE

A member of the court, JA and prosecutor are competent witnesses for the defence, and may be sworn/affirmed at any stage of the proceedings, but an officer should not be detailed to serve as a member of, or act as prosecutor or JA at, a court-martial if his evidence is likely to be required. A witness for the prosecution cannot serve as a member of the court or act as JA at the trial of the case in which he is a witness (See ARs 39(2) (b) and 102).

137. Procuring attendance of witnesses.—(l) In the case of trials by general or district court-martial, the Commanding Officer of the accused, the convening officer or, after the assembly of the court, the presiding officer, shall take proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured, but the person requiring the attendance of a witness may be required to undertake to defray the cost (if any) of their attendance.

(2) The court shall, in the case of trials by summary court-martial, take proper steps to procure the attendance of the witnesses whom the accused desires to call and whose attendance can reasonably be procured, but the accused may be required to undertake to defray the cost (if any) of their attendance.

NOTES

1. See AA.s. 135 as to summoning witnesses.

2. For form of summons, see Appendix III, Part III to AR.

3. Witnesses who are subject to AA should be ordered by the proper authority to attend without the issue of a formal summons. The appropriate naval or air force authorities should be approached for the attendance of witnesses subject to naval or air force law.

4. An accused person can have no technical ground of complaint if the attendance of a witness from distant parts cannot be procured, but it is the duty of the CO or convening officer, or after the assembly of the court, the presiding officer, or in the case of trial by SCM, the court, to take all reasonable steps to secure the attendance of any witness whom there is any ground to suppose to be material to the defence, and AR 138 makes provision for the adjournment of the court if the attendance of such witness is essential.

5. The power to require the person calling a witness to undertake to defray the cost of his attendance is given in order to prevent an unreasonable demand by prosecutors or accused persons for the attendance of witnesses. In the case of the prosecutor, the cost will usually be defrayed as part of the expenses of the prosecution. In the case of the accused, this provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness might afterwards be held to invalidate the proceedings of a court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had upon the court.

6. As to expenses of witnesses, see Travel Regulations.

7. If a civilian witness had in his possession or under his control any books, accounts, letters, returns, papers, or other documents which are considered necessary for the trial, care must be taken in summoning him to require him to bring them with him; the witness would be justified in declining to acknowledge a mere oral request.

[1] Omitted by SRO 17(E), dated 6th December, 1993

8. For action where a civilian witness, who has been duly summoned and whose expenses have been tendered, makes default in attending, see AR 150(3) and notes thereto. As to privilege from arrest under civil or revenue process of a witness summoned to attend before a court-martial, see AA.s. 30.

138. Procedure when essential witness is absent.—If such proper steps as mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not be reasonably procured before the assembly of the court is essential to the prosecution or defence, the court shall—

(a) take steps to procure the issue of a commission for the examination of such witness; or

(b) if it is a general or district court-martial, adjourn and report the circumstances to the convening officer; or

(c) if it is a summary court-martial, adjourn to enable the witness to attend, or adopt such other course as appears to the officer holding the trial best calculated to do justice.

NOTES

1. See AA.ss. 137 and 138. Only the JAG or the DJAG of a command can issue a commission and then only when action is initiated by a court-martial. An AJAG cannot issue a commission.

2. At SCM, the court may, for instance, acquit the accused forthwith or order his release without prejudice to his subsequent trial should the witness become available.

139. Withdrawal of witnesses from court.— During the trial a witness, other than the prosecutor, shall not, except by special leave of the court, be permitted to be present in court while not under examination and if, while he is under examination, a discussion arises as to the allowance of a question, or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.

NOTES

1. It is customary to have all witnesses present in court while the members of the court are being sworn/affirmed, but they should withdraw before the arraignment. This does not, of course, apply to the prosecutor if he is a witness.

2. Permission to remain in court while not under examination may reasonably be given, e.g., to expert or professional witnesses, provided that no objection is made by or on behalf of the accused.

3. If any such discussion arises as is mentioned in the rule, the court should generally order the witness to withdraw, as his answer might be influenced by the discussion.

140. Oath or affirmation to be administered to witnesses.—An oath or affirmation shall, if so required by the Act, be administered to every witness before he gives his evidence by the judge-advocate (if any), a member of the court, or some other person empowered by the court in one of the following forms or in such other form to the same purport as the court ascertains to be according to the religion or otherwise binding on the conscience of the witness.

Form of Oath

"I ..... swear by almighty God that what I shall state shall be the truth, the whole truth, and nothing but the truth".

Form of Affirmation

"I ....., do solemnly, sincerely and truly declare and affirm that what I shall state shall be the truth, the whole truth, and nothing but the truth".

NOTES

1. For manner of administering and taking oaths and affirmations, see notes to ARs. 45 and 47.

2. The following is a translation into Hindi of the above oath :—

(Form of oath)

(Main ....., Parmeshwar ki shapath leta hun, kih main jo kuchh kahunga vah satya, purna satya, aur kewal satya hoga)

3. The following is a translation into Hindi of the above affirmation:—

(Form of Affirmation)

(Main ....., satya nishtha, shudh hridaya tatha sachhai se ghoshana karta hun aur partigya karta hun ki main jo kuchh kahunga vah satya, purna satya aur kewal satya hoga).

4. As to power of dealing with recalcitrant witnesses, see AA.s. 59 (in the case of persons subject to AA) and AR 150 (in other cases). See also AA.s. 152 and notes thereto.

141. Mode of questioning witness.—(l)-Every question shall be put to a witness orally by the officer holding the trial, by the prosecutor, by or on behalf of the accused, or by the judge-advocate and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor or accused, in which case he shall not reply until the objection is disposed of. The witness shall address his reply to the court.

(2) The evidence of a witness as taken down shall be read to him if he so requests before he leaves the court, and shall, if necessary, be corrected. If he makes any explanation or correction, the prosecutor and accused or counsel or the defending officer may respectively examine him respecting the same.

(3) If the witness denies the correctness of any part of evidence when the same is read over to him, the court may instead of correcting the evidence, record the objection made to it by the witness.

(4) If the evidence is not given in English and the witness does not understand that language, the evidence as recorded shall be interpreted to him in the language in which it was given, or in a language which he understands if he so requests before he leaves the court.

(5) Where evidence is recorded by shorthand writer, it shall not be necessary to read the evidence of the witness to him under sub-rule (2) or (4), if, in the opinion of the court and the judge-advocate, if any (such opinion to be recorded in the proceedings), it is unnecessary so to do.

NOTES

1. The court and JA must carefully listen to the actual questions put by the prosecutor and by or on behalf of the accused, as well as to the form in which such questions are put, and they must intervene before the witness replies if in their opinion, any question is improper or "leading". If either the prosecutor or the accused, or the officer or counsel representing him, considers that a particular question about to be put by him may be objected to, he should submit the propriety of the question to the decision of the Court, having first informed the witness that he must not make his reply until the decision of the court has been given.

2. A witness is first examined by the person calling him, then cross-examined by the opposite party, after which he may be re-examined by the party calling him on matters raised in the cross-examination. The court should, if requested by either party, allow the cross-examination of a witness by that party to be postponed, especially if his evidence comes as a surprise; see also AR 135 where a witness is called, whose evidence is not contained in the summary [***][1] of evidence. A request for postponement should not be acceded to, if, in the opinion of the court, it is made for purposes of obstruction.

3. When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end of the record of his evidence, and not by way of interlineation or erasure.

4. If the witness makes any explanation or correction, the prosecutor and accused or counsel or defending officer may respectively examine him respecting the same.

5. Under sub-rules (2) and (4) evidence of a witness is required to be read over or translated to him if he so wishes. The fact that the witness was informed of his right under the said sub-rules should be recorded in the proceedings. If he declines to have his statement read over or translated to him, the same should be recorded accordingly.

6. After a witness has given his evidence every effort should be made to keep him separate from other witnesses who have not given their evidence before the court.

142. Questions to witnesses by court or judge-advocate.—(1) The presiding officer, the judge-advocate (if any), or the officer holding the trial and with the permission of the

[1] Omitted by SRO 17(E), dated 6th December, 1993

court, any member of the court may address a question to a witness while such witness is giving his original evidence and before he withdraws.

(2) Upon any such question being answered, the presiding officer, the judge-advocate (if any), or the officer holding the trial, shall also put to the witness any question relative to that answer which the prosecutor or the accused or counsel or the defending officer may request him to put and which the court deem reasonable.

NOTES

1. It will be noted that this rule applies only to the original evidence of a witness and not to any evidence given by him on being recalled. As to recalled witnesses, see AR 143.

2. It is desirable that any questions should be put after the conclusion of the examination, cross-examination (if any) of the witness; but questions may properly be put to a witness during his examination in order that his evidence may be clearly recorded.

3. The presiding officer, JA or officer holding the trial should always, under the provisions of this rule, put any question which they are requested by the prosecutor, or by or on behalf of the accused, to put and which does not seem unreasonable. It is to be noted that members of the court other than the presiding officer are not empowered except in the circumstances mentioned in sub-rule (1), to put questions.

143. Re-calling of witnesses and calling of witnesses in reply.—(1) At the request of the prosecutor or of the accused, a witness may, by leave of the court, be recalled at any time before the closing address of or on behalf of the accused (or at a summary court-martial at any time before the finding of the court) for the purpose of having any question put to him through the presiding officer, the judge-advocate (if any), or the officer holding the trial.

(2) The court may, if it considers it expedient, in the interests of justice, so to do, allow a witness to be called or recalled by the prosecutor, before the closing address of or on behalf of the accused, for the purpose of rebutting any material statement made by a witness for the defence or for the purpose of giving evidence on any new matter which the prosecutor could not reasonably have foreseen.

(3) Where the accused has called witnesses to character, the prosecutor before the closing address of or on behalf of the accused, may call or re-call witnesses for the purpose of proving a previous conviction or entries in the defaulter's book, against the accused.

(4) The court may call or re-call any witness at any time before the finding, if it considers that it is necessary for the ends of justice.

NOTES

1. The presiding officer, JA or officer holding the trial should also put to a witness recalled under the provisions of sub-rule (1) any further questions which they consider necessary in view of the answers given.

2. Sub-rules (2) and (3) are inapplicable to an SCM where there is no prosecutor. Sub-rule (4) will, however, admit of the officer holding the trial calling or recalling witnesses in similar circumstances when the ends of justice require it. See also AR 119.

3. The power given under sub-rule (4) of calling or recalling a witness should only be exercised in exceptional circumstances, e.g., where it appears for the first time from the evidence given at the trial that a person, who has not been called either by the prosecutor or on behalf of the defence, was present at, and probably witnessed the occurrence which forms the subject of the charge which is being tried. Witnesses should not be called or recalled under this provision in order to supplement any negligent conduct on the part of the prosecution. If witnesses are called or recalled under this provision, the prosecutor and the accused should be invited to put or suggest any relevant questions which in their opinion should be put by the court. If new evidence is given after the closing address by or on behalf of the prosecutor or the accused, the court should permit the prosecutor and the accused (as the case may be), make a further address upon the new matter which has been elicited (if any).

4. If a witness is recalled, he should not be sworn or affirmed again, but reminded of his previous oath or affirmation. The fact of his being reminded should be recorded in the proceedings.

Addresses

144. Addresses.—All addresses by the prosecutor and the accused and the summing up of the judge-advocate may either be given orally or in writing, and if in writing shall be read in open court.

NOTE

The summing-up of the JA should invariably be in writing. See note I to AR 60. Also see AR 92(4).

Insanity

[145. Finding of Insanity.—(1) Where the court finds either that the accused by reason of unsoundness of mind, is incapable of making his defence; or that he committed the act alleged but was by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the court shall give brief reasons in support thereof. The judge advocate, if any, or the presiding officer or in the case of summary court-martial, the officer holding the trial shall record or cause to be recorded such brief reasons in the proceedings.

2. The presiding officer or in the case of summary court-martial, the officer holding the trial, shall date and sign the above record, and the proceedings, upon being signed by the judge-advocate, if any, shall at once be transmitted to the confirming officer or to the authority empowered to deal with its finding under section 162, as the case may be][1].

NOTES

1. See AA.ss. 145 and 146 and notes thereto.

2. For form of finding see page 286

Preservation of Proceedings

146. Preservation of proceedings.—(1) The proceedings of a court-martial (other than a summary court-martial) shall, after promulgation, be forwarded as circumstances require, to the office of the Judge-Advocate General, and there preserved for not less, in the case of a general court-martial, than seven years, and in the case of any other court-martial, than three years.

(2) The proceedings of a summary court-martial shall be preserved for not less than three years, with the records of the corps or department to which the accused belonged.

[147. Right of person tried to copies of proceedings.— Every person tried by a court-martial (other than summary court-martial) shall, after the proceedings have been signed by the Presiding Officer and in the case of summary court-martial the officer holding the trial, and before they are destroyed, on a request made by such person in writing to the Court or the officer holding the trial or the person having the custody of his proceedings, be entitled for the supply of a copy of such proceedings, within a reasonable time and free of cost, including the proceedings upon revision, if any.][2]

NOTES

1. Under this rule an accused is entitled to a copy of the proceedings of his trial free of charge. In case of joint trial by SCM the officer holding the trial or in case of joint trial by GCM, DCM or SGCM the convening officer, should ensure that sufficient copies of the proceedings are prepared to facilitate delivery of the same to the accused on demand. The application for a copy of the proceedings should be made personally by the accused.

2. For custody of proceedings after confirmation or where no confirmation is required, see AR 146.

[1] sub vide SRO 17(E), dated 6th December, 1993

[2] sub vide SRO 169 dated 15 May, 1987

147A. Copy of proceedings not to be given in certain cases.—Notwithstanding anything contained in rule 147, if the Central Government certifies that it is against the interests of the security of the State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof under the said rule, he shall not be furnished with such copy;

Provided that if the Central Government is satisfied that the person demanding the copy is desirous of submitting a petition in accordance with the Act or instituting any action in a court of law in relation to the finding or sentence, it shall permit inspection of the proceedings to such person or his legal adviser, if any, on the following conditions, namely:—

(a) the inspection shall be made at such times and such places as the Central Government or any authority authorised by it may direct; and

(b) the person allowed to inspect the proceedings shall, before such inspection, furnish —

(i) an undertaking in writing, that he shall not make copies of the proceedings or any part thereof and that the information or documents contained in such proceedings shall not be used by him, for any purpose whatsoever other than for the purpose of submitting a petition in accordance with the Act or instituting an action in a court of law in relation to the said finding or sentence; and

(ii) a certificate that he is aware that he may render himself liable to prosecution under sections 3 and 5 of the Indian Official Secrets Act, 1923 (19 of 1923), if he commits any act specified in the said sections in relation to the documents or information contained in the said proceedings.

NOTE.—This rule shall be deemed always to have been inserted in the Army Rules. Ministry of Defence Gazette Notification No. E-7 dated 17th June 1960 published in Extra ordinary Gazette Pt I Sec. 3 dated 20th June, 1960, refers.

NOTE

The accused or his legal adviser will be liable to be prosecuted for contravening section 3 or 5 of the Indian Official Secrets Act, 1923, if they communicate any information obtained during the inspection of the proceedings to unauthorised persons or make unauthorised use of such information.

148. Loss of proceedings.— (1) If, before confirmation, the original proceedings of a court-martial which require confirmation or any part thereof, are lost, a copy thereof, if any, certified by the presiding officer or the judge-advocate at the court-martial may be accepted in lieu of the original.

(2) If there is no such copy, and sufficient evidence of the charge, finding, sentence, and transactions of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings, or part thereof, which have been lost.

(3) In any case above in this rule mentioned, the finding and sentence may be confirmed, and shall be as valid as if the original proceedings, or part thereof, had not been lost.

(4) If the accused refuses the assent referred to in sub-rule (2), he may be tried again, and the finding and sentence of the previous court of which the proceedings have been lost shall be void.

(5) If, after confirmation or in any case where confirmation is not required, the original proceedings of a court-martial or any part thereof are lost, and there is sufficient evidence of the charge, findings, sentence, and transactions of the court and of the confirmation

(if required) of the finding and sentence, that evidence shall be a valid and sufficient record of the trial for all purposes.

NOTES

1. Confirmation is not complete until the finding and sentence have been promulgated. See AR 71.

2. As to annexure to the proceedings of original documents, see note 3 to AR 67.

3. The evidence may be obtained by the presiding officer or some member of the court writing out from memory the substance of the charge, finding, sentence and transactions of the court, which should be authenticated by the signatures of the members. A copy of the charge, however, should always be procured if possible.

4. As soon as it is known that the proceedings have been lost; steps should be taken to obtain and preserve the best evidence available.

Irregular Procedure when no injustice is done

149. Validity of irregular procedure in certain cases.— Whenever, it appears that a court-martial had jurisdiction to try any person and make a finding and that there is legal evidence or a plea of guilty to justify such finding, such finding and any sentence which the court-martial had jurisdiction to pass thereon may be confirmed, and shall, if so confirmed and in the case of a summary court-martial where confirmation is not necessary, be valid, notwithstanding any deviation from these rules or notwithstanding that the charge-sheet has not been signed by the commanding officer or the convening officer, provided that the charges have, in fact, before trial been approved by the commanding officer and the convening officer or notwithstanding any defect or objection, technical or other, unless it appears that any injustice has been done to the offender, and where any finding and sentence are otherwise valid they shall not be invalid by reason only of a failure to administer an oath or affirmation to the interpreter or shorthand writer; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.

NOTES

1. This rule is intended to prevent a miscarriage of justice in consequence of defects, usually of a technical nature, in matters of procedure which do not affect the real merits of the case; but before acting upon this rule the confirming officer must be satisfied that the accused has not suffered any injustice through any deviation from the AR or through any defect or objection. Whether or not a deviation, etc., is of a substantial nature will often depend upon the circumstances. The court should not allow any technicality to interfere with the accused in the making of his defence.

2. The confirming officer should always direct the attention of all officers concerned to deviations and defects which have been observed and for which they are responsible.

3. It may be convenient to note here that if, after confirmation, the charges or findings thereon are declared to be invalid, the trial must be treated as null, the conviction set aside, the person convicted relieved of all consequences of his trial and the record of conviction erased.

4. As to the substitution of valid finding and sentence for invalid finding and sentence, see AA.s. 163.

5. As to review of SCsM, see AA.s. 162 and notes to AR 133.

Offences of witnesses and others

150. Offences of witnesses and others.— When any court-martial is of opinion that there is ground for inquiring into any offence specified in sections 59 and 60 and committed before it or brought under its notice in the course of its proceedings, or into any act done before it or brought under its notice in the course of its proceedings, which would, if done by a person subject to the Act, have constituted such an offence, such court-martial may proceed as follows that is to say—

(1) If the person who appears to have committed the offence is subject to the Act, the court may bring his conduct to the notice of the proper military authority, and may also order him to be placed in military custody with a view to his punishment by an officer exercising authority under section 80, 83, 84 or 85 or to his trial by a court-martial.

(2) If the person who appears to have done the act is amenable to naval or air force law, the court may bring his conduct to the notice of the proper naval or air force authority, as the case may be.

(3) If the person who appears to have done the act is not subject to military, naval or air force law, then in the case of acts which would, if done by a person subject to the Act, have constituted an offence under clause (a), (b), (c) or (d) of section 59, the officer who summoned the witness to appear or the presiding officer or officer holding the court, as the case may be, may forward a written complaint to the nearest Magistrate of the first class having jurisdiction, and in the case of acts which would, if done as aforesaid, have constituted an offence under clause (e) of section 59 or section 60, the court, after making any preliminary inquiry that may be necessary, may send the case to the nearest Magistrate of the first class having jurisdiction for inquiry or trial in accordance with [Section 340 of the Code of Criminal Procedure, 1973 (Act 2 of 1974)][1]

NOTES

1. A trial by court-martial is deemed to be a judicial proceeding within the meaning of IPC.ss. 193 and 228. A court-martial is deemed to be a court within the meaning of Cr P C ss. 345 and 346(Cr PC 1973); see AA.s. 152 and notes thereto.

2. An act includes an illegal omission, See AA.s. 3(xxv) and IPC.s. 32.

3. When a person subject to AA commits an offence under any of the clauses of AA.s. 59, or when a corresponding offence is committed by a person subject to naval or air force law or by a civilian, court-martial will often act wisely in accepting an apology sufficient to vindicate their dignity instead of resorting to the more severe measures here indicated. As already pointed out (note 3 to AR 76) the best course to adopt when a person other than the accused, interrupts the proceedings will ordinarily be to order his exclusion from the court.

4. Courts-martial should exercise the greatest discretion in instituting proceedings or in taking measures which may result in the institution of proceedings, against a person subject to AA for the offence specified in AA.s. 60, or against a person subject to naval or air force law, or a civilian for corresponding offence. It is not enough that the court-martial has by its verdict shown that it did not believe the witness, for it may have thought him to be mistaken or, on the balance of probabilities, it may have accepted another version of what took place. Before instituting proceedings as indicated in this rule against a witness, the court should be satisfied that there are good grounds for believing that the witness has wilfully given false evidence on some point which is material to the issue, and that his conviction is likely. The credit of another witness is a point material to the issue.

5. When it is likely that a witness will be prosecuted for giving false evidence, the exact words used, in the language in which the evidence was given, should be recorded; see AR 92(2).

6. In the case of a person subject to AA, the court-martial may, at its discretion, either merely report his conduct to the proper military authority, or may in addition order him into military custody pending disposal of his case.

7. If a person is so ordered into custody, this fact should be mentioned in the report; and it then becomes the duty of the officer receiving the report to see that the case is promptly investigated in accordance with AA.s. 102(1). The report should be in sufficient detail to place the officer in full possession of the facts and enable him to exercise his discretion whether to order trial by court-martial if he is competent to do so, or to direct summary disposal.

8. As to "proper military authority", see AR 2(d). This will depend on the status of the offender and the authority under whose orders the court has been convened.

9. In the case of an SCM, the officer holding the trial would ordinarily report to the next superior authority and a GCM, DCM or SGCM would report to the convening officer, observing in each case the usual channel of correspondence.

10. As explained in the notes to AA.s. 59, the members of a court-martial reporting an officer under this rule are individually disqualified (AR 39(2)(c) and (e)) from trying him on charges arising out of their report. If the officer, to whom the case is finally referred, decides on trial, he must convene a new court for the purpose. For similar reasons it is undesirable that a CO should try by SCM a person under his command who has offended against his authority when holding an SCM or when sitting as a member of a GCM. DCM or SGCM. He could, save in grave emergency, only do so with the sanction of superior authority which should, therefore, as a rule, be withheld, see AA.s. 120(2).

11. A court-martial convened or assembled under AA has, as such, no authority over a person subject to naval or air force law and cannot as a court order him into military custody. Sub rule (2) enables the court

[1] Subs by SRO 17 (E), dated 6th December, 1993

merely to report offences of contempt or of giving false evidence committed by such persons to proper naval or air force authority for disposal under the appropriate Act. See, however, AA.s. 152 and notes thereto.

12. When a person subject to AA commits contempt or gives false evidence before a court-martial other than the one convened under AA, the charge can only be framed under AA.s. 63, as a court-martial convened under an Act other than AA is not a court-martial for the purpose of charges under AA.s. 59 or 60.

13. Sub rule (3) deals with civilian offenders; Cr P C 1973, ss. 195 and 340/341 provide for the institution of proceedings for certain offences against the IPC, on the written complaint of the public servant concerned or of the court before which the offence complained of was committed. A court-martial is a "criminal court" for the purpose of the above sections and is also a "court of justice" for the purpose of the IPC; See Cr PC.s. 6 and IPC.s. 20. The effect of this is that all the acts and omissions which are punishable under AA.s. 59 clause (a), (b), (c) or (d), when committed by persons subject to AA, are, when committed by civilians, offences under IPC .ss. 174, 175. 178 and 179, for which the officer who summoned the witness to appear or the officer conducting the proceedings of the court-martial, as the case may be, can institute proceedings under CrPC.s. 195(1)(a); and that all acts and omissions which are punishable under AA.ss. 59(e) and 60 when committed by persons subject to AA are, when committed by civilians, offences under I P C.ss. 193, 194 and 228, for which the aggrieved court-martial can institute proceedings under Cr PC 1973, s.340. Before instituting such proceedings, the officer (in the case of offences corresponding to those in AA.s. 59, clauses (a), (b), (c) or (d) and a court-martial (in the case of offences corresponding to those in AA.ss. 59(e) or (60) must prima-facie be satisfied that a definite offence has been committed by some definite person or persons against whom proceedings in a criminal court are to be taken. It is not sufficient that the circumstances may raise some sort of suspicion against someone. In such a case the officer or the court-martial, as the case may be should either allow the matter to drop, or should make or hold a preliminary inquiry to see who is to be prosecuted and for what. A court's decision to institute proceedings must be a judicial one, i.e., either based on what the court has itself heard or seen and considered, or on evidence taken before it and considered. Similarly an officer's decision to institute proceedings must be a reasonable one, based on, sufficient grounds.

14. The report to the magistrate may be in letter form, and should be sufficiently detailed to place him in full possession of all the materials on which the decision to prosecute was based. It should set forth the name and identity of the person accussed and of the witnesses who can substantiate the accusation. A narrative of the events complained of, should be included in the report and a record of the evidence taken in preliminary inquiry (if any) attached.

15. In the case of a person subject to naval or air force law the proper course is to report the offence to the proper naval or air force authority, though proceedings could be taken under sub-rule (3).

SECTION 5 — SUMMARY GENERAL COURTS-MARTIAL

The foregoing rules in this Chapter shall not, save as hereinafter mentioned, apply to a summary general court-martial which shall be subject to the following rules, namely—

151. Convening the court and record of proceedings.— (1) The court may be convened and the proceedings of the court recorded in accordance with the form in Appendix III, with such variations as the circumstances of each case may require.

(2) The officer convening the court shall appoint or detail the officers to form the court, and may also appoint or detail such officers as waiting members as he thinks expedient. Such officers should have held commissions for not less than one year, but, if any officers are available who have held commissions for not less than three years, they should be selected in preference to officers of less service.

(3) The provost-marshal, an assistant provost marshal, or an officer who is prosecutor or witness for the prosecution shall not be appointed a member of the court, but subject to sub-rule (2), any other available officer may be appointed to sit.

NOTES

1. In the convening order, members and waiting members (if any) may be appointed by name, or only their ranks and units may be mentioned. In the latter event, the ranks, names, etc, of the members of the court as constituted, will be recorded in the proceedings.

2. The convening order must be signed personally by the convening officer.

3. Under sub-rule (2), it is not mandatory that a member of an SGCM must have held a commission for not less than one year. An officer with less than one year's commissioned service can legally sit as a member.

152. Charge.— The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Act.

153. Trial of several accused persons.— The court may be sworn at the same time to try any number of accused persons then present before it, but except as provided in rule 35, the trial of each accused person shall be separate.

154.Challenges.— (1) The names of the presiding officer and members of the court shall be read over to the accused who shall thereupon be asked if he objects to be tried by any of these officers.

(2) Any objection shall be decided as provided for in section 130 and rule 44—the vacancies being filled from among the waiting members (if any), or by fresh members being appointed by the convening officer.

155. Swearing or affirming the court, judge-advocate, etc.—The provisions of rules 45, 46 and 47 relating to administering and taking of oaths and making of affirmations shall apply to every summary general court-martial.

156. Arraignment.—When the court is sworn or affirmed, the judge-advocate (if any) or the presiding officer shall state to the accused then to be tried, the offence with which he is charged with, if necessary, an explanation giving him full information of the act or omission with which he is charged and shall ask the accused whether he is guilty or not guilty of the offence.

NOTES

1. As to objection by accused to charge, see AR 49 which by AR 164 is applied, so far as practicable, to an SGCM. As to responsibility of presiding officer, see AR 76.

2. As to general plea of "Guilty" Or "Not Guilty", see AR 52 and notes: as to procedure after plea of "Guilty", see AR 54. Both these rules are, by AR 164 applied, so far as practicable, to an SGCM.

3. A plea of "Guilty" will not be accepted by the court if the charge or charges upon which an accused is arraigned render him liable, on conviction, to be sentenced to death. If such plea is offered, the court will enter plea of "Not Guilty' and proceed with the trial accordingly. See AR 52(4).

157. Plea of jurisdiction.—If a special plea to the general jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer.

NOTE

See AR 51, which by AR 164 is applied, so far as practicable, to an SGCM

158. Evidence.—(1) The witnesses for the prosecution will be called and the accused shall be allowed to cross-examine them and to call any available witnesses for his defence.

(2) An oath or affirmation as laid down in rule 140 shall be administered to every witness, if so required by the Act, before he gives his evidence, by one of the persons specified in that rule.

NOTE

Although by AR 164 only a limited number of the foregoing rules are applied to SGCM, so far as practicable, the procedure to be adopted at an SGCM should be the same as at a GCM or DCM.

159. Defence.—(l) The accused shall be asked what he has to say in his defence, and shall be allowed to make his defence. He may be allowed to have any person to assist him during the trial,[***][1]

(2) The court or the judge-advocate, if any. may question the accused on the case for the purpose of enabling him to explain any cirrcumstances appearing in his statement or in the evidence against him. The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving answers to them which he knows not to be true [***][1].

[1]Omitted by SRO 17 (E), dated 6th December, 1993

NOTES

1. See note to AR 158.

2. As to rights of the accused to prepare his defence, see AR 33 which by AR 164 is applied, so far as practicable, to an SGCM.

3. See ARs 95 to 101. If the person assisting is an officer subject to AA or a counsel, (see AR 101(2)), he may be allowed full privileges of address, etc.

4. As to questioning of accused by the court or JA, see note 3 to AR 58.

160. Record of the Evidence and Defence.—(l) The judge-advocate (if any), or the presiding officer shall take down or cause to be taken down a brief record of the evidence of the witnesses at the trial and of the defence of the accused; the record so taken down shall be attached to the proceedings.

(2) If it appears to the convening officer that military exigencies or other circumstances prevent compliance with sub-rule (1), he may direct that the trial will be carried on without any such brief record being taken down.

(3) If the accused pleads "Guilty" the summary [***][1] of evidence, if any, may be read and attached to the proceedings, and it shall not be necessary for the court to hear witnesses for the prosecution, respecting matters contained in the summary [***][1] of evidence so read.

NOTE

It would hardly ever be necessary for the convening officer to give such a direction as is mentioned in sub-rule (2). If he does so, he must record it in his order convening the court and state shortly the exigencies or other circumstances which appear to him to prevent compliance with this rule.

161. Finding and sentence.— The court shall then be closed to consider its finding. If the finding on any charge is "Guilty", the court may receive any evidence as to previous convictions and character which is available. The court shall then deliberate in closed court as to its sentence.

NOTES

1. As to voting of members, see AA.s. 132(1) and (4).

2. For votes required before a sentence of death can be passed, see AA.s. 132(3).

3. ARs 61 (consideration of finding), 62 (form, record and announcement of finding), 64 (recommendation to mercy) and 67 (announcement of sentence) are applied by AR 164, so far as practicable, to trials by SGCM.

162. Signing and transmission of proceedings.— Upon the court arriving at a finding of "Not guilty", or awarding the sentence in case of having arrived at a finding of "Guilty", the presiding officer shall date and sign the finding or sentence, as the case may be. The signature shall authenticate the whole of the proceedings and the proceedings upon being signed by the judge-advocate, if any, shall at once be transmitted to the confirming officer, for confirmation.

NOTES

1. Every finding and sentence of an SGCM is subject to confirmation; see AA.s. 153.

2. As to retention to serve in the ranks of a person sentenced on active service to imprisonment or dismissal, see AA.s. 78.

163. Adjournment.— (1) A summary general-court-martial may adjourn from time to time and from place to place and may when necessary view any place.

(2) The proceedings shall be held in open court, in the presence of the accused except on any deliberation among the members when the court may be closed.

NOTE

As to adjournment, see AR 82 and notes thereto.

---

[1] Omitted by SRO 17 (E), dated 6th December, 1993

164. Application of rules.—The foregoing rules, namely rules 22 (hearing of charge), 23 (procedure for taking down the summary of evidence), 24 (remand of accused), [***][1] 27 (delay report), 33 (rights of accused to prepare defence), 34 (warning of accused for trial), 36 (suspension of rules on grounds of military exigencies or the necessities of discipline), 38 (adjournment for insufficient number of officers), 49 (objection by accused to charge), 51 (special plea to the jurisdiction), 52 (general plea of 'Guilty' or 'Not guilty'), 53 (plea in bar), 54 (procedure after plea of "Guilty"), 55 (withdrawal of plea of 'Not guilty'), 61 (consideration of finding), 62 (form, record and announcement of finding), 64 (procedure on conviction), 65 (sentence), 66 (recommendation of mercy), 67 (announcement of sentence), 71 (promulgation), 72 (mitigation of sentence on partial confirmation), 73 (confirmation notwithstanding informality in, or excess of, punishment), 74 (member or prosecutor not to confirm proceedings), 76 (responsibility of presiding officer), 77 (power of court over address of prosecutor and accused), 78 (procedure on trial of accused persons together), 80 (sitting in closed court) ,[80-A (Court-martial to be be public)][2], 84 (proceedings on death or illness of accused), 85 (death, retirement or absence of presiding officer), 86 (presence throughout of all members of the court), 94 (transmission of proceedings after finding), 95 (defending officer and friend of accused), [96 (counsel allowed in certain general and district courts-martial), 97 (requirement for appearance of counsel) 98 (counsel of prosecution), 99 (counsel for accused),][2] 100 (general rules as to counsel), 101 (qualification of counsel)][1],102 (disqualification of judge-advocate), 103 (invalidity in the appointment of judge-advocate), 104 (substitute on death, illness, or absence of judge-advocate), 105 (powers and duties of judge-advocate), 145 (finding of insanity), 146 (preservation of proceedings), 147 (right of person tried to copies of proceedings), 148 (loss of proceedings), 149 (validity of irregular procedure in certain cases), shall, so far as practicable, apply as if a summary general court-martial were a district court-martial.

NOTE

See also ARs 152, 154(2), 155 and 158(2).

165. Evidence of opinion of convening officer.—Any statement in an order convening a summary general court-martial as to the opinion of the convening officer shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

NOTE

See IEA.s 4 for the meaning of "conclusive evidence".

SECTION 6—EXECUTION OF SENTENCES

166. Committal Warrants.—A warrant for the committal of a person sentenced by a court-martial to a prison, under the provision of section 168 and sub-section (2) of section 169, shall be in one of the forms given in Appendix IV. Such warrant shall be signed and despatched by the commanding officer of the prisoner or by any higher authority or his staff officer and forwarded to the proper prison authority.

NOTE

See AR 4. for presumption as to signature on warrants, see AA.s. 140.

167. Warrants under Section 173.—Any warrant issued under the provisions of section 173 shall be in one of the forms given in Appendix IV, and shall be signed by the officer making the order in pursuance of which such warrant is issued, or by his staff officer, or by the commanding officer of the unit to which the person undergoing sentence belonged.

[1] Omitted by SRO 17 (E), dated 6th December, 1993

[2] Sub. by SRO17 (E), dated 6th December, 1993

NOTE

See note to AR 166.

168. Sentence of Cashiering or Dismissa1.—(1) A sentence of cashiering or dismissal awarded by a court-martial shall take effect from the date on which the sentence is promulgated to the person under sentence, or except in the case of an officer, from such subsequent date as may be specified by the commanding officer at the time of such promulgation.

(2) When dismissal is combined with imprisonment which is to be carried out in a military prison or in military custody [***][1] the dismissal shall not take effect until, the date on which the prisoner is released from a military prison or from a military custody, [***][1]

(3) When cashiering or dismissal is combined with imprisonment for life or with imprisonment which is to be carried out in a civil prison, the cashiering or dismissal shall not take effect until the date on which the prisoner is received into a civil prison.

NOTES

1. Under AA.s. 23, a discharge certificate must be furnished to every JCO, WO or enrolled person who is dismissed from the service (see also AR 12). An officer is not furnished with a discharge certificate.

2. A sentence of cashiering or dismissal awarded by a court-martial to an officer takes effect from the date of promulgation, or when combined with imprisonment, from the date on which the prisoner is received into a civil prison. The sentence is notified in the Gazette of India.

3. It may sometimes be expedient for a CO, in order to keep a person sentenced to dismissal (other than an officer) subject to AA for a short period, to specify a date subsequent to the date of promulgation. If he considers such action is desirable, he must do so at the time of the promulgation of the sentence to the person and he should record the date he specifies in the minute of promulgation. When a CO exercises this option of specifying a subsequent date, the date specified must by strictly limited by the requirements of the case. For instance, in the case of a person sentenced out of India to dismissal alone, or to dismissal combined with imprisonment which is carricd out locally either in military custody or for special reasons in local civil custody (AA.s. 171), the subsequent date might be "date of disembarkation" or "date of embarkation" according to whether the intention is to despatch the person to India on a transport or by a private vessel. It is obviously desirable to keep the person subject to military discipline while travelling on a transport or until he can be despatched to India. If the person is to be sent by a transport, the CO can enter in the discharge certificate "date of disembarkation" as the date from which the dismissa1 takes effect.

4. The effect of sub-rule (3) is that a prisoner under sentence of cashiering or dismissal combined with imprisonment which is carried out in a civil prison remains subject to AA until he is received into a civil prison. The CO should enter on the discharge certificate the date of admission into a civil prison as the date from which the dismissal takes effect, or in the case of an officer, report the date of admission to the proper military authority.

5. AA will apply to an offender who upon conviction by court-martial is sentenced to imprisonment and committed to civil prison, during the term of his imprisonment, though he is cashiered or dismissed from the regular Army or otherwise has ceased to be subject to AA and he may be kept, removed, imprisoned and punished as if he continued to be subject to AA; see AA.s. 123 and notes thereto.

169. Custody of Person under Sentence of Death.—When a person is sentenced by a court-martial to suffer death, the commanding officer for the time being of such person may, if he thinks fit, by a warrant in one of the forms in Appendix V, commit the said person for safe custody in a civil prison pending confirmation or the carrying out of the sentence.

[1] Omitted by SRO 17 (E), dated 6th December, 1993

[170. Opportunity for petition against sentence of death.—(1) While confirming the sentence of death, the confirming authority shall specify the period within which the person sentenced may, after the sentence has been promulgated to him, submit a petition against the finding or sentence against him of the court-martial.

(2) The person against whom a sentence of death has been confirmed shall at the time of promulgation, be informed of his rights under sub-section (2) of section 164 and of the period specified by the confirming authority within which he may, if he so wishes to do, submit a petition against the finding or sentence of the court-martial.

(3) Every petition against a finding or sentence submitted by a person against whom a sentence of death has been confirmed, and every order in respect of such petition shall be transmitted, whereas confirming authority is the Chief of the Army Staff or the Central Government, through the Adjutant General at the Army Head-quarters and in any other case, through the confirming officer.

(4) A sentence of death shall not be carried into effect until the expiry of the period specified by the confirming authority under sub-rule (1) or if, within the period so specified, the person under sentence submits a petition against the finding or sentence of the court-martial, until the authority legally competent to dispose of such petition finally, after considering the petition, orders that the sentence of death may be carried into effect.][1]

[170A. Death Warrant.—(1) The officer commanding the army, army corps or division or an officer commanding forces in the field shall nominate a provost marshal or other officer not below the rank of Lieutenant Colonel who shall be responsible for the due execution of the sentence of death passed under the Act, and shall issue to such officer the death warrant in the relevant form contained in Appendix V.

(2) The officer specified in sub-rule (1) shall not issue the death warrant until he is satisfied that having regard to the provision of rule 170, the sentence of death may be carried into effect.

(3) No sentence of death passed under the Act shall be carried into effect untill the death warrant has been received by the provost marshal or other officer nominated under sub-rule (1).

(4) If the authority specified in sub-rule (1) is of the opinion that the sentence of death be carried out in a civil prison, he shall forward a warrant in one of the forms in Appendix V together with an order of the confirming authority certifying the confirmation of the sentence, to the civil prison for execution of the sentence.][1]

[170B. Execution of sentence of death.—(1) On receipt of the death warrant, the provost marshal or other officer, nominated under sub-rule (1) of rule 170A shall :—

(a) inform the person sentenced as soon as possible of the date on which the sentence will be carried out;

(b) if the person sentenced has been committed to a civil prison under rule 169, obtain the custody of his person by issuing a warrant in one of the forms in Appendix V; and

(c) proceed to carry out the sentence as required by the death warrant and in accordance with any general or special instructions which may from time to time be given by or under the authority of the Chief of the Army Staff.

(2) During the execution of sentence of death passed under the Act, no person except those specified, below, shall be present without the authority of the officer who issued the death warrant. The following persons shall attend the execution of the sentence of death:-

(a) the provost marshal or other officer who is responsible for the due execution of the sentence in accordance with these rules;

(b) a commissioned medical officer of the armed forces of the Union;

[1] Subs by SRO 17 (E), dated 6th December, 1993

(c) an officer nominated by the officer who issued the death warrant, who is able to identify the person under sentence as the person described in the death warrant and as the person who was tried and sentenced by the court-martial mentioned therein;

(d) such non-commissioned officers as may be detailed by the provost marshal or the other officer aforesaid for escort and security purposes or to assist in the execution;

(e) if the execution is carried into effect in an army unit, the officer for the time being in command of such unit.

(3) After the sentence of death has been carried into effect, the provost marshal or other officer nominated under sub-rule (1) of rule 170A or the Superintendent of the civil prison, as the case may be, shall complete or cause to be completed parts II and III of the death warrant, and shall, without unnecessary delay return the completed death warrant to the officer who had issued the same][1].

171. Procedure on Commutation of Sentence of Death—If a sentence of death is commuted under the Act or if the person sentenced to death is pardoned, and

(a) if he has been committed to a civil prison under a warrant issued under rule 169, a further warrant in one of the forms given in Appendix V shall be issued by the commanding officer of such person;

(b) if he has been detained in military custody, any warrant which may be necessary to give effect to the sentence as so commuted, shall be issued in one of the forms given in Appendix IV.

172. -176. [***][2]

---

[1] Inserted by SRO 17 (E), dated 6th December, 1993

[2] Omitted by SRO 17(E) dated 6 December, 1993.

CHAPTER VI

COURTS OF INQUIRY

[**177. Courts of Inquiry.**—(l) A court of inquiry is an assembly of officers or of junior commissioned officers or of officers and junior commissioned officers, warrant officers or non-commissioned officers, directed to collect evidence, and if so required to report with regard to any matter which may be referred to them.

(2) The court may consist of a Presiding Officer, who will either be an officer or a junior commissioned officer, and of one or more members. The Presiding Officer and members of court may belong to any Regt or Corps of the service according to the nature of the investigation.

(3) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.][1]

NOTES

1. See generally as to courts of inquiry Regs Army paras 516 to 526. For disqualification of members of courts of inquiry for serving on subsequent courts-martial, see AR 39(2)(c).

2. A court of inquiry has no power to compel the attendance of civilian witnesses. See AA.s. 135(1).

3. The court of inquiry should normally consist of three members.

178. Members of Court not to be Sworn or Affirmed. —The members of the court shall not be sworn or affirmed, but when the court is a court of inquiry on recovered prisoners of war, the members shall make the following declaration—

''I do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which..... became a prisoner of war, according to the true spirit and meaning of the regulations of the regular Army; and I do further declare, upon my honour that I will not on any account, or at any time disclose or discover my own vote or opinion or that of any particular member of the court, unless required to do so by competent authority''.

179. Procedure.—(1) The court shall be guided by the written instructions of the authority who assembled the court. The instructions shall be full and specific and shall state the general character of the information required. They shall also state whether a report is required or not.

(2) The officer who assembled the court shall, when the court is held on a returned prisoner of war or on a prisoner of war who is still absent, direct the court to record its opinion whether the person concerned was taken prisoner through his own wilful neglect of duty, or whether he served with or under, or aided the enemy; he shall also direct the court to record its opinion in the case of a returned prisoner of war; whether he returned as soon as possible to the service and in the case of a prisoner of war still absent whether he failed to return to the service when it was possible for him to do so. The officer who assembled the court shall also record his own opinion on these points.

(3) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry except a prisoner of war who is still absent.

(4) The court may put such questions to a witness as it thinks desirable for testing the truth or accuracy of any evidence he has given and otherwise for eliciting the truth.

(5) The court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

---

[1] Substituted by SRO 8 (E) dated 23 June, 2003

[(5A) Any witness may be summoned to attend by order under the hand of the officer assembling the court. The summons shall be in the Form provided in Appendix III.][1]

(6) The whole of the proceedings of a court of inquiry shall be forwarded by the presiding officer to the officer who assembled the court.

NOTES

1. As to the authorities who can remit the forfeiture of pay and allowances incurred by absence as a prisoner of war, see AR 195(c). If the officer who assembles the court is not one of these authorities, he should forward the proceedings with his recommendation, to one of these authorities. A court of inquiry on a prisoner of war who is still absent may be assembled in order to assist the authorities prescribed in AR, 195(c) and 196, in determining what remission of forfeiture of pay and allowances shall be ordered and what provision in terms of AA.ss. 98 and 99 shall be made for the dependants of such prisoner of war. A second court of inquiry must be assembled as soon as possible after the return of the prisoner of war. See Regs Army para 522.

2. For form of oath and affirmation, see AR 140.

180. Procedure when character of a person subject to the Act is involved.—Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule.

NOTE

Whenever it appears possible that the character or military reputation of a person subject to AA may be affected as the result of the court of inquiry, the authority who assembles the court of inquiry will take all necessary steps to ensure that the provisions of this rule are observed. The ultimate responsibility of ensuring that they are observed in every case will, however, rest upon the presiding officer of the court of inquiry, and should it transpire during the sitting of the court that the character or military reputation of any person subject to AA is affected by the evidence put forward, the presiding officer, will immediately arrange for such person to be afforded the full facilities of the rule, adjourning the court if necessary for the purpose of securing his attendance.

181. Evidence when to be taken on oath or affirmation.—Evidence shall be recorded on oath or affirmation when a court of inquiry is assembled—

(a) on a prisoner of war, or

(b) to inquire into illegal absence under section 106, or

(c) in any other case when so directed by officer assembling the court.

Explanation.—The court shall administer the oath or affirmation to witnesses as if the court were a court-martial.

[182. Proceedings of court of inquiry not admissible in evidence.—The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry shall not be admissible in evidence against a person subject to the Act, nor shall any evidence respecting the proceedings of the court be given against any such person except upon the trial of such person for wilfully giving false evidence before the court :

Provided that nothing in this rule shall prevent the proceedings from being used by the prosecution or the defence for the purpose of cross-examining any witness.][2]

NOTE

See. AA.s. 60 and notes thereto.

183. Court of inquiry as to illegal absence under section 106.—(1) A court of inquiry under section 106 shall, when assembled, require the attendance of such witnesses as it thinks sufficient to prove the absence and other facts specified as matters of inquiry in that section.

---

[1] Inserted by SRO 17(E), dated 6th December, 1993

[2] Subs by SRO 17(E), dated 6th December, 1993

(2) It shall take down the evidence given it in writing and at the end of the proceedings shall make a declaration of the conclusions at which it has arrived in respect of the facts it is assembled to inquire into.

(3) The commanding officer of the absent person shall enter in the court-martial book of the corps or department, a record of the declaration of the court, and the original proceedings will be destroyed.

(4) The court of inquiry 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 court in making its declaration shall give due weight to the evidence of all such witnesses.

(5) An oath or affirmation shall be administered to the witnesses in the manner specified in rule 181.

NOTES

1. See notes to AA.s. 106

2. See notes to AR 177

3. The court of inquiry declares that (number, rank, name) illegally absented himself for a period of 30 clear days, excluding the day on which the absence commenced and that on which the court of inquiry assembles.

4. The court of inquiry in making its declaration will follow the wording shown below. An exact reproduction of the declaration will be entered in the court-martial book. It should be free from alteration or erasure.

DECLARATION

The court declares that (number, rank, name and unit)..... illegally absented himself without leave (or other sufficient cause) at .....(station or place) on the .....; that he is still so absent, and that on the (date on which the inventory of kit was taken)..... he was deficient, and that he is still deficient of the following articles (value of equipment and clothing to be stated).

.....Value Rs.....

.....Value Rs.....

Name of the Presiding officer

Presiding officer Members

and members

5. In framing a charge of losing by neglect under AA.s. 54 (b), the date of taking the inventory should be averred in the particulars.

6. Before a court of inquiry proceeds to find deficiencies, it will require evidence:-

(a) that the absentee has been at some time previously in possession of a complete kit, or at any rate, of the articles alleged to be deficient;

(b) that an inventory of his kit has been taken and at the taking of the inventory certain specified articles were deficient;

(c) that none of the articles have since been recovered (any articles recovered will, of course, be omitted.)

7. When the declaration is to be produced in evidence at a court-martial, a copy will be made on IAFD-918 which is admissible under AA.s. 142 (4), and will be produced instead of the court-martial book. IAFD-918 must be a correct extract from the court-martial book and free from alteration or erasure.

8. As to form of oath see AR 140.

[184. Right of certain persons to copies of statements and documents—(1) Any person subject to the Act who is tried by a court-martial shall be entitled to copies of such statements and documents contained in the proceedings of a court of inquiry, as are relevant to his prosecution or defence at his trial.

(2) Any person subject to the Act whose character or military reputation is affected by the evidence before a court of inquiry shall be entitled to copies of such statements and documents as have a bearing on his character or military reputation as aforesaid, unless the Chief of the Army Staff for reasons recorded by him in writing, orders otherwise.][1]

Losses or Thefts of Arm

185. Court of inquiry when rifles, etc., are lost or stolen.—(1) Whenever any weapon or part of a weapon, which forms part of the equipment of a squadron, battery, company or other similar unit, and in respect of the loss or theft of which a fine may be imposed under the rule 186 is lost or stolen, a court of inquiry shall be assembled, under the orders of the officer commanding the army, army corps, division or independent brigade, to investigate the circumstances under which the loss or theft occurred.

(2) The officer who assembled the court shall direct it to record an opinion as to the circumstances of the loss or theft.

[186. Collective Fines may be imposed.—(1) The officer commanding the army, army corps. division or independent brigade shall then record his opinion on the circumstances of the loss or theft, and may impose for each weapon or part of a weapon lost or stolen, collective fines to the extent of the current official prices of such weapons or part of weapons on the junior commissioned officers, warrant officers, non-commissioned officers, and men of such unit or upon so many of them as he considers should be held responsible for the occurrence.][2]

(2) Such fine will be accessed as a percentage on the pay of the individuals on whom it falls.

NOTE

See AA.s. 89 and notes thereto.

---

[1] Subs by SRO 44 dated 24 January, 1985

[2] Subs by SRO 17 (E), dated 6th December, 1993

CHAPTER VII

PRESCRIBED OFFICERS, AUTHORITIES AND OTHER MATTERS

187. 'Corps' prescribed under Section 3(vi).—(l) Each of the following separate bodies of persons subject to the Act shall be a "Corps" for the purposes of Chapter III and section 43(a) of the said Act and of [Chapters II and III][1] of these rules, [except rule 13][2], namely:—

(a) President's Body Guard.

(b) The Armoured Corps, Horsed Cavalry Regiments, including Training Centres and non-combatants.

(c) The Regiment of Artillery.

(d) The Corps of Engineers including non-combatants.

(e) The Corps of Signals including non-combatants.

(f) Each regiment or each ungrouped battalion (as the case may be) of Infantry, or, in the case of grouped Gorkha Regiments, each group of Infantry including non-combatants.

(g) Each parachute battalion.

(h) The Army Service Corps (including postal).

(i) The Remount, Veterinary & Farms Corps.

(j) The Army Medical Corps.

(k) The Army Dental Corps.

(l) The Army Ordnance Corps.

(m) The Corps of Electrical & Mechanical Engineers.

(n) The Technical Development Establishments.

(o) The Intelligence Corps.

(p) The Corps of Military Police.

(q) The Pioneer Corps.

(r) The Defence Security Corps.

(s) The Army Education Corps.

(t) The Army Physical Training Corps.

(u) The General Service Corps.

(v) The Frontier Defence Corps.

(w) Each Boys Battalion.

(x) Gorkha Boys Company.

(y) Any other separate body of persons subject to the Act, employed on any service and NOT attached to any of the above Corps or to any department.

(2) Every unit in which a court-martial book is maintained shall be a "Corps" for the purposes of section 106 and rule 183.

---

[1]Inserted by SRO 1, dated 22nd Dec, 1961

[1]Substituted by SRO 1, dated 12th March, 1964.

(3) For the purposes of every other provision of the said Act and of these rules each of the following separate bodies shall be "corps" :—

(a) Every battalion.

(b) Every company which does **NOT** form part of battalion.

(c) Every regiment of cavalry, armoured corps or artillery.

(d) Every squadron or battery which does **NOT** form part of regiment of cavalry, armoured corps or artillery.

(e) Every school of instruction, training centre, or regimental centre.

(f) Every other separate unit composed wholly or partly of persons subject to the Act.

NOTES

1. The effect of this rule is that each of the bodies specified in sub-rule (1) is a "corps" for the purposes of enrolment, attestation, and discharge, except for AR 13. For all other purposes (except those of AA.s. 106) the bodies mentioned in sub-rule (3) are "corps".

2. The effect of AR 7 read with the prescribed forms of enrolment in Appendix I is that every person enrolled under AA must be enrolled in some corps, as defined in sub-rule (I), or in some department as defined in AA.s. 3(ix).

188. Conditions prescribed under Section 3(xviii) (f).—In the Act and in these rules, the expression 'officer', in relation to a person subject to the Act, includes a person holding a commission in the Indian Navy or the Air Force, when he is serving under any of the following conditions, namely :—

(a) when he is a member of a body of the regular Army, acting with a body of the Indian Navy or the Air Force which is on active service;

(b) when he is being conveyed on any vessel or aircraft employed as a transport or troop ship;

(c) when he is serving in or is a patient in any hospital or medical unit in which any officer of the Indian Navy or the Air Force is on duty or is a patient;

(d) when he is a member of a body of the regular Army acting in an emergency with a body of the Indian Navy or the Air Force and an order in writing is made by the officers commanding the bodies concerned stating that an emergency exists and that it is necessary for officers of the Indian Navy or the Air Force to exercise command over persons subject to the Act. A copy of every such order shall forthwith be sent to the Central Government;

(e) when he is serving in any place in which or with any body of the regular Army with which, there is present any officer of the Indian Navy or the Air Force and the Central Government has by special order declared that it is necessary for officers of the Indian Navy or the Air Force to exercise command over persons subject to the Act in that place or with that body of the regular Army.

NOTES

1. For active service, see AA.ss. 3(i) and 9.

2. For the declaration made, by the Central Government under clause (e) see Government of India, Ministry of Defence, SRO No 34 dated 5 Jan 63.

189. Prescribed Officer under Section 7(1).—The prescribed officer for the purposes of sub-section (1) of section 7 shall be the officer commanding the army, army corps, division, or brigade or any equivalent formation with which the person subject to the Act under clause (i) of sub-section (1) of section 2 is for the time being serving.

190. Prescribed form under Section 13.—The prescribed form for the purposes of section 13 shall be the same as set forth, in Appendix I.

191. Prescribed Officer under Section 78.—The prescribed officer for the purposes of section 78 shall be the officer commanding the forces in the field, or, in the case of a sentence which he confirms or could have confirmed or which did not require confirmation, the officer commanding the army corps, division, brigade or any detached portion of regular Army within which the trial was held.

192. Prescribed extent of Punishments under Section 80.—Subject to the other provisions of the Act, a commanding officer or other officer as is specified under section 80, may,—

(i) if not below field rank, award punishments specified in section 80 to the full extent;

(ii) if below field rank, award imprisonment and detention upto seven days and other punishments to the full extent. An officer having power not less than an officer commanding a division may, however, empower such officer to award imprisonment and detention to the full extent.

[Provided that where the punishment awarded consists of reduction to a lower grade of pay, such reduction shall be to the immediately next lower grade and shall not be effective for a period exceeding one year.][1]

[193. Prescribed officer under Sections 90 (i) and 91 (i).—The prescribed officer for the purposes of clause (i) of section 90 and clause (i) of section 91 shall be the Chief of the Army Staff or the officer commanding the Army.][2]

194. Prescribed officer under Section 93.—The prescribed officer for the purposes of section 93 shall be, in the case of an officer, the Chief of the Army Staff or the officer commanding an Army, and, in the case of a person other than an officer, the officer empowered to convene a court-martial for his trial.

195. Prescribed Authorities under Section 97.—Any penal deduction from the pay and allowances of a person subject to the Act, made under Chapter VIII thereof, may be remitted as hereinafter provided, that is to say :—

(a) a penal deduction from the pay and allowances of any such person may be remitted by the Central Government,

(b) the commanding officer of any such person, other than an officer, who has been absent without leave for a period not exceeding five days may, unless the person is convicted by a court-martial on a charge for such absence, remit the forfeiture of pay and allowances to which that absence renders him liable.

(c) a forfeiture of pay and allowances incurred by any such person owing to his absence as a prisoner of war may, (unless it shall have been proved before a court of inquiry that he was taken prisoner through his own wilful neglect of duty, or

[1] Substituted by SRO 215 dated 17 June, 1965
[2] Substituted by SRO 17 (E), dated 6th December, 1993

that he served with or under, or aided, the enemy or that he did not, as soon as possible, return to the service) be remitted by the Chief of the Army Staff, by the officer commanding an army, army corps, division or independent brigade, or by the officer commanding the forces in the field.

196. Prescribed Authorities under Sections 98 and 99.—The prescribed authorities for the purposes of sections 98 and 99 shall be—

(i) in the case of officers of the Army Medical Corps, Director General Armed Forces Medical Services,

(ii) in the case of all other officers, the Director of Personal Services, and

(iii) in all other cases, the officer not below the rank of Lieutenant-Colonel commanding a Training Battalion, Training Centre, Depot or Record Office who maintains the accounts of the individual, or any superior authority.

197. Prescribed Officer under Section 107 (1)—The prescribed officer for the purposes of sub-section (1) of section 107 shall be the officer commanding an army, army corps, division or independent brigade or an officer commanding the forces in the field.

197-A. Prescribed Officer under Section 125.—The prescribed officer for the purpose of section 125 of the Act shall except in cases falling under Section 69 of the Act in which death has resulted, be the officer commanding the brigade or station in which the accused person is serving.

198. Prescribed Officer under Section 142.— The prescribed officer for the purposes of sub-section (1) of section 142 shall be the officer commanding the corps, department or detachment to which the person appears to have belonged or alleges that he belongs or had belonged.

199. Prescribed Manner of Custody and Prescribed Officers under Sections 145 and 146.— (1) The prescribed officer for the purposes of section 146 shall be—

(a) in the case of trial by summary court-martial the commanding officer of the corps. Department or Detachment to which the accused persons belongs, or any authority superior to the commanding officer;

(b) in the case of trial by any other court-martial, the convening officer or any authority superior to him.

(2) Where an officer who proposes to act as a prescribed officer under sub-rule (1) is under the command of the officer who has taken action in the case under sub-section (4) of section 145, he shall ordinarily obtain the approval of such officer before he acts; but, if he is of opinion that military exigencies, or the necessities of discipline, render it impossible or inexpedient to obtain such approval, he may act without obtaining such approval, but shall report his action and the reasons therefore to such officer.

(3) For the purposes of sub-section (4) of section 145 the manner in which an accused person shall be kept in custody shall be as follows:-

The accused shall be confined in such manner as may, in the opinion of the proper military authority, be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal but as a person labouring under a disease.

200. Prescribed Officer under Section 162.— The prescribed officer for the purposes of section 162 shall, whenever any division or brigade is temporarily withdrawn from its territorial area, be the officer, not being below the rank of field officer, commanding the corresponding divisional or brigade area, within which the trial is held:

Provided that, when the officer who held the trial is himself the commander of such area, he shall forward the proceedings to superior authority.

When the trial is held on board a ship the prescribed officer shall be the officer commanding the troops on board the ship, or the officer who would have had power to deal with the proceedings had the trial been held at the port of disembarkation:

Provided that, when the officer who held the trial is himself the officer commanding the troops on board the ship, he shall forward the proceedings to the authority at the port of disembarkation.

201. Prescribed Officer under Section 164(2).— The prescribed officer for the purposes of sub-section (2) of section 164 shall be any officer superior in command to the commanding officer and in the case of a summary court-martial, any officer superior in command to the officer who held the summary court-martial, provided that such superior officer has power not less than a brigade commander.

202. Prescribed Officer under Section 165.— The prescribed officer for the purposes of section 165 shall be the officer commanding an army, army corps, division or brigade in respect of proceedings confirmed by him or by a person under his command.

203. Prescribed Officer under Section 169.—The prescribed officer, under sub-section (1) of section 169, for the purposes of directing whether the sentence shall be carried out by confinement in a civil prison or by confinement in a military prison, shall be, in the case of a sentence which has been confirmed, any higher authority than the confirming officer, and in the case of a sentence which does not require confirmation, any higher authority to the officer holding the trial.

204. Prescribed Officer under Section 179.—The prescribed officer for the purposes of section 179 shall be—

(a) as regards persons undergoing sentence in a civil prison or any other place, the officer commanding the army, army corps, division, or independent brigade within the area of whose command the prisoner subject to such punishment may for the time be;

(b) as regards persons convicted on active service, the officer commanding the forces in the field.

Authorised Deductions

205. Authorised Deductions.—The following deductions may be made from the pay, non-effective pay and all other emoluments payable to a person subject to the Act, namely :—

(a) upon the general or special order of the Central Government, any sum required to meet any public claim there may be against him, any regimental debt that may be due from him or any regimental claim;

(b) any sum required to meet compulsory contributions to any provident fund or any benevolent or other fund approved by the Central Government.

Explanation.—(i) "Public Claim" means any public debt or disallowance including any over-issue; or a deficiency or irregular expenditure of public money or store of which,

after due investigation, no explanation satisfactory to the Central Government is given by the person who is responsible for the same.

(ii) The aforesaid deductions shall be in addition to those specified in the Act.

NOTES

1. When a person subject to AA accepts his liability in respect of regimental dues, it becomes a regimental debt. When he does not so accept his liability, it becomes a regimental claim.

2. See AA.s. 25 and notes thereto. This rule lays down the deduction authorised under AA.

APPENDIX I

* * * *

*This Appendix consists of Enrolment Form (lAFK-1162). This has not been reproduced.

See SRO 484 dated 27 Nov 1954 (as amended).

APPENDIX II

FORMS OF CHARGES

PART I

COMMENCEMENT OF CHARGE-SHEET

(Description of the accused)

(Refer to AR 29)

1. The accused, Number..... Rank..... Name....., Unit....., is charged with :—

2. The accused, Number..... Rank..... Name..... , Unit ....., an officer holding a permanent (or short service or temporary.....) commission in the regular Army, is charged with:—

3. The accused, Number..... Rank..... Name....., Unit ....., attached to.....(unit), is charged with :—

4. The accused, Number..... Rank (Reservist)..... Name ..... Unit....., is charged with:—

5. The accused, Number..... Rank..... Name..... Unit ....., a person enrolled in the Territorial Army and called out to provide essential guards (or embodied....., or when attached to.....), is charged with:—

6. The accused, Number.....Rank (or appointment or grade)..... Name.....Unit ....., a person subject to the Army Act as an Officer (or Junior Commissioned Officer or Warrant Officer or Non Commissioned Officer or a Sepoy) under Section 4(1) thereof read with SRO.....dated....., is charged with :—

7. The accused, Name Shri ……..... Unit....., a person subject to the Army Act as an Officer (or Junior Commissioned Officer or Warrant Officer or Non Commissioned Officer or Sepoy) under Section 2 (1) (i) read with Section 6 thereof, is charged with:—

8. The accused, Name....., formerly Number....., Rank,....., Name..... Unit ....., now attached to..... (unit), and liable to trial by court-martial under Section 123 of the Army Act, is charged with:—

PART II

ILLUSTRATION OF CHARGE-SHEET

NOTE :—The following is an illustration of a complete charge-sheet, as it would be placed before a District Court Martial for the trial of a Sepoy charged with two offences:—

Charge-sheet

The accused, No. 12345678 Sepoy (P/A/Naik) Prem Chand, 1st Battalion, The Punjab Regiment, attached to 2nd Battalion, The Dogra Regiment, is charged with :—

First Charge
Army Act
Section 41(2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,
in that he,

at Allahabad, on 28 Jan 1977, when ordered by JC-23456 Subedar Vijay Chand of 1st Battalion, The Punjab Regiment to turn out for Commanding Officer's parade, did not do so.

Second Charge
Army Act
Section 40(c)

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER,
in that he,

at the place and date aforesaid, when arrested by JC-23456 Subedar Vijay Chand of 1st Battalion, The Punjab Regiment, said to him, "You know only how to arrest a Sepoy, You are good for nothing", or words to that effect.

NOTE :- The accused will be described by his substantive rank. His acting rank or appointment, if any, may be stated in bracket e.g. Capt (A/Major, Sep (L/NK).

APPENDIX II—*Contd*

Sd/-
P1ace : Allahabad Veer Pratap
Date : 30 Jan 2008 Lt Col
Commanding 2nd Battalion
The Dogra Regiment

Sd/-
† To be tried by a District Court Martial. Dayanand
Brigadier
Commanding Allahabad Sub Area

Place : Allahabad
Date : 1 Feb 2008

†When sanction is accorded for the trial of an offence by a Summary Court Martial vide AA.S. 120(2), a similar endorsement should be made on the charge-sheet.

NOTES AS TO USE OF FORMS OF CHARGES

These notes do not form part of the Appendices to Army Rules.

(1) Every charge-sheet will begin as shown in the form in Part I of Appendix II (forms of charges), which are given as examples.

The description of an officer, junior commissioned officer, warrant officer or person enrolled under the Act by his number, rank and corps is a sufficient averment that he is an officer, junior commissioned officer, warrant officer or such a person and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law (See AR 29). See illustration at Page above.

(2) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3) Each charge will consist of two parts; a statement of the offence and a statement of the particulars of the act, neglect or omission constituting the offence. [AR 30(2)].

(4) The statement of the offence will be in one of the forms in Part III of Appendix II.

(5) Where two or more words or expressions occur in Part III of Appendix II bracketed together one under the other, the particular word, or expression, should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6) Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7) Where two or more of the words or expressions bracketed together appear, when coupled together with the word “and”, accurately to describe the offence, the charge may couple together such words or expressions; but in no case must the charge couple with the word “or” two or more of the words or expressions bracketed together *[See AR 30(1)]*. For example, a person may be charged with making away with arms and ammunition the property of the Government entrusted to him; but a charge for making away with arms or ammunition will be a bad charge.

(8) Where the AA contains a general expression such as “other place”, “other property”, “or otherwise”, the officer framing the charge must not use these terms but specify them by inserting a description of the place, property or means.

(9) The statement of the offence in each charge will be followed by the appropriate statement of the particulars, commencing with the words "in that he", etc., or 'in having", etc., and stating in brief ordinary language what the accused is alleged to have done.

(10) The words "in that he", will be followed by the verb in the past tense; the words "in having" will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(11) In the case of several charges, the particulars in one charge may refer to the particulars in another [AR 30(5)], as, for example "in having done the acts alleged in the particulars of the first charge", or "in that he, at the place and time aforesaid, was deficient of the property abovementioned in the second charge, which was entrusted to him". If the accused is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the accused is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(12) The "particulars" should always give a general description of the place where the offence was committed, such as the station or town, or "Field" or "the line of march" and if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance "at or near", "between") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(13) The "particulars" should always state the date on which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed "on or about" a particulars day or time. This must never be done where the time is the essence of the offence, as, for example, in the case of absence without leave, or being asleep on a post.

(14) In some cases the offence may be stated more accurately as having been committed between two days or between two times; as for instance, in the case of absence without leave, or of quitting a post. In other cases "between" may be used in consequence of the exact day or exact time not being known.

(15) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant; or unless the word ''about" or "between" are the most accurate expression of the place or time.

(16) In many cases, as, for instance, where the defence is an alibi, the time and place may be of the utmost importance in disproving that alibi, although it is not the essence of the offence.

(17) The statement of particulars should specify all the ingredients necessary to constitute the offence : for example if the charge is one for disobeying a lawful command, the "particulars" must state the command, and show that it was given by a superior officer, and also how the accused disobeyed the command.

(18) There must be added at the end of the "Particulars" a statement of any expense, loss or damage in respect of which the court-martial may award stoppages under AA.s.71(i). For example, there may be added to the "Particulars" in the case of a charge under AA.s. 55(b) that the accused thereby damaged ..... property to the value of ..... : and other statement may be made according to the facts.

(19) If, however, the expense, loss or damage was caused by an act, or omission which constitutes another offence, separately specified in the AA, that act or omission should be charged as a separate offence; for example, if a man deserts and is deficient in his kit, he should be charged in a separate charge for losing by neglect clothing, the property of the Government issued to him for his use. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

(20) For offences punishable more severely on active service than at other times, the words 'while on active service' must be averred in the particulars of the charge. (*see* AA.ss. 36 and 38).

APPENDIX II—*Contd.*

PART III

STATEMENT OF OFFENCES

Offences in relation to the enemy and punishable with death

Section 34

(a) Shamefully { abandoning a / delivering up a } { garrison / fortress / post / place / guard } { committed to his charge. / which it was his duty to defend }

Using means to { compel / induce } { a commanding officer / a person } shamefully to { abandon a / deliver up a } { garrison / fortress / post / place / guard } { committed to his charge which it was his duty to defend. }

(b) Intentionally using means to { compel / induce } { a person subject to / military / naval / air force } { law } { to abstain from acting against the enemy. / from acting against the enemy. }

discourage { a person subject to / military / naval / air force } { law } { to abstain from acting against the enemy. / from acting against the enemy. }

(c) In the presence of the enemy shamefully { casting away his / misbehaving in such manner as to show cowardice. } { arms. / ammunition. / tools. / equipment. }

(d) Treacherously { holding correspondence with / communicating intelligence to } { the enemy. / a person in arms against the Union. }

(e) Directly or Indirectly assisting the enemy with { money. / arms. / ammunition. / stores. / supplies. }

(f) Treacherously Through cowardice { sending a flag of truce to the enemy.

APPENDIX II—*Contd*.

(g) In time of war
During a military operation
- intentionally occassioning a false alarm in
  - action
  - camp.
  - garrison.
  - quarters.
- spreading reports calculated to create
  - alarm.
  - despondency.

(h) In time of action leaving his
- Commanding officer
- post / guard / picquet / patrol / party
  - without being regularly relieved.
  - without leave.

(i) Having been made a prisoner of war, voluntarily
- serving with / aiding
  - the enemy

(j) Knowingly
- harbouring / protecting
- an enemy not being a prisoner

(k) When a sentry, in time of
- war / alarm / military / naval / air
  - sleeping upon his post
  - being intoxicated.
- forces of India.

(l) Knowingly doing an act calculated to imperil the success of the
- forces co-operating with / part of / part of forces co-operating with
  - military / naval / air
    - forces of India.

Offences in relation to the enemy and not punishable with death

Section 35

(a) Being taken prisoner
- by want of due precaution.
- through disobedience of orders.
- through wilful neglect of duty

Having been taken prisoner failing to rejoin his service when able to do so.

(b) Without due authority
- holding correspondence with / communicating intelligence to
  - the enemy.

Having come by the knowledge of a
- correspondence with / communication of intelligence to
  - the enemy
    - wilfully omitting to discover it immediately to his
      - commanding officer.
      - superior officer.

(c) Without due authority sending a flag of truce to the enemy.

[Common 2188-20B (PM7)]

APPENDIX II—*Contd*.

Offences punishable more severely on active service than at other times.

Section 36

(*a*) Forcing a safeguard.
Forcing { a sentry.
Using criminal force to

(*b*) Breaking into a { house / (other place) } { in search of plunder.

(*c*) When a sentry { sleeping upon his post. / being intoxicated

(*d*) Leaving his { guard / picquet / patrol / post } { without orders from his superior officer.

(*e*) Intentionally
Through neglect { occasioning a false alarm in { a m p / garrison / quarters.

Spreading reports calculated to create unnecessary { alarm / despondency

(*f*) Making known the { parole / watchword / countersign } { to a person not entitled to receive it.

Knowingly giving a { parole / watchword / countersign } { different from what he received

Mutiny

Section 37

(*a*) Beginning
Inciting
Causing
Conspiring with other persons
to cause { a mutiny in the { military / naval / air } { forces co-operating with the { military / naval / air } { forces of India. } forces of India.

(*b*) Joining in a mutiny in the { military / naval / air } forces co-operating with the { military / naval / airforces of India } forces of India.

APPENDIX II—*Contd.*

(*c*) Being present at a mutiny in the { military / naval / air } forces of India co-operating with { military / naval / air } forces of India

(*d*) Knowing / Having reason to believe in the existence of { a mutiny in the / an intention to mutiny in the / a conspiracy to cause a mutiny in the } { military / naval / air } forces of India co-operating with the { military / naval / air } forces of India

(*e*) Endeavouring to seduce a person in the { military / naval / air } forces of India from his { duty / allegience } to the Union

Desertion and aiding desertion

Section 38

(1) Deserting the service.
Attemtping to desert the services.

(2) Harbouring a person subject to the Army Act knowing him to be a deserter.

(3) Being cognizant of { the desertion / attempt at desertion } of a person subject to the Army Act not { giving notice forthwith to his own or other superior officer. / taking forthwith any steps in his power to cause such person to be apprehended. }

Absence without leave

Section 39

(*a*) Absenting himself without leave.

(*b*) Without sufficient cause overstaying { leave granted to him.

(*c*) Being on leave of absence and having received information from proper authority that the { corps / portion of a corps / department } to which he belongs has been ordered on active service, failing without sufficient cause to rejoin without delay.

(*d*) Without sufficient cause failing to appear at the time fixed at the { parade / place } appointed for { exercise / duty.

(*e*) Quitting { parade / the line of march } without sufficient cause without leave from his superior officer

[Common 2188-20B (PM7)]

APPENDIX II—*Contd*.

(*f*) When in camp / When in garrison / When in (elsewhere) } being found } beyond the limits fixed / in a place prohibited } by } a general / a local / (other) } order without } pass. / written leave from / his superior officer.

(*g*) Without leave from his superior officer / Without due cause } absenting himself from a school when duly ordered to attend there.

Striking or threatening superior officers

Section 40

(*a*) Using criminal force to / Assaulting } his superior officer.

(*b*) Using threatening language to his superior officer.

(*c*) Using insubordinate language to his superior officer.

Disobedience to superior officer

Section 41

(1) Disobeying in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer, in the execution of his office.

(2) Disobeying a lawful command given by his superior officer.

Insubordination and obstruction

Section 42

(*a*) When concerned in a } quarrel / affray / disorder } refusing to obey / using criminal force to / assaulting } an officer who ordered him into arrest.

(*b*) Using criminal force to / Assaulting. } a person, in whose custody he was lawfully placed.

(*c*) Resisting an escort whose duty it was } to apprehended him / to have him in charge

(*d*) Breaking out of } barracks. / camp. / quarters.

(*e*) Neglecting to obey } general / local / (other) } order.

[Common 2188-20B (PM7)]

APPENDIX II—*Contd.*

(*f*) When called upon refusing to assist { the provost-marshal / a person lawfully acting on behalf of the provost marshal } in the execution of his duty.

(*g*) Using criminal force to / Assaulting { a person bringing { provisions / supplies } to the force.

Fraudulent enrolment

Section 43

(*a*) Without having obtained a regular discharge from his { corps / department } { enrolling himself in / entering } { the same / another / a part of the } { corps. / department. / naval / air / Territorial Army. } { forces of India.

Without having fulfilled the conditions enabling him to { enrol / enter }

(*b*) Being concerned in the enrolement in any part of the Forces of a person, when { knowing / having reason to believe } such person to be so circumstanced that by enrolling, he would commit an offence against the Army Act.

False answers on enrolment

Section 44

Making at the time of enrolment wilfully false answer to a question set forth in the prescribed form of enrolment, which was put to him by the enrolling officer before whom he appeared for the purpose of being enrolled.

Unbecoming conduct

Section 45

Being { an officer / a junior commissioned officer / a warrant officer } behaving in a manner unbecoming his position and the character expected of him.

[Common 2188-20B (PM7)]

APPENDIX II—*Contd.*

Certain forms of disgraceful conduct

Section 46

(*a*) Disgraceful conduct of { a cruel / an indecent / an unnatural } { kind.

(*b*) Malingering / Feigning / Producing / Intentionally { disease / infirmity } { in himself

{ delaying his cure / aggravating his } { disease / infirmity }

(*c*) Voluntarily causing hurt to { himself / a person } { with intent to render { himself / that person } { unfit for service.

Ill-treating a subordinate

Section 47

Using criminal force to / Ill-treating { a person subject to the Army Act being his subordinate in } { rank / position.

Intoxication

Section 48

Intoxication

Permitting escape of person in custody

Section 49

(*a*) When in command of a { guard / picquet / patrol / post } { willfully / without reasonable excuse } { releasing without proper authority a person committed to his charge.

{ refusing to receive } { prisoner / person } { committed to his charge

(*b*) Willfully / Without reasonable excuse { allowing to escape / a person } { commited to his charge. / whom it was his duty to } { keep, / guard }

[Common 2188-20B (PM7)]

APPENDIX II—*Contd.*

Irregularity in connection with arrest or confinement

Section 50

(*a*) Unnecessarily detaining a person in { arrest / confinement } { without bringing him to trial. / before the proper authority for investigation. }

Unnecessarily failing to bring the case of a person in { arrest / confinement } { without bringing him to trial. / before the proper authority for investigation. }

(*b*) Having committed a person to military custody failing without reasonable cause to deliver { at the time of committal / as soon as practicable within forty-eight hours after such committal } { to the } { Officer / person } { into whose custody the person arrested was committed, an account in writing signed by himself of the offence with which the person so committed was charged. }

Escape from custody

Section 51

When in lawful custody { escaping. / attempting to escape }

Offences in respect of property

Section 52

(*a*) Committing theft of property belonging to { the Government. / a military / a naval / an air force / a person subject to } { mess. / band. / institution. / military / naval / air force } { law. }

(*b*) Dishonestly { misappropriating / converting to his own use } { property belonging to } { the Government. / a military / a naval / an air force / a person subject to } { mess / band / institution. / military / naval / air force } { law. }

(*c*) Committing criminal breach of trust in respect of property belonging to { the Government. / a military / a naval / an air force / a person subject to } { mess. / band. / institution. / military / naval / air force } { law. }

APPENDIX II—*Contd.*

(*d*) Dishonestly { receiving / retaining } the property belonging to { the Government / a military / a naval / an air force / a person subject to } { mess / band / institution / militrary / naval / air force } { law } { knowing / having reason to believe } { that theft had been committed in respect of the same / the same to have been dishonestly / that criminal breach of trust had been committed in respect of the same. } { misappropriated / converted to his own use } { by a person subject to the Army Act. }

(e) Wilfully { destroying / injuring } { property of the Government entrusted to him. }

(*f*) Such an offence as is mentioned in clause (f) of Section 52 of the Army Act. { with intent to } { defraud. / cause wrongful gain to a person. / cause wrongful loss to a person. }

Extortion and corruption

Section 53

(*a*) Committing extortion.
(*b*) Exacting without proper authority { money / provisions / service } { from a person. }

Making away with equipment

Section 54

(*a*) Making away with
Being concerned in making away with { arms / ammunition / equipment / instruments / tools / clothing / other thing } { the property of the Government } { issued to him for his use. / entrusted to him. }

[Common 2188-20B (PM7)]

APPENDIX II—*Contd*.

(*b*) Losing by neglect — arms / ammunition / equipment / instruments / tools / clothing / (other) thing — the property of the Government — issued to him for his use. / entrusted to him.

(*c*) Selling / Pawning / Destroying / Defacing — a medal / a decoration — granted to him.

Injury to property
Section 55

(*a*) Wilfully / Without reasonable excuse — destroying / injuring — arms / ammunition / equipment / instruments / tools / clothing / (other) thing / property belonging to — the property of the Government — issued to him for his use. / entrusted to him.

a military / a naval / an air force — mess. / band. / institution.

a person subject to — military / naval / air force — law.

a person serving with a person attached to — the regular Army.

(*b*) Wilfully / Without reasonable excuse — committing an act causing — damage to / destruction of — property of the Government by fire.

(*c*) Wilfully / Without reasonable excuse — killing / injuring / making away with / illtreating / losing — an animal entrusted to him.

APPENDIX II—*Contd.*

False accusations

Section 56

(*a*) Making a false accusation against a person subject to the Army Act { knowing / having reason to believe } { such accusation to be false }

(*b*) In making a complaint { under section 26 of the Army Act / under section 27 of the Army Act } { making a statement affecting the character of a person subject to the Army Act / knowingly and wilfully suppressing } { knowing / having reason to believe / a material fact } { such statement to be false }

Falsifying official documents and false declaration

Section 57

(*a*) In a { report / return / list / certificate / book / (other document) } { made by him / signed by him / of the contents of which it was his duty to ascertain the accuracy } { knowingly making / being privy to the making of } { a false statement. / a fraudulent statement. }

(*b*) ln a { report / return / list / Certificate / book / (other document) } { made by him / signed by him / of the contents of which it was his duty to ascertain the accuracy. } { knowinlgy making / being privy to the making of } { an omission with intent to defraud. }

(*c*) Knowingly and with intent to { injure a person / defraud } { suppressing / defacing / altering / making away with } { a document which it was his duty to } { preserve. / produce }

(*d*) Where it was his official duty to make a declaration respecting a matter, knowingly making a false declaration.

(*e*) Obtaining { for himself / for a person } { a pension / an allowance / an advantage / a privilege } { by a false statement which he } { knew / believed / did not believe to be true } { to be false. }

{ by making a false entry in a / by using a false entry in a } { book. / record. }

by making a document containing a false statement.

by omitting to make a true entry or a document containing a true statement.

[Common 2188-20B (PM7)]

APPENDIX II—*Contd.*

Signing in blank and failure to report

Section 58

(*a*) When signing a document relating to { pay / arms / ammunition / equipment / clothing / supplies / stores / property of the Government } { } fraudulently leaving in blank a material part for which his signature is a voucher.

(*b*) Refusing to / By culpable neglect omitting to { make / send } { a report / a return } { which it was his duty to } { make / send }.

Offences relating to courts-martial

Section 59

(*a*) When duly { summoned / ordered to attend } { as a witness before / a court-martial } { wilfully / without reasonable excuse } { making default— / in attending }.

(*b*) Refusing to { take an oath legally required by a court-martial to be taken. / make an affirmation legally required by a court martial to be made.

(c) Refusing to { produce / devlier } { a dcoument in his } { power / control } { legally required / by a court-martrial / to be } { produced / delivered } { by him.

(*d*) Refusing when a witness to answer a question which he was by law bound to answer. [Being a witness, refusing to answer a question, which he was by law bound to answers]

(*e*) Contempt of court-martial by { using / causing } { insulting / threatening } { language. } { an interruption / a disturbance } { in the proceedings of such court }

[Common 2188-20B (PM7)]

APPENDIX II—*Contd.*

False evidence

Section 60

Having been duly { sworn / affirmed } { before } { a court-martial / a court competent under the Army Act to administer an oath or affirmation } { making a false statement which / he } { knew / believed / did not believe } { to be false. / to be true. }

Unlawful detention of pay

Section 61

Having received the pay of a person subject to the Army Act, unlawfully { detaining the same / refusing to pay the same. } { when due. }

Offences in relation to aircraft and flying

Section 62

(*a*) Wilfully / Without reasonable execuse { damaging / destroying / losing } { aircraft / aircraft material } { belonging to the Government }

(*b*) An Act / Neglect { likely to cause } { damage to / destruction of / loss of } { aircraft / aircraft material } { belonging to the Government. }

(*c*) Without lawful authority disposing of { aircraft / aircraft material. } { belonging to the Government. }

(*d*) An Act / Neglect { in flying / in the use of aircraft / in relation to aircraft / in relation to aircraft material } { which caused / which was likely to cause } { loss of life / bodily injury } { to a person. }

(*e*) During the state of war { wilfully and without proper occasion / negligently } { causing } { the sequestration by or under the authority of / the destruction in } { a neutral state of an aircraft belonging to the Government. }

[Common 2188-20B (PM7)]

APPENDIX II—*Contd.*

Violation of good order and discipline

Section 63

An Act / An omission — prejudicial to good order and military discipline.

Miscellaneous offences

Section 64

(*a*) When in command / at a post / on the march — having received a complaint that a person under his command has — beaten / maltreated / oppressed / disturbed / committed — a person / a fair / a market / a riot / a tresspass — failing to — have due reparation made to the injured person. / report the case to the proper authority.

(*b*) By defiling a place of worship / Otherwise — intentionally — insulting the religion / wounding the religious feelings. — of a person.

(*c*) Attempting to commit suicide and in such attempt doing an act towards the commission of the same.

(*d*) Being below the rank of Warrant Officer and carrying when off duty — a rifle / a sword / an offensive weapon — without proper authority — in / around / when going to / when returning from — camp. / cantonment. / a town. / a bazar. / a town / a bazar

(*e*) Accepting / Obtaining / Agreeing to accept / Attempting to obtain — for himself / for another person — a gratification as a — motive / reward — for procuring — the enrolment of a person. / leave of absence / promotion / an advantage / an indulgence — for a person in the service.

(*f*) Committing an offence against the — property / person — of an inhabitant of / of a resident in — the country in which he was serving.

[Common 2188-20B (PM7)]

APPENDIX II—*Contd.*

Attempt

Section 65

Attempting to (specify offence attempted) and in such attempt doing an act towards the commission of the same.

Abetment of offences that have been committed

Section 66

Abetment of an offence specified in section (specify the section and sub-section) of the Army Act, in consequence of which abetment such offence was committed.

Abetment of offence punishable with death and not committed

Section 67

Abetment of an offence punishable with death under section { 34 / 37 / 38(1) } of the Army Act, in consequence of which abetment such offence was not committed.

Abetment of offences punishable with imprisonment and not committed.

Section 68

Abetment of an offence specified in section (specify the section and sub-section) of the Army Act and punishable with imprisonment in consequence of which abetment such offence was not committed.

Civil Offences

Section 69

Committing a civil offence, that is to say, (state the offence as described in Indian Penal Code or other law in force in India), contrary to Section . . . . . (specify the section of the Indian Penal Code or other law)

[Common 2188-20B (PM7)]

APPENDIX II—*Contd.*

PART IV

SPECIMEN CHARGES

The following specimen charges (which are not, however, prescribed in any Rules) may be found useful. In this part only statements of offences and particulars of the charges have been given. For the commencement of charge-sheet and the description etc. of the accused, see Part I of Appendix II.

***No.* 1**

Charge-Sheet

[Section 34 (a)]

SHAMEFULLY ABANDONING A POST COMMITTED TO HIS CHARGE,

in that he,

at....., on....., when in charge of Post No.....……..…..in Sector ……..and attacked by the enemy, shamefully abandoned the said post, without any attempt to resist the enemy.

***No.* 2**

Charge-Sheet

[Section 34 (b)]

INTENTIONALLY USING MEANS TO INDUCE A PERSON SUBJECT TO MILITARY LAW TO ABSTAIN FROM ACTING AGAINST THE ENEMY,

in that he,

at....., on....., when both he and No....., Rank..... Name....., of his Regiment were in forward post under enemy fire said to the said ..... (insert the words in vernacular) of which the following is an English translation :—

"We are likely to be killed. Think of your wife and children. Let us run away from the post and hide in the nullah nearby".

***No.* 3**

Charge-Sheet

[Section 34 (c)]

IN THE PRESENCE OF THE ENEMY MISBEHAVING IN SUCH MANNER AS TO SHOW COWARDICE,

in that he,

at....., on....., when No ..... Sep ..... of ....., one of the sentries at the Regimental Quarter Guard, had mortally wounded one Sepoy of the said guard and seriously wounded another and was firing his rifle in all directions, showed cowardice by abandoning the said Quarter Guard and hiding himself.

***No.* 4**

Charge-Sheet

[Section34 (h)]

IN TIME OF ACTION LEAVING HIS PICQUET WITHOUT LEAVE,

in that he,

at....., on....., in time of action between 2000 hrs and 2200 hrs, being on duty at picquet....., left the said piequet without leave.

APPENDIX II—*Contd.*

***No.* 5**

Charge-Sheet

[Section 35 (b)]

WITHOUT DUE AUTHORITY COMMUNICATING INTELLIGENCE TO THE ENEMY,

in that he,

at....., on....., without due authority communicated to....., an enemy agent, that the 1st Battalion, The Dogra Regiment was moving to..... on..... .

***No.* 6**

Charge-Sheet

[Section 36 (a)]

FORCING A SENTRY,

in that he,

at....., on....., after being warned by No.....Rank..... Name .....of.....Regiment, a sentry on post No....., not to pass, passed the said sentry.

***No.* 7**

Charge-Sheet

[Section 36 (b)]

BREAKING INTO A HOUSE IN SEARCH OF PLUNDER,

in that he,

when on active service, at....., on....., broke into the house of Shri..... of.....in search of plunder.

***No.* 8**

Charge-Sheet

[Section 36 (c)]

WHEN A SENTRY SLEEPING UPON POST,

in that he,

when on active service, at....., on....., between 0100 hrs and 0200 hrs, when a sentry at..... post, was asleep.

***No.* 9**

Charge-Sheet

[Section 36 (d)]

LEAVING HIS POST WITHOUT ORDERS FROM HIS SUPERIOR OFFICER,

in that he,

at field, between 0400 hrs and 0600 hrs on....., when on sentry duty at..... post, quitted his post without orders from his superior officer.

***No.* 10**

Charge-Sheet

(Joint Trial)

[Section 37 (a)]

CONSPIRING WITH OTHER PERSONS TO CAUSE A MUTINY IN THE MILITARY FORCES OF INDIA,

in that they,

at....., on....., agreed together with No.....Rank ..... Name ....., of..... battalion (and certain other persons unknown) to cause a mutiny in ..... Company of the said battalion, to wit, to cause the said Company to refuse to march on the..... to.....to which place the said Company was under orders to march.

APPENDIX II—*Contd.*

***No.* 11**

Charge-Sheet

(Joint Trial)

[Section 37 (b)]

JOINING IN A MUTINY IN THE MILITARY FORCES OF INDIA,

in that they, together,

at....., on....., in company with a number of other sepoys of the..... Company,..... (Unit), in a mutinous spirit marched to the orderly room of the said (unit) with the object of making a combined representation on a matter of supposed grievance to their Commanding Officer and then and there, they with the exception of No. .....Rank.....Name*.....on.....seeing the said*..... marched out of the orderly room in custody, insubordinately took off their belts and threw them on the ground.

***No.* 12**

Charge-Sheet

[Section 37 (c)]

BEING PRESENT AT A MUTINY IN THE MILITARY FORCES OF INDIA, NOT USING HIS UTMOST ENDEAVOURS TO SUPPRESS THE SAME,

in that he,

at....., on....., being present when No ..... Sepoy..... No ..... Sepoy....., and other soldiers of the same Regiment together refused to go on a route march when ordered to do so by the Company Commander, failed to use his utmost endeavours to suppress the said mutiny.

***No.* 13**

Charge-Sheet

[Section 38 (1)]

DESERTING THE SERVICE,

in that he,

at....., on....., absented himself from..... Regiment, until apprehended by the civil police at..... on..... .

***No.* 14**

Charge-Sheet

[First Charge, Section 38 (1)]

DESERTING THE SERVICE,

in that he,

at....., on....., absented himself from the Regiment, until apprehended by the Civil police, at....., on.....

[Second charge, Section 52(a)]

COMMITTING THEFT IN RESPECT OF PROPERTY BELONGING TO THE GOVERNMENT,

in that he,

when absenting himself from his Regiment at the place and on the day aforesaid, committed theft by dishonestly taking with him one rifle (give description) value..... and twenty rounds of .303 ball ammunition value....., the property belonging to the Government.

NOTE 1.—As a rule, proof of the date and circumstances in which the period of absence terminated is necessary to enable the court to decide whether the absence constituted desertion or merely absence without leave. Occasionally, however these facts are not material, and proof of them cannot be obtained without inconvenience to the public service and great delay. In such cases they need not be proved, and should, therefore, not be averred in the particulars of the charge. See Charge-Sheet No. 16 below.

NOTE 2.—It is immaterial whether the rifle is the one issued to the accused or to a comrade. See IPC.S. 27 and illustration (d) to IPC. S. 378.

APPENDIX II—*Cont.*

***No.* 15**

Charge-Sheet

[Section 38 (l)]

DESERTING THE SERVICE,

in that he,

at....., on....., when under orders for embarkation for foreign service, absented himself from.....to.....with intent to avoid such embarkation.

***No.* 16**

Charge-Sheet

[Section 38 (1)]

DESERTING THE SERVICE,

in that he,

at....., on....., deserted from the Regiment.

NOTE :—This form may be used when the date and circumstances of the termination of the absence are not material facts, and proof of them cannot be obtained without an unreasonable amount of delay or expense. See Note 1 to Charge Sheet No. 14.

***No.* 17**

Charge-Sheet

[Section 38 (l)]

DESERTING THE SERVICE,

at....., on....., having been placed under orders for active service and having been granted leave of absence from ..... to....., to proceed to ....., did not rejoin at.....on the expiry of the said leave but absented himself with intent to avoid such active service.

NOTE : —It will often be advisable to frame an alternate charge for without sufficient cause overstaying leave granted to him, See; Charge sheet No. 22 below. With respect to a case in which the accused has been apprehended by the civil police, see note 1 to Charge Sheet No. 14.

***No.* 18**

Charge-Sheet

[Section 38 (1)]

ATTEMPTING TO DESERT THE SERVICE,

in that he,

at....., on....., attempted to quit the lines of his Regiment disguised as a woman, with the intention to desert the service.

***No.* 19**

Charge-Sheet

[Section 38 (2)]

HARBOURING A PERSON SUBJECT TO THE ARMY ACT KNOWING HIM TO BE A DESERTER

in that he,

at....., on....., concealed in his house, No. ....., Rank....., Name....., Regiment, whom he knew to be a deserter from the said ..... Regiment.

***No.* 20**

Charge-Sheet

[Section 38 (3)]

BEING COGNIZANT OF THE DESERTION OF A PERSON SUBJECT TO THE ARMY ACT NOT GIVING NOTICE FORTHWITH TO HIS SUPERIOR OFFICER,

in that he,

at....., on....., when cognizant of the desertion of No....., Rank..... Name....., of the same unit did not give notice thereof forthwith to his superior officer.

APPENDIX II—*Contd.*

***No.* 21**

Charge-Sheet

[Section 39 (a)]

ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

at....., absented himself without leave from the unit lines from....., to.....

***No.* 22**

Charge-Sheet

[Section 39 (b)]

WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM,

in that he,

at....., on....., having been granted leave of absence from.....to....., to proceed to....., failed without sufficient cause, to rejoin on the expiry of the said leave, until surrendered voluntarily at ..... , on ..... (until apprehended by the civil police at ..... , on .....).

***No.* 23**

Charge-Sheet

[Section 39 (c)]

BEING ON LEAVE' OF ABSENCE HAVING RECEIVED INFORMATION FROM PROPER AUTHORITY THAT CORPS TO WHICH HE BELONGS HAS BEEN ORDERED ON ACTIVE SERVICE, FAILING WITHOUT SUFFICIENT CAUSE TO REJOIN WITHOUT DELAY,

in that he,

on ....., while on leave of absence at ....., having received information from ..... that the..... Regiment had been ordered on active service, failed, without sufficient cause, to rejoin the said Regiment without delay.

***No.* 24**

Charge-Sheet

[Section 39 (d)]

WITHOUT SUFFICIENT CAUSE FAILING TO APPEAR AT THE TIME FIXED, AT THE PLACE APPOINTED FOR DUTY,

in that he,

at....., on....., failed without sufficient cause to appear at ..... hrs at....., the place appointed for PT (Commanding Officer's) parade.

***No.* 25**

Charge-Sheet

[Section 39 (e)]

QUITTING THE LINE OF MARCH WITHOUT LEAVE FROM HIS SUPERIOR OFFICER,

in that he,

at....., on....., when on the line of march from..... to ....., fell out without leave from the Officer Commanding his Company.

***No.* 26**

Charge-Sheet

[Section 40 (a)]

USING CRIMINAL FORCE TO HIS SUPERIOR OFFICER,

in that he,

at....., on....., struck with a stick on the head of No. ..... Rank..... Name..... , of the same Regiment.

APPENDIX II—*Contd.*

***No.* 27**

Charge-Sheet

[Section 40(a)]

ASSAULTING HIS SUPERIOR OFFICER,

in that he,

at....., on....., when ordered by No. ..... Rank..... Name....., of the same Regiment to report him at..... hrs that day, picked up a stone and threatened to throw it at the said..... .

***No.* 28**

Charge-Sheet

[Section 40(b)]

USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER,

in that he,

at....., on....., when ordered by No. ..... Rank..... Name..... , of the same Regiment, to fall in for parade, said to the said....., "who the hell are you to fall me in; I will bash your head", or words to that effect.

***No.* 29**

Charge-Sheet

[Section 40 (c)]

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER,

in that he,

at....., on....., said to No..... Rank..... Name....., of the same Regiment, "You know only how to get drunk everyday. You are good for nothing", or words to that effect.

***No.* 30**

Charge-Sheet

[Section 41 (1)]

DISOBEYING IN SUCH MANNER AS TO SHOW A WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER IN THE EXECUTION OF HIS OFFICE,

in that he,

at....., on....., when ordered by No. ..... Rank..... Name....., the guard commander, to proceed to sentry post, said, "I shall not go, do what you feel like" and did not proceed to the sentry post from the guard room.

***No.* 31**

Charge-Sheet

[Section 41 (2)]

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,

in that he,

at....., on....., when ordered by No. ..... Rank..... Name....., of the same Regiment to eat his food, did not do so.

***No.* 32**

Charge-Sheet

[Section 41 (2)]

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,

in that he,

at....., on....., when ordered by No. ..... Rank..... Name....., of the same Regiment to fall in for PT parade, did not do so.

APPENDIX II—*Contd.*

***No.* 33**

Charge-Sheet

[Section 42 (b)]

USING CRIMINAL FORCE TO A PERSON IN WHOSE CUSTODY HE WAS LAWFULLY PLACED,

in that he.,

at....., on....., when placed by No..... Rank..... Name....., Regiment....., under custody of No..... Rank..... Name*..... of the same unit, struck with his web belt, on the head, the said*..... ,

***No.* 34**

Charge-Sheet

[Section 42 (b)]

USING CRIMINAL FORCE TO A PERSON IN WHOSE CUSTODY HE WAS LAWFULLY PLACED

in that he,

at....., on....., struck on the head of Civil Police Constable No..... Name.....of..... Police Station, in whose custody he was lawfully placed.

***No.* 35**

Charge-Sheet

[Section 42 (e)]

NEGLECTING TO OBEY REGIMENTAL ORDERS,

in that he,

at....., on....., bathed in the river..... above camp, contrary to Regimental Daily Order Part I No ..... dated....., which directed all persons to abstain from bathing in that part of the river.

***No.* 36**

Charge-Sheet

[Section 42 (e)]

NEGLECTING TO OBEY REGIMENTAL ORDERS,

in that he,

at....., on....., neglected to obey Battalion Daily Order Part I No..... dated....., by entering Lal Chowk which had been placed out of bounds by the said order.

***No.* 37**

Charge-Sheet

[Section 42 (f)]

WHEN CALLED UPON, REFUSING TO ASSIST THE PROVOST MARSHAL IN THE EXECUTION OF HIS DUTY,

in that he,

at....., on....., when called upon by No..... Rank..... Name....., Assistant Provost Marshal of HQ..... Corps, to assist him in arresting No..... Rank..... Name.....Regiment, an offender, refused to do so.

***No.* 38**

Charge-Sheet

(Section 42 (g)]

USING CRIMINAL FORCE TO A PERSON BRINGING SUPPLIES TO THE FORCES,

in that he,

at....., on....., struck on the face Shri ....., a civilian contractor bringing supplies to the forces.

APPENDIX II—*Contd.*

***No.* 39**

Charge-Sheet

[Section 43 (a)]

WITHOUT HAVING OBTAINED A REGULAR DISCHARGE FROM HIS CORPS, ENROLLING HIMSELF IN ANOTHER CORPS,

in that he,

at....., on....., without having obtained a regular discharge from the..... Regiment, enrolled himself in the.....Regiment.

No. 40

Charge-Sheet

[Section 44]

MAKING AT THE TIME OF ENROLMENT, A WILFULLY FALSE ANSWER TO A QUESTION SET FORTH IN THE PRESCRIBED FORM OF ENROLMENT, WHICH WAS PUT TO HIM BY THE ENROLLING OFFICER BEFORE WHOM HE APPEARED FOR THE PURPOSE OF BEING ENROLLED,

in that he,

at....., on....., when appeared before IC..... Rank..... Name....., an enrolling officer, for the purpose of being enrolled for service in the..... Regiment, to the question put to him, "Have you ever served in the Indian Armed Forces" answered, "No", whereas he had served as he well knew in the..... Regiment.

***No.* 41**

Charge-Sheet

[Section 45]

BEING AN OFFICER BEHAVING IN A MANNER UNBECOMING HIS POSITION AND THE CHARACTER EXPECTED OF HIM,

in that he,

at....., on....., in payment of his mess bill No..... dated ....., gave to the Mess Secretary cheque dated.....for Rs..... drawn on the SBI..... (Branch), which was dishonored when presented, well knowing that he had not sufficient funds in the said branch of the Bank to meet the said cheque, and having no reasonable grounds for supposing that the said cheque would be honoured when presented.

***No.* 42**

Charge-Sheet

[Section 46 (a)]

DISGRACEFUL CONDUCT OF AN INDECENT KIND,

in that he,

at....., on....., at about 2330 hrs, with indecent intent, got into bed with No. ..... Rank..... Name....., of the same Regiment.

***No.* 43**

Charge-Sheet

[Section 46 (a)]

DISGRACEFUL CONDUCT OF AN UNNATURAL KIND,

in that he,

at....., on....., committed an unnatural offence on the person of No ..... Rank ..... Name ....., a Sepoy of the same Regiment.

***No.* 44**

Charge-Sheet

[Section 46 (b)]

MALINGERING,

in that he,

at....., on....., falsely pretended to MR ..... Capt....., Regimental Medical Officer, that he was suffering from a sprained ankle.

APPENDIX II—*Contd.*

***No.* 45**

Charge-Sheet

[Section 46 (b)]

MALINGERING,

in that he,

at....., on....., between..... and..... hrs. with the intention of evading his duties as a member of the Quarter Guard counterfeited dumbness.

***No.* 46**

Charge-Sheet

[Section 46 (b)]

FEIGNING DISEASE IN HIMSELF,

in that he,

at....., on....., pretended to MR ..... Captain....., Regimental Medical Officer, that he was suffering violent pain in the head and down his back, whereas he was not so suffering.

***No.* 47**

Charge-Sheet

[Section 46 (b)]

INTENTIONALLY DELAYING HIS CURE,

in that he,

at....., on....., when under medical treatment for a wound in his leg, removed the bandages from the said wound, with intent thereby to delay his cure and did thereby delayed his cure.

***No.* 48**

Charge-Sheet

[Section 46 (c)]

VOLUNTARILY CAUSING HURT TO A PERSON WITH INTENT TO RENDER THAT PERSON UNFIT FOR SERVICE,

in that he,

at....., on....., at the request of No..... Rank..... Name....., cut off the trigger finger of the said....., with intent to render him unfit for service.

***No.* 49**

Charge-Sheet

[Section 47]

USING CRIMINAL FORCE TO A PERSON SUBJECT TO THE ARMY ACT, BEING HIS SUBORDINATE IN RANK,

in that he,

at....., on....., when drilling a squad of Sepoys, struck No Sepoy....., of the same Regiment on the shoulder with a pacestick.

***No.* 50**

Charge-Sheet

[Section 47]

ILL-TREATING A PERSON SUBJECT TO THE ARMY ACT, BEING HIS SUBORDINATE IN RANK,

in that he,

at....., on....., ill-treated No..... Rank..... Name....., of the same unit, by making him stand in the sun between 10 a.m. and 4 p.m. and not allowing him to drink water during the said period.

APPENDIX lI—*Contd.*

***No.* 51**

Charge-Sheet

[Section 48]

INTOXICATION,

in that he,

at....., on....., when on duty (specify duty) was intoxicated.

***No.* 52**

Charge-Sheet

[Section 49 (a)]

WHEN IN COMMAND OF A GUARD, WILFULLY RELEASING WITHOUT PROPER AUTHORITY, A PERSON COMMITTED TO HIS CHARGE,

in that he,

at....., on....., when in command of the Quarter Guard of the.....Regiment, wilfully released, without proper authority, No..... Rank..... Name....., Regiment, who was confined in the said Quarter Guard and committed to his charge.

***No.* 53**

Charge-Sheet

[Section 49 (b)]

WITHOUT REASONABLE EXCUSE, ALLOWING TO ESCAPE A PERSON WHOM IT WAS HIS DUTY TO GUARD,

in that he,

at....., on....., when posted as sentry over No. ..... Rank..... Name....., of.....Regiment, allowed the said.....to escape without reasonable excuse.

***No.* 54**

Charge-Sheet

[Section 50 (a)]

UNNECESSARILY DETAINING A PERSON IN CONFINEMENT WITHOUT BRINGING HIM TO TRIAL,

in that he,

at....., on....., when officiating Commanding Officer.....Regiment, unnecessarily detained No..... Rank..... Name....., of the same Regiment in confinement from..... to....., without bringing the said.....to trial.

***No.* 55**

Charge-Sheet

[Section 51]

WHEN IN LAWFUL CUSTODY ESCAPING,

in that he,

at....., on....., when under close arrest in the unit quarter guard, escaped therefrom.

***No.* 56**

Charge-Sheet

[Section 52 (a)]

COMMITTING THEFT OF PROPERTY BELONGING TO THE GOVERNMENT,

in that he,

at....., on....., committed theft in respect of one rifle 7.62 SLR Registered No. ....., value....., the property of the Government.

APPENDIX II—*Contd.*

***No.* 57**

Charge-Sheet

[(Section 52 (a)]

COMMITTING THEFT OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

at....., on....., committed theft in respect of a watch, the property of No..... Rank..... Name....., of the same Regiment.

***No.* 58**

Charge-Sheet

[Section 52 (b)]

DISHONESTLY MISAPPROPRIATING PROPERTY BELONGING TO THE GOVERNMENT,

in that he,

at....., between..... and..... , dishonestly misappropriated twenty rounds of 7.62 SLR ammunition, the property of the Government value....., which had been entrusted to his charge for the target practice of.....Company.

[Second Charge, Section 63 (Alternative to first charge)

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at....., on....., through neglect lost twenty rounds of 7.62 SLR ammunition, the property of the Government, value....., which had been entrusted to him for the target practice of.....Company.

***No.* 59**

Charge-Sheet

[Section 52 (c)]

COMMTTING CRIMINAL BREACH OF TRUST IN RESPECT OF PROPERTY BELONGING TO THE GOVERNMENT,

in that he,

at....., on....., dishonestly misappropriated a sum of Rs.....the property belonging to the Government, which was entrusted to him as OC 9 Bihar Bn NCC.

***No.* 60**

Charge-Sheet

[Section 52 (d)]

DISHONESTLY RECEIVING THE PROPERTY BELONGING TO THE GOVERNMENT, KNOWING THAT THEFT HAD BEEN COMMITTED IN RESPECT OF THE SAME BY A PERSON SUBJECT TO MILITARY LAW,

in that he,

at....., on....., dishonestly received 2 jerricans of 70 MT, the property belonging to the Government, which he knew to have been stolen by No. ..... Rank..... Name....., of..... Regiment.

[Second Charge Section 63 (Alternative to first charge)]

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

in that he,

at....., on....., was in unauthorized possession of 2 jerricans of 70 MT, the property belonging to the Government.

***No.* 61**

Charge-Sheet

[Section 52 (e)]

WILFULLY DESTROYING PROPERTY OF THE GOVERNMENT ENTRUSTED TO HIM,

in that he,

at....., on....., wilfully destroyed by breaking it up, one heliograph, value....., the property of the Government which had been entrusted to him for his use as a Regimental signaller.

APPENDIX II—*Contd.*

***No.* 62**

Charge-Sheet

[Section 52 (f)]

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT, WITH INTENT TO DEFRAUD,

in that he,

at....., on....., with intent to defraud, obtained from....., a shopkeeper, three packets of Gold Flake Cigarettes valued at Rs. ....., by falsely pretending that he was an orderly to Capt....., of ..... Regiment and that he had been sent by the said Capt.....for the said cigarettes.

***No.* 63**

Charge-Sheet

[Section 52 (f)]

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT, WITH INTENT TO DEFRAUD,

in that he,

at....., on....., with intent to defraud, forged the name of Captain....., to a post office order for Rupees.....and thereby detained the sum of Rupees.....

***No.* 64**

Charge-Sheet

[Section 52 (f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) Of SECTION 52 OF THE ARMY ACT, WITH INTENT TO CAUSE WRONGFUL LOSS TO A PERSON,

in that he,

at....., on....., with intent to cause wrongful loss to No. .....Rank*....., Name....., of ..... Regiment, debited the said*.....in the acquittance roll for Rs..... of ..... Coy..... Regiment, with a deduction of Rs. ..... on account of clothing, which deduction he did not credit to the said*..... clothing account.

***No.* 65**

Charge-Sheet

[Section 52 (f)]

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT, WITH INTENT TO CAUSE WRONGFUL LOSS TO A PERSON,

in that he,

at....., on....., having received from No. ..... Rank..... Name....., of the same Regiment, the sum of Rupees hundred (Rs. 100/-) for the purpose of dispatching a money order, did not dispatch the money order, but with intent to cause wrongful loss to the said*.....converted Rupees hundred to his own use.

***No.* 66**

Charge-Sheet

[Section 53 (a)]

COMMITTING EXTORTION,

in that he,

at....., on....., by threatening to make a false report to the Officer Commanding their Coy to the effect that No. ..... Rank..... Name*....., and No. ..... Rank ..... Name*..... have committed an unnatural offence together, extorted Rs. ..... from each of the said*.....persons.

APPENDIX II—*Contd.*

***No.* 67**

Charge-Sheet

[Section 53 (b)]

EXTRACTING WITHOUT PROPER AUTHORITY MONEY FROM A PERSON,

in that he,

at....., on....., exacted without proper authority, Rs..... from No..... Rank..... Name....., of the same Regiment.

***No.* 68**

Charge-Sheet

[Section 54 (a)]

MAKING AWAY WITH CLOTHING, THE PROPERTY OF THE GOVERNMENT ISSUED TO HIM FOR HIS USE,

in that he,

at....., on....., sold his great coat (value Rs.....) property of the Government, issued to him for his use to..... for Rupees..... .

***No.* 69**

Charge-Sheet

[Section 54 (b)]

LOSING BY NEGLECT IDENTITY CARD, THE PROPERTY OF THE GOVERNMENT ISSUED TO HIM FOR HIS USE,

in that he,

at....., on....., lost by neglect Identity Card No....., the property of the Government, issued to him for his use.

***No.* 70**

Charge-Sheet

[Section 54 (b)]

LOSING BY NEGLECT IDENTITY CARD, THE PROPERTY OF THE GOVERNMENT ISSUED TO HIM FOR HIS USE,

in that he,

at....., on....., was deficient of Identity Card No....., the property of the Government, issued to him for his use.

Note:—Ordinarily proof of the date and circumstances of the loss of the property is necessary. Occasionally, proof of them cannot be obtained. In such cases the particulars of the charge should aver that the accused was deficient of the property in question on a specific date.

***No.* 71**

Charge-Sheet

[Section 55 (a)]

WITHOUT REASONABLE EXCUSE DESTROYING AMMUNITION, THE PROPERTY OF THE GOVERNMENT ENTRUSTED TO HIM,

in that he,

at....., on....., when NCO i/c of the ammunition dump, without reasonable excuse, destroyed 100 rounds of 7.62. SLR ammunition, the property of the Government entrusted to him.

***No.* 72**

Charge-Sheet

[Section 56 (a)]

MAKING A FALSE ACCUSATION AGAINST A PERSON SUBJECT TO THE ARMY ACT, KNOWING SUCH ACCUSATION TO BE FALSE,

in that he,

at....., on....., when appearing before Colonel A...B... Commanding the..... Regiment to answer for an offence, used language to the following effect, that is to say, "Maj C.....the Coy Commander takes no interest in his work and is entirely in the hands of the Platoon Commanders who in turn take bribe all round and allow no one without a bribe to approach the "Maj Sahib", well knowing the said statement to be false.

APPENDIX II—*Contd.*

***No.* 73**

Charge-Sheet

[Section 56 (b)]

IN MAKING A COMPLAINT UNDER SECTION 27 OF THE ARMY ACT, MAKING A STATEMENT AFFECTING THE CHARACTER OF A PERSON SUBJECT TO THE ARMY ACT, KNOWING SUCH STATEMENT TO BE FALSE,

in that he,

at....., on....., in a complaint under Section 27 of the Army Act addressed to the Central Government, made the following statement, "The CO is indulging in all sort of malpractices in spending the money received by the unit out of the Annual Training Grant," well knowing the said statement to be false.

***No.* 74**

Charge-Sheet

[Section 57 (a)]

IN A CERTIFICATE SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT,

in that he,

at....., on....., in a certificate signed by him in the TA/DA claim for his temporary duty from his unit to.....for the duration from..... to....., stated that he was not provided with free messing at the outstation, well knowing the said statement to be false.

***No.*75**

Charge-Sheet

[Section 57 (c)]

KNOWINGLY AND WITH INTENT TO DEFRAUD MAKING AWAY WITH A DOCUMENT WHICH IT WAS HIS DUTY TO PRESERVE,

in that he,

at....., on....., when accounts officer of his unit, knowingly and with intent to defraud, destroyed by burning the cash Book pertaining to the Regimental Accounts of the unit, a document which it was his duty to preserve.

***No.* 76**

Charge-Sheet

[Section 57 (d)]

WHERE IT WAS HIS OFFICIAL DUTY TO MAKE A DECLARATION RESPECTING A MATTER, KNOWINGLY MAKING A FALSE DECLARATION,

in that he,

at....., on....., when being the custodian of classified documents of his unit, rendered a quarterly certificate that he checked and found correct all the said documents, well knowing that a secret document ATM No..... had been lost by him.

***No.* 77**

Charge-Sheet

[Section 57 (e)]

OBTAINING FOR A PERSON A PENSION BY A FALSE STATEMENT WHICH HE KNEW TO BE FALSE,

in that he,

at....., on....., when examined by Major A B,..... Regiment who was investigating a claim to family pension preferred by Shri C, inhabitant of....., stated that he knew the said Shri C to be the father of late Sep....., ...Regiment, well knowing such statement to be false and consequent to which, a family pension of Rs..... p.m. was sanctioned to the said Shri C.

APPENDIX II—*Contd.*

***No.* 78**

Charge-Sheet

[Section 58 (a)]

WHEN SIGNING A DOCUMENT RELATING TO SUPPLIES, FRAUDULENTLY LEAVING IN BLANK A MATERIAL PART FOR WHICH HIS SIGNATURE IS A VOUCHER,

in that he,

at....., on....., when Officer Commanding Sub Depot.....and when signing the Receipt of articles supplied by contractor (IAFS-1520) for the month of....., fraudulently left in blank the columns wherein the total quantity of fresh rations received from the contractor were to be shown.

***No.* 79**

Charge-Sheet

[Section 59 (c)]

REFUSING TO PRODUCE A DOCUMENT IN HIS CONTROL LEGALLY REQUIRED BY A COURT-MARTIAL TO BE PRODUCED BY HIM,

in that he,

at....., on....., when a witness, refused to produce a letter dated.....in his control, written to him by No. ..... Rank..... Name..... Regiment, when legally required by the Summary Court-Martial trying the said.....to be produced by him.

***No.* 80**

Charge-Sheet

[Section 59 (e)]

CONTEMPT OF COURT MARTIAL BY USING INSULTING LANGUAGE,

in that he,

at....., on....., when being tried by a General Court Martial said in a loud tone, "It is no use my making any defence; the Court has been told by the Convening Officer to convict me and of course they will", or words to that effect.

***No.* 81**

Charge-Sheet

[(Section 60]

HAVING BEEN DULY AFFIRMED BEFORE A COURT MARTIAL, MAKING A FALSE STATEMENT WHICH HE KNEW TO BE FALSE,

in that he,

at....., on....., when examined as a witness before a District Court - Martial stated on solemn affirmation that Sep..... of .....Regiment, the person charged before the said Court was in his (the witness's) company in the lines at..... between 0200 hrs and 0500 hrs on....., which statement was, as he well knew, false.

***No.* 82**

Charge-Sheet

[Section 61]

HAVING RECEIVED THE PAY OF A PERSON SUBJECT TO THE ARMY ACT, UNLAWFULLY REFUSING TO PAY THE SAME WHEN DUE,

in that he,

at....., on....., having received Rs. ..... as an advance of pay for month of..... in respect of the No. .....Rank.....Name..... of the same unit, unlawfully refused to pay the same to the said.....

APPENDIX II—*Contd.*

***No.* 83**

Charge-Sheet

[Section 62 (d)]

NEGLECT IN FLYING WHICH WAS LIKELY TO CAUSE LOSS OF LIFE OR BODILY INJURY TO A PERSON,

in that he,

at....., on....., while flying aircraft No. .....over village....., negligently flew the same at a dangerously low altitude which was likely to cause loss of life or bodily injury to the inhabitants of the said village.

***No.* 84**

Charge-Sheet

[Section 63]

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at....., on....., when JCO i/c at the butt, during the repetition of Musketry No. .....by certain Sepoys of the Regiment, improperly caused it to be signalled to the firing point that four fair hits had been made on No.3 target, whereas actually only one fair hit and one ricochet had been made on the said target, as he well knew.

***No.* 85**

Charge-Sheet

[Section 63)

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at....., on....., improperly wrote and sent to his Commanding Officer IC- ..... Rank..... Name....., an anonymous letter in which he made use of the following words "..... ."

***No.* 86**

Charge-Sheet

[Section 63)

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at....., on....., was improperly in possession of a pair of boots, the property of No..... Rank..... Name..... of the same Regiment.

***No.* 87**

Charge-Sheet

[Section 63]

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at....., on....., so negligently drove vehicle BA No. ..... 3 Ton, the property of the Government, as to cause the said vehicle to be damaged to the amount of Rs. ..... .

***No.* 88**

Charge-Sheet

[Section 63]

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at....., on....., while concerned with the care of public money, so negligently performed his duties as to be unable to account for Rs. ....., part of the said money.

APPENDIX II—*Contd.*

***No.* 89**

Charge-Sheet

[Section 63]

AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at....., between....., and .....when I/C (in charge) of Military Farm, omitted to exercise proper supervision over the stacking and the issue of bhoosa at the said farm and thereby caused a loss to the Government of Rs..... or thereabout.

***No.* 90**

Charge-Sheet

[Section 63]

AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at....., on....., so negligently handled a rifle as to cause it to be discharged and thereby injuring No. ..... Rank..... Name....., of the same Regiment.

***No.* 91**

Charge-Sheet

[Section 63]

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at....., on....., when appearing at part 'D' promotion examination for paper II Tactics, was in improper possession of a USI precis on Tactics.

***No.* 92**

Charge-Sheet

[Section 64 (b)]

BY DEFILING A PLACE OF WORSHIP, INTENTIONALLY WOUNDING THE RELIGIOUS FEELINGS OF A PERSON,

in that he,

at....., on....., entered the unit Mandir in a drunken state and spat around, thereby wounding the religious feeling of the unit personnel.

***No.* 93**

Charge-Sheet

[Section 64 (c)]

ATTEMPTING TO COMMIT SUICIDE AND iN SUCH ATTEMPT, DOING AN ACT TOWARDS THE COMMISSION OF THE SAME,

in that he,

at....., on....., attempted to commit suicide by drinking a bottle of TIK.-20.

***No.* 94**

Charge-Sheet

[Section 64 (e)]

OBTAINING FOR HIMSELF A GRATIFICATION AS A REWARD FOR PROCURING LEAVE OF ABSENCE FOR A PERSON IN THE SERVICE,

in that he,

at....., on....., while performing the duties of CHM of 'A' Coy, obtained for himself Rs. 50 from No..... Rank..... Name..... of his Coy, a gratification as a reward for having procured leave of absence for the said.....from.....to..... .

APPENDIX II—*Contd.*

***No.* 95**

Charge-Sheet

[Section 64 (e)]

ATTEMPTING TO OBTAIN FOR HIMSELF, A GRATIFICATION AS A MOTIVE FOR PROCURING THE ENROLMENT OF A PERSON,

in that he,

at....., on....., while working as a clerk in the enrolment section of the Branch Recruiting Office, attempted to obtain Rs. 200 a gratification as a motive for procuring the enrolment of Shri A B, by demanding the said sum from the said Shri A B.

***No.* 96**

Charge-Sheet

[Section 64 (f)]

COMMITTING AN OFFENCE AGAINST THE PROPERTY OF A RESIDENT IN THE COUNTRY IN WHICH HE WAS SERVING,

in that he,

at....., on....., maliciously damaged a motor car belonging to ..... of....., a resident in.....by thrusting a knife into one of the tyres.

***No.* 97**

Charge-Sheet

[Section 65]

ATTEMPTING TO INCITE A MUTINY IN THE MILITARY FORCES OF INDIA AND IN SUCH ATTEMPT DOING AN ACT TOWARDS THE COMMISSION OF THE SAME,

in that he,

at....., on....., attempted to incite the non-commissioned officers and men of his Squadron to combine together and refuse to eat their rations next day and to demand from IC..... Rank.....Name.....,Commanding the said Regiment that No..... Rank.....,Name....., be removed from his employment as .....i/c of ration issue and to this end addressed Dafadar.....and Sowars.....and .....in the following words.....(set out the language used).

***No.* 98**

Charge-Sheet

[Section 66]

ABETMENT OF AN OFFENCE SPECIFIED IN SECTION 40(a) OF THE ARMY ACT IN CONSEQUENCE OF WHICH ABETMENT, SUCH OFFENCE WAS COMMITTED,

in that he,

at....., on....., abetted by instigating No..... Rank ..... Name..... of the same Regiment to strike Nb Sub..... of the same Regiment, in consequence of which, the said..... struck the said JCO on the head with a stick.

***No.* 99**

Charge-Sheet

[Section 66]

ABETMENT OF AN OFFENCE SPECIFIED IN SECTION 52(a) OF THE ARMY ACT, IN CONSEQUENCE OF WHICH ABETMENT, SUCH OFFENCE WAS COMMITTED.

in that he,

at....., on....., when sentry over the Magazine Guard between ..... and ..... , by omitting to keep on the alert, intentionally aided No..... Rank..... Name..... of the same Regiment to commit theft of one-box of ammunition, value Rs....., the property of the Government, in consequence of which the said..... committed theft of one box of ammunition.

NOTE.—If there is any doubt as to the assistance being intentional, an alternative charge under AA. S. 63 may be added.

APPENDIX II—*Contd.*

***No.* 100**

Charge-Sheet

[Section 67]

ABETMENT OF AN OFFENCE PUNISHABLE WITH DEATH UNDER SECTION 38(1) OF THE ARMY ACT, IN CONSEQUENCE OF WHICH ABETMENT SUCH OFFENCE WAS NOT COMMIITED,

in that he,

at....., on....., when on active service, instigated No..... .Rank..... Name*....., of the same Regiment to desert the service, which offence was not committed by the said*..... .

***No.* 101**

Charge-Sheet

[Section 68]

ABETMENT OF AN OFFENCE SPECIFIED IN SECTION 52(a) OF TIIE ARMY ACT AND PUNISHABLE WITH IMPRISONMENT, IN CONSEQUENCE OF WHICH ABETMENT, SUCH OFFENCE WAS NOT COMMITTED,

in that he,

at....., on....., instigated No....., Rank....., Name....., who was working as a batmen to No....., Rank....., Name*..... .of the same Regiment to commit theft of the Transistor belonging to the said*.....,. which offence was not committed by the said Sepoy.

***No.* 102**

Charge-Sheet

[Section 69}

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, CAUSING DEATH BY A RASH OR NEGLIGENT ACT NOT AMOUNTING TO CULPABLE HOMICIDE, CONTRARY TO SECTION 304-A OF THE INDIAN PENAL CODE,

in that he,

at....., on....., by rashly or negligently driving vehicle BA No....., caused the death of Shri....., Son of ....., a civilian.

***No.* 103**

Charge-Sheet

[Section 69]

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MURDER, CONTRARY TO SECTION 302 OF THE INDIAN PENAL CODE,

in that he,

at....., on....., by intentionally causing the death of No..... Rank..... Name....., of his unit, committed murder.

***No.* 104**

Charge-Sheet

[Section 69]

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, VOLUNTARILY HAVING CARNAL INTERCOURSE AGAINST THE ORDER OF NATURE WITH A MAN, CONTRARY TO SECTION 377 OF THE INDIAN PENAL CODE,

in that he,

at....., on....., voluntarily had carnal intercourse against the order of nature with No..... Rank..... Name....., of his unit. .

***No.* 105**

Charge-Sheet

[Section 69]

COMMITTING A CIVIL OFFENCE THAT IS TO SAY, RIOTING CONTRARY TO SECTION 147 OF THE INDIAN PENAL CODE,

in that he,

at....., on....., was a member of an unlawful assembly, which in prosecution of the common object of such assembly to use criminal force to the Civil Police, beat the Civil Police with lathis, thereby committing the offence of rioting.

APPENDIX II—*Concld.*

***No.* 106**

Charge-Sheet

[Section 69]

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, ATTEMPT TO MURDER, CONTRARY TO SECTION 307 OF THE INDIAN PENAL CODE,

in that he,

at....., on....., fired two shots from a rifle at No..... Rank..... Name*....., of the same Regiment, with intent to murder him and thereby wounded the said*.....in the right ear and left thigh.

***No.* 107**

Charge-Sheet

[Section 69]

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, VOLUNTARILY CAUSING GRIEVOUS HURT, CONTRARY TO SECTION 325 OF THE INDIAN PENAL CODE,

in that he,

at....., on....., voluntarily caused grievous hurt to No..... Rank....., Name....., of the same Regiment by fracturing his left arm with an iron rod.

***No.* 108**

Charge-Sheet

[Section 69]

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, THEFT, CONTRARY TO SECTION 379 OF THE INDIAN PENAL CODE,

in that he,

at....., on....., committed theft of a tin of ghee, value Rs....., from the shop of Shri..... in Sadar Bazar, the property of the said Shri..... .

***No.* 109**

Charge-Sheet

[Section 69]

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, USING CRIMINAL FORCE TO A WOMAN WITH INTENT TO OUTRAGE HER MODESTY, CONTRARY TO SECTION 354 OF THE INDIAN PENAL CODE,

in, that he,

at....., on....., used criminal force to Smt....., wife of Shri....., by putting his right hand on her thigh, intending thereby to outrage her modesty.

***No.* 110**

Charge-Sheet

[Indian Reserve Forces Act 1888 (Section 6 (1) (a)]

WHEN REQUIRED IN PURSUANCE OF A RULE UNDER THE INDIAN RESERVE FORCE ACT TO ATTEND AT A PLACE, FAILING WITHOUT REASONABLE EXCUSE,

in that he,

having in pursuance of the Indian Reserve Forces Rule 5A been required by his Commanding Officer, Commanding....., ... Regiment to attend at....., on....., for training, failed without reasonable excuse so to attend.

APPENDIX III

PART I (A)

IAFD-937 (Revised)

FORM OF APPLICATION FOR A COURT-MARTIAL

Place.....dated .....20.....

Application for a Court-Martial

Sir,

1 have the honour to submit.....charge(s).....against No..... Rank..... Name.....of the.....(unit), under my command, and request you to obtain sanction, of ..... that a....., court-martial may be assembled for his trial at..... (place).

The case was investigated by (a) .....

A court of inquiry (b) was held on.....(date).....at..... (Station).

Presiding Officer.....Ranks .....Names and Corps; Members .....

The accused is now at.....(place).

His general character is (c) .....

Enclose the following documents (d) :

1. Tentative Charge-Sheet along with record of hearing of charge proceedings. (in duplicate).

2. Summary of Evidence, original and.....copy/copies.

3. Original exhibits.

4. List of witnesses for the prosecution and defence (with their present station and addresses).

5. List of exhibits.

6. Correspondence.

7. Statement as to character (IAFD-905) and the conduct-sheet of the accused (e).

8. Statement by the accused as to whether or not he desires to have an officer assigned by the convening officer to represent him at the trial [AR 33(7)].

Yours faithfully,

Signature of Officer Commanding

(a) Here insert the name of—

(i) Officer who investigated the charges.

(ii) Company, etc., Commander who made preliminary enquiry into the case.

(iii) Officer who took down the Summary of Evidence [AR 39(2) (c)].

(b) To be filled in if there has been a Court of Inquiry respecting any matter connected with the charge(s); otherwise to be struck out [AR 39(2)(c)].

(c) To be filled in by the Commanding Officer personally in accordance with Regs Army para 171.

(d) Any item not applicable to be struck out.

(e) 3, 4, 5, 6, 7 and 8 to be returned to the Officer Commanding the unit of the accused with the notice of trial.

APPENDIX III—*Contd.*

MEDICAL OFFICER'S CERTIFICATE

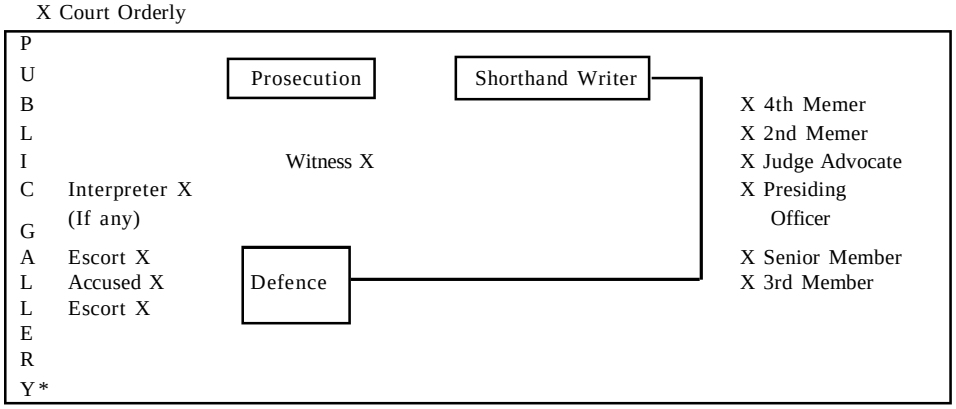
I certify that No…….. Rank……Name..... of …….. (unit), is fit/unfit to undergo trial by Court-Martial.

Place—

Date— Signature of the Medical Officer

Arrangement of the Court Room

There is nothing stated in the Army Rules but the following seating arrangement has been found convenient in practice :—



* (Subject to provisions of AR 80-A)

PART I (B) IAFD-916

FORMS FOR ASSEMBLY OF COURT MARITAL

GENERAL AND DISTRICT

Form of order for the Assembly of a General (or District) Court-Martial under the Army Act.

Orders by.....

Commanding the.....

Place : .....

Dated : .....

The detail of officers as mentioned below will assemble at..... on the ..... day of..... for the purpose of trying by a ..... Court-Martial the accused person (persons) named in the margin (and such other person or persons as may be brought before them)**

NOTE :—The members and waiting members may be mentioned by name, or the number and ranks and the mode of appointment may alone be named.

The senior officer to sit as Presiding Officer.

MEMBERS

WAITING MEMBERS

JUDGE ADVOCATE

..... is appointed Judge Advocate

INTERPRETER

.....is appointed Interpreter

PROSECUTOR

.....is appointed Prosecutor

†The accused will be warned, and all witnesses duly required to attend.

** Any opinion of the Convening Officer with respect to the composition of the Court (see AR 40) should be added here, thus :

"In the opinion of the convening officer, it is not practicable to appoint officers of different corps or departments" or,

"In the opinion of the convening officer, officers of equal or superior rank to the accused are not, having due regard to the exigencies of the public service, available".

† Add here any order regarding counsel—see Army Rule 96.

APPENDIX III—*Contd.*

the proceedings (of which only..... @ Copies are required) will be forwarded to this HQ through Dy JAG.....Command.

Signed this.....day of .....20.....

**

[ ]
Rank
Appointment

@ The number of copies of the proceedings required is two plus the number of accused persons in case of GCM and one plus the number of accused persons in case of DCM.

**The convening order must be signed by the convening officer personally. The date of the convening order must not be prior to the date on which the order for trial was endorsed by the convening officer on the charge-sheet.

FORM OF DECLARATION FOR SUSPENSION OF RULES UNDER ARMY RULE 36

In my opinion $ mlilitary exigencies, namely (state them) render it @ (impossible)

to observe the provisions of rule £ on the trial of ..... by.....

court-martial assembled pursuant to the order of the .....

of

Signed at..... this.....day of.....20..... Sd/-
(Name)
Rank
Appointment

$ (the necessities of discipline).
@ (or inexpedient)
£ State the rule or rules which cannot be observed. (see AR 36).

***(*Instruction :**—*This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings. It should not be included in the Convening Order but should be a separate document).*

IAFD-906

PART I (C)

% FORMS OF PROCEEDINGS OF COURTS-MARTIAL

'A'

Form of Proceedings of a General (or District) Court-Martial under the Army Act (including some of the incidents which may occur to vary the ordinary course of procedure with instructions for the guidance of the Court).

% All printed matter not applicable to the particular Court being held should be struck out and initialled by the officer responsible for the record (AR 92).

Proceedings of a.....Court-Martial, held at .....@@..... on the ..... day of .....20.....by order of.....Commanding..... .....dated the.....day of.....20.....

@@ Insert place of assembly

APPENDIX III—*Contd.*

PRESIDING OFFICER

No. .....Rank.....Name.....Unit .....

MEMBERS

No. .....Rank.....Name.....Unit .....

JUDGE ADVOCATE

No. .....Rank.....Name.....Unit .....

INTERPRETER

No. .....Rank.....Name.....Unit .....

Trial of*.....

* Insert Number, Rank, Name, Unit and appointment (if any) of the accused. as mentioned in the convening order.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

[Instruction:—*All documents relating to Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military exigencies, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received should be read in open court, marked so as to identify them, signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings*].

The Court satisfy themselves that $..... is not available to serve owing to+ ....., £..... waiting member, takes his place as a member of the Court.

$ Insert rank, name and unit
+Insert reasons.
£ Insert number, rank, name and unit.

The court as reconstituted is as follows:—

PRESIDING OFFICER

No. .....Rank.....Name.....Unit .....

MEMBERS

No. .....Rank.....Name.....Unit .....

JUDGE ADVOCATE

No. .....Rank.....Name.....Unit .....

The Court satisfy themselves as provided by Army Rules 41 and 42.

NOTE.—Before certifying that the Court have satisfied themselves as provided by Army Rules 41 and 42, the Presiding Officer will, in every case where a Court of Inquiry has been held respecting a matter upon which a charge against the accused is founded, insert an asterisk after the words "Army Rules 41 and 42" and sign a footnote at the bottom of the first page of the proceedings, to the following effect :—

"I have satisfied myself that none of the officers detailed as members of this Court has previously served upon any Court of Inquiry respecting the matters forming the subject of the charge (charges) before this Court-Martial."

(Signature of Presiding Officer)
(Name)
Rank
Presiding Officer

APPENDIX III—*Contd.*

The accused is brought before the Court.

Prosecutor% .....

Counsel..... @ or Defending Officer ..... @.....

At..... hrs..... the trial commences.

(Instruction-In terms of para 462 of regs for the army, 1987, the accused is to be examined by a medical officer on morning of each day the court sits, before he is brought before the Court

The order convening the Court is read and is marked.....@@.....signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

The names of the Presiding Officer and Members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q—*

Question by the Presiding Officer to the accused.

Do you object to be tried by me as Presiding Officer, or by any of the officers whose names you have heard read over ?

VARIATIONS

CHALLENGING OFFICERS (AR 44)

I object to..... .

Do you object to any other officer ?

(This question must be repeated until all the objections are ascertained).

What is your objection to (the junior most officer objected to)?

(Set out)

The accused in support of his objection to.....requests permission to call.....etc., etc.....is called in to court, and is questioned by accused.

(Set out).

The member (objected to) in reply states.

(Set out).

The court is closed to consider the objection in the absence of (the challenged officer).

Court closed

The court decides to allow/ disallow the objection :

The court is re-opened and the accused is again brought before it. The above decision is announced in the open court.

Court re-opened

@Waiting Member.....*.....takes his place as a member of the Court.

(This only applies in the case of there being a waiting member of the Court).

@In case objection is allowed

The Court satisfy themselves that No. ..... Rank .....Name..... Unit is eligible and not disqualified to serve on this Court-Martial.

*Insert number, rank, name and unit.

%Here state his number, rank, name, unit and legal qualifications if any.

@ Here state name and legal qualifications (see AR [101(2)] in respect of counsel and number, rank, name, uint and legal qualifications in respect of defending officer.

@@ All exhibits to be noted in the margin.

* All questions and answers will be numbered serially throughout the proceedings.

Q—* Question by the Presiding Officer to the accused.

A— Answer by the accused.

Q— Question to the accused.

A—Answer by the Accused.

Do you object to be tried by.....(the waiting member)?

Q— Question to the accused.

(Set-out).

(If he objects, the objection wilI be dealt with in the same manner as the former objection).

A— Answer by the accused.

What is your objection to.....(the junior of the officers objected to)?

Q— Question to the accused.

(This objection will be dealt with in the same manner as the former objection).

The Court adjourns for the purpose of fresh members being appointed.

or

The Court is of the opinion that in the interests of justice and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because (here state the reasons).

At.....hrs on.....the Court resume its proceedings. An order appointing fresh officer(s) is read, marked....., signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

The Court satisfy themselves with respect to such fresh officers as provided by Army Rule 41.

(Instruction:— The procedure as to challenging fresh officers and the procedure, if any objection is allowed, will be the same as above).

The Presiding Officer and members of the Court, as constituted after the above proceedings, are as follows :—

PRESIDING OFFICER

No .....Rank.....Name.....Unit.....

MEMBERS

No. .....Rank.....Name.....Unit.....

@'B'

@ Fresh page.
* Strike out if not applicable.

The Presiding Officer, Members and Judge Advocate (also any officers under instruction) are duly sworn *(or affirmed).

(Instruction :—The witnesses, if in Court, other than the Prosecutor, should be ordered out of the Court after the oath ceremony.

**Certificate of commissioned service in terms of para 460(e) of Regs for the Army, 1987, to be rendered by each member and attached to the proceedings)

Do you object to.....as interpreter?

Q— Question to the accused.

(Set out).

A— Answer by the accused.

(Intructions :—*(l) In case the accused does not object, the interpreter should be sworn/affirmed. In case the accused objects to the appointment of interpreter, the same procedure will be followed as in the case of an objection to a member of the court.*

(2) A member of the court appointed interpreter must take the interpreter's oath/ affirmation in addition to the oath/affirmation administered to him as a member of the Court).

$ Strike out this para if there is no interpreter or shorthand writer, as the case may be.

$..... is duly sworn (or affirmed) as interpreter.

Do you object to ..... as shorthand writer?

Q— Question to the accused.

(Set out)

A— Answer by the accused.

$ .....is duly sworn (or affirmed) as short hand writer.

(Instruction :—If he objects, the objection will be disposed of as in the case of an interpreter).

CHARGE-SHEET*

The charge-sheet is signed by the Presiding Officer (or Judge Advocate) marked B-2 and annexed to the proceedings as page—

The accused is arraigned upon each charge in the above mentioned charge-sheet**

Are you guilty or not guilty of the (first) charge against you, which you have heard/ read?

(Set out)

(**Instructions:—***(1) When there is more than one charge the foregoing question will be asked after each charge (whether alternative or not) is read, the number of the charge being stated).*

(2) If the accused pleads guilty to any charge the provisions of AR 52(2) must be complied with, and the fact that they have been complied with must bc recorded. Where there are alternative charges and the accused pleads guilty to the less serious charge, the Court will enter after the plea is recorded: "The Court proceeds as though the accused had not pleaded guilty to any charge" AR 54(2) refers.

* If the trial proceeds on more than one charge-sheet, the trial-on each charge-sheet from arraignment to finding inclusive will be kept separate and distinct.

**In case of joint trial each accused will be arraigned separately on each charge (AR 78 refers).

Q— Question to the accused.

A— Answer by the accused.

VARIATIONS

OBJECTION TO CHARGE (AR 49)

The accused objects to the charge on the ground that (set out).

(Instruction :-*Provisions of AR 88 will be followed on all such incidental matters as shown below).*

The Prosecutor answers (Set out).

The accused (or defending officer) replies (Set out).

Advice by the Judge Advocate—The Judge Advocate advises (Set out).

Court closed.

The court is closed to consider its decision.

The court decides to disallow the objection (or the Court decides to allow the objection and agrees to report to the convening authority).

Court re-opened.

The Court being re-opened the accused is again brought before it and the above decision is announced in the open court.

The Court proceeds with the trial (or adjourns).

AMENDMENT TO CHARGE (AR 50)

The Court, being satisfied that the name (or description) of the accused is..... and not as stated in the charge-sheet, amend the charge-sheet accordingly.

The Court, before any witnesses are examined, considers that, in the interest of justice, the following addition to (or omission from or alteration in) the charge is required (set out), and adjourns to report its opinion to the convening authority.

PLEA TO THE JURISDICTION (AR 51)

The accused pleads to the general jurisdiction of the Court on the ground that

(Set out).

Do you wish to produce any evidence in support of your plea?

Q—Question to the accused.
A—Answer by the accused.

(Set out).

Witness is examined on oath (or affirmation).

(**Instruction**:—The examination, etc., of the witnesses called by the accused and of any witness called by the prosecutor in reply, will proceed as directed below in the case of witnesses to the facts of the trial. Provisions of AR 88 will be complied with).

The Court is closed to consider its decision.

The Court (a) decides to overrule the plea and to proceed wilh the trial; Court closed

or (b) decides to allow the plea and to report to the convening authority and adjourn ;

or (c) is in doubt as to the validity of the plea and decides to refer the matter to the convening authority and adjourn [or make the following special decision (Set out) and decides to proceed with the trial].

The Court is re-opened, the accused is brought before it and the above decision is announced in open court . Court reopened

The Court proceeds with the trial (or adjourns).

PLEA IN BAR OF TRIAL (AR 53)

Accused, besides the plea of guilty (or, not guilty) offers a plea in bar of trial on the ground that (set out).

Q—Question to the accused.
A—Answer by the accused.

Do you wish to produce evidence in support of your plea?

(Set out).

(**Instruction:**—*The examination, etc., of the witnesses called by the accused, and of any witness called by the prosecutor in reply, will proceed as directed below in the case of witnesses to the facts at the trial. Provisions of AR 88 will be complied with*) :

The court is closed to consider its decision. Court closed

The Court decides to allow the plea and resolve to adjourn [or to proceed with the trial on another charge) (or the Court decides "to overrule the plea].

The court is re-opended, the accused is brought before it and the above decision is announced in the open Court as being subject to confirmation. Court re-opened

The Court adjourns (or proceeds with the trial on another charge) (or proceeds with the trial).

REFUSAL TO PLEAD [AR 52 (1)]

As the accused does not plead intelligibly (or refuses to plead) to the above charge, the Court enters a plea of "Not guilty".

The accused having pleaded guilty to the ..... charge the provisons of AR 52 (2) and 2(A) are hereby complied with (Reproduce certificate)

APPENDIX III—*Contd.*

@CC

@ Fresh Page.

PROCEEDINGS ON PLEA OF GUILTY

*[The Court having been re-opened, the accused is again brought before it, and the charge (charges) to which he has pleaded guilty is (are) read to him again].

* To be struck out in case no plea of "not guilty" has been proceeded with

The accused No. ..... Rank..... Name..... Regiment..... is found guilty of the charge (all the charges).

or,

is found guilty of the ..... charge, and is found not guilty of the ..... charge.

***(Instruction:**— If the trial proceeds upon any charge to which there is a plea of "not guilty", the Court will not proceed upon the record of the plea of "guilty" until after the finding on that other charge; and in that case the Court will be re-opened and the charge on which the record is "guilty" must be read to the accused again).*

ANNOUNCEMENT OF FINDING(S)

The finding(s) is/are read in open Court and is/are announced as being subject to confirmation.

Do you wish to make any statement in reference to the charge?

Q— Question to the accused.

(Set out).

A— Answer by the accused.

(The accused may in accordance with AR 54(3) make any statement he wishes in reference to the charge].

The Summary of evidence is read (orally translated) marked ..... signed by the Presiding Officer (or Judge Advocate), and attached to the proceedings.

*[**Instruction** :—If there is no summary of evidence, sufficient evidence to enable the Court to determine the sentence and the confirming officer to know all the circumstances connected with the offence will be taken on a separate sheet in the same manner as on a plea of "not guilty"].*

Do you wish to make any statement in mitigation of punishment?

The accused in mitigation of punishment says [or, if the statement is in writing, hands in a written statement, which is read, marked ..... signed by the Presiding Officer (or Judge Advocate), and attached to the proceedings].

Q— Question to the accused.

A— Answer by the accused.

*(**Instructions** :—If the satement of the accused is not in writing, the material portion should be taken down in the first person, and as nearly as possible in his own words.*

If counsel or defending officer addresses the Court on behalf of the accused, the material portions of his address should be recorded.

In any case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment).

APPENDIX III—*Contd.*

VAR1ATIONS

$ ALTERATION OF PLEA [(AR 54(5)]

$To be struck out if not applicable. See AR 54(5)

The Court being satisfied from the statement of the accused (or the summary of evidence or otherwise) that the accused did not understand the effect of the plea of "Guilty" enters in the proceedings; the Court consider that the accused does not understand the effect of his plea of "guilty" on ..... charge(s), after the record and enters a plea of "not guilty" in respect of ..... charge(s).

(**Instruction :**—*The Court will then proceed in respect of the charge as on a plea of "not guilty"*).

***DD**

* Fresh Page.

WITNESSES FOR DEFENCE ON PLEA OF GUILTY

(AR 54 (7))

The Court permits the accused to call witnesses to prove his above statement that (set out the statement which is to be proved).

(Instruction:—*The examination, etc., of witnesses called in pursuance of this permission will proceed in the same manner as on a plea of "not guilty"*).

Do you wish to call any witnesses as to character?

(Set out).

Q—Question to the accused.
A—Answer by the accused.

(Instruction:—*The examination, etc. of witnesses as to character will proceed as in the case of a witness giving evidence as to the facts of the case*).

*Fresh page.

***C**

PROCEEDINGS ON PLEA OF NOT GUILTY

(AR 56 (1))

Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby or on the ground that you have not had sufficient opportunity for preparing your defence?

Q—Question to the accused.

A—Answer by the accused.

(Set out).

(**Instruction** :—*In case of request for adjournment, the accused's statement together with the decision of the Court is to be recorded*).

The prosecutor makes an opening address [or hands in a written address, which is read (orally translated), marked....., signed by the Presiding Officer (or Judge-Advocate) and attached to the proceedings].

The prosecutor proceeds to call witnesses.

.....*being duly sworn (affirmed) is examined by the prosecutor.

First witness for prosecution.
*Here insert No. Rank, Name and appointment, if any, or other description.

(NOTE.—For form of oath or affirmation, see AR (140).

Cross-examined by the accused (or by counsel, or Defending Officer).

Re-examined by the Prosecutor.

Questioned by the Court.

APPENDIX III-CONTD.

[Instructions :—(1) *The fact that AR 141(2)(3) and (4), as applicable, has been complied with must be recorded at the conclusion of the evidence of each witness as under :—*

"Provisions of AR 141(2)(3) and (4) are complied with" or "The witness does not wish his evidence to be read over to him. Provisions of AR 141(2) are complied with".

(2) In case the Presiding Officer or Judge-Advocate or a member addresses any question to the witness AR 142(2) should also be complied with and the fact recorded.

(3) If the accused or his counsel, or defending officer declines to cross-examine a witness that fact must be recorded).

VARIATIONS

POSTPONEMENT OF CROSS-EXAMINATION (AR 135)

The Court, at the request of the accused, allows the cross-examination of the witness to be postponed.

OBJECTIONS TO EVIDENCE OR PROCEDURE

(AR 88)

The accused (or counsel or defending officer or the prosecutor) objects to the following question on the ground that (set out).

The prosecutor (or counsel or defending officer or accused, as the case may be, answers that (set out).

The accused (or counsel or defending officer or the prosecutor) in reply states that (set out).

The Judge advocate advises that (set out)

The Court is closed to consider its decision. Court closed

The Court decides to over-rule (allow) the objection.

The Court is re-opened, the accused is brought before it and the above decision is announced in open Court: Court reopened

The Court proceeds with the trial.

EXPLANATION OR CORRECTION OF EVIDENCE

[AR 141 (2)]

The witness, on his evidence being read to him, makes the following explanation or correction (set out).

Examined by the prosecutor as to the above explanation or correction.

Examined by (or on behalf of) the accused as to the above explanation or correction, The prosecutor and accused (or counsel or defending officer) declines to examine him respecting the above explanation or correction.

Second witness for prosecution.

……..being duly, sworn (affirmed) is examined by the prosecutor.

(The examination, etc., of this and every other witness proceeds as in the case of the first witness).

APPENDIX III—*Contd.*

VARIATIONS

ADJOURNMENT

At…...…….hrs on…..the Court adjourn until…...…….... hrs on ……. 20.....

At.....hrs on.....20.....the Court re-assemble, pursuant to the adjournment; present the same members and the Judge Advocate as on .....20.……

***[Instructions** :—(1) If upon re-assembly a member is absent and his absence will reduce the Court below the legal minimum and, it appears to the members present that the absent member cannot attend within a reasonable time, the Presiding Officer or senior member present will thereupon report the case to the convening authority (AR 83).*

(2) If the Judge Advocate is absent, and cannot attend within a reasonable time, the Court will adjourn and the Presiding Officer will thereupon report the case to the convening authority (AR 104).

ABSENCE OF MEMBER

(No. .....Rank.....Name.…… Unit)..... being absent, a medical certificate (or letter, or as the case may be) is produced, read, marked……., and attached to the proceedings.

The Court adjourns until.....

or

There being present..... (not less than the legal minimum) members, the trial is proceeded with.

Examination (Cross-examination) of.....continued.

***D@**

@ Fresh page.

The prosecution is closed.

DEFENCE

Q—
Question to the accused.
A—
Answer by the accused.

Do you intend to call any witness in your defence?

(Set out)

Is he a witness as to character only?

(Set out)

(Instructions to the Court:—(1) When the answers to the above questions have been recorded the Court will follow the provisions of AR 58 or 59 respecting the order of evidence and addresses which are applicable to the circumtances of the case.

(2) All addresses by prosecutor, accused, counsel, or defending officer whether recorded by the Court or handed in writing (and the written summing up by Judge Advocate) will be attached to the proceedings in the order in which they are made. Written addresses (and summing up) will be read to the Court, marked and singed by the Presiding Officer (or Judge Advocate except summing up)

If any person who is entitled to make an address declings to do so, a record will be made to that effect.

(Where any evidence is given for the defence).

The evidence of the witnesses for the defence (including witnesses as to character) is recorded. Such evidence will be taken after the questions, if any, to the accused have been addressed under AR 58(2)(a) .

@@ The accused (counsel or defending officer) makes an opening address, or (hands in a written opening address which is read, marked ....., signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings) or declines to make an opening address.

Q—
Question to the accused.
A—
Answer by the accused.

Have you anything to say in your defence?

The accused in his defence says (see Instruction (1) below) (or hands in a written address, which is read (orally translated) marked ....., signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

@@ See Army Rule 59(a)

(Instructions :— (1) In, the space will be recorded any oral statement or address made by the accused in his defence, (For any additional address which he is entitled to make, see Instructions to the Court above).

(2) If the statement of the accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person and as nearly as possible in his own words.

Any matter which is requested by or on behalf of the accused to be recorded should be recorded and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.

QUESTION TO THE ACCUSED

The Presiding Officer (or Judge Advocate) reads and explains the provisions of AR 58(2)(a) - AR 58. Having ascertained from the accused that he understands the provisions read over to him, the Court (or Judge Advocate) proceeds to ask the following questions:—

(Set out).

INSTRUCTIONS TO THE COURT

(1) The accused should be questioned only to afford him an opportunity of offering an explanation, if he so desires, where absence of such explanation would affect him adversely.

(2) Questions put to the accused should be such as will enable him to explain any circumstances appearing against him in the evidence, which if unexplained may lead to a conviction.

(3) Question must not be put to the accused in order to supplement the case for the prosecution.

(4) Questions to the accused and the answers both will be recorded verbatim as far as possible.

@ D2

@ Fresh page. First witness for defence
**If witnesses are called excepting as to character, these words are to be struck out.
*Here insert his No, Rank, Name, Unit and appointment (if any) or any other description.

(The accused calls the following witnesses** as to character).

[**Instruction** :—All evidence given upon oath (affirmation) will be recorded in the following form).

*..... being duly sworn (or affirmed) is examined by the accused (or counsel, or defending officer).

Cross-examined by the Prosecutor.

Re-examined.

Questioned by the Court.

[**Instructions**:—*(1) The fact that AR 141(2), (3), (4) as applicable, has been complied with must be recorded at the conclusion of the evidence of each witness.*

(2) If the prosecutor declines to cross-examine that fact must be recorded.

(3) Evidence of witnesses as to character will be taken in the same manner as that of witnesses to the facts.

(4) In case the Presiding Officer or the Judge Advocate or a member addresses any question to the witness AR 142(2) should also be complied with and the fact recorded.]

APPENDIX III—*Contd.*

RECALLING WITNESS (AR 143)

(1) At the request of the prosecutor (or the accused)..... is recalled and examined on his former oath/affirmation through the Presiding Officer (or Judge Advocate) and states as follows—

(Set out).

or

(2) The prosecutor with leave of the Court calls (or recalls).....for the purpose of rebutting material statement made by a witness for the defence. The witness being duly sworn (or affirmed) is (or is reminded of his former oath/affirmation) examined by the prosecutor and states as follows— .

(Set out any cross-examination; re-examination, etc.).

or

(3) The prosecutor calls (or recalls) ..... in reply to the witness(es) as to character called by the accused. The witness being duly sworn (or affirmed) is (or is reminded of his former oath/affirmation) examined by the prosecutor and states as follows—

(set out with any cross-examination, re-examination etc.);

or

(4) The Court in accordance with AR 143(4) calls (or recalls).....who being duly sworn (or affirmed) (or is reminded of on his former oath/affirmation) states in reply to the Presiding Officer (or Judge Advocate) as follows—

(Set Out)

[**Instructions** :—*In (1), (2), and (3) witnesses must be called or recalled before the closing address of or on behalf of the accused. In (4) witnesses may be called or recalled by the Court at any time before the finding; in this case the accused or counsel or defending officer and the prosecutor should be given the opportunity of asking further questions through the Court*].

ADJOURNMENT TO PREPARE ADDRESSES ETC.

The Court at the request of the prosecutor (counsel) adjourn until ..... to enable him to prepare his address.

The Court at the request of the accused (counsel or defending officer) adjourn until …….....…… to enable him to prepare his reply.

The Court at the request of Judge Advocate adjourn until ..... to enable him to prepare his summing up.

The accused (counsel) makes the following closing address (or hands in a written closing address) which is read (orally translated) marked..... signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

or

The accused (counsel or defending officer)declines to make a closing address.

The prosecutor makes the following reply (or hands in a written reply) which is read (orally translated) marked……..signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

or

The prosecutor declines to reply.

Summing-up

The judge Advocate hands in a written Summing-Up which is read (orally translated) marked....., signed by the Presiding Officer and attached to the proceedings.

(**Instructions :—***(1) The occasion when the prosecutor's closing address must precede that of the accused (counsel or defending officer) is given in AR 58 (2).*

(2) Where the address of the prosecutor (or counsel or defending officer) is not in writing, the Court should record as much as appears to it material, and so much as the prosecutor (counsel or the defending officer) requires to be recorded.

Care must be taken, whether request is made or not, to record every point brought forward in the defence or in mitigation of punishment.

If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person and as nearly as possible in his own words).

APPENDIX III—*Contd.*

@ Fresh Page.

@E

*** FINDING(S)**

Court closed

Court-closed.

The Court is closed for the consideration of the finding.

* To be omitted except in case of a plea of "Not guilty" having been proceeded.

(1) Acquittal on all the charges.

The Court find that the accused (No....., Rank.....Name.....Unit.....) is not guilty of the charge (or, of all the charges).

Finding not guilty. (of all charges).

(2) Acquittal on some but not all charges.

is not guilty of the.....charge(s) but guilty of the.....charge(s).

(3) Conviction on all charges.

is guilty of the charge (or all the charges).

(4) Special finding.

(a) is guilty of the.....charge(s) and guilty of the.....charge with the exception of the words (set out) (or, with the exception of the words that (set out).

or

(b) is not guilty of deserting the service but is guilty of absenting himself without leave.

or

(c) is guilty of the charge with the variation that figures and words "Rs. 4200.00 (rupees four thousand two hundred)" shall read as "Rs. 3200.00 (rupees three thousand two hundred)"

(**Instruction** :—*Any special finding permitted by AR 62(4) will be framed as far as possible in accordance with (a) or (c). Any special finding allowed by AA.s, 139 may be expressed in accordance with (b).*

Brief reasons in support of finding.

APPENDIX III—*Contd.*

(5) REFERENCE TO CONFIRMING AUTHORITY

[AR 62(3)]

The Court find as regards the.....charge that the accused did (set out the facts which the Court find to be proved), but doubt whether the facts proved, show the accused to be guilty or not of the offence charged (or of the offence of which the accused might under the Act legally be found guilty on the charge as laid). It, therefore refers to the confirming authority for an opinion and adjourn.

or

AR 62(8)

(NOTE.—This applies only to alternative charges).

The Court find that the accused did (set out—such particulars of the charge as the Court find to be proved), but doubt whether such facts constitute in law the offence stated in the..... charge or in the ..... charges.

It, therefore, refers to the confirming authority for an opinion and adjourn.

(In either case)

The Court re-assemble on the.....day of.....20.....The opinion of the confirming authority is read, marked....., signed by the presiding Officer (or Judge Advocate) and attached to the proceedings.

The Court now find the accused (No. ....., Rank ..... Name..... Unit.....) is (finding to be recorded- in the usual manner).

(6) INSANITY

The Court find that the accused (No. .....Rank.....Name..... Unit.....) is of unsound mind and consequently incapable of making his ,defence.

or,

Committed the act (acts) alleged as constituting the offence (offences) specified in the charge (charges) but was by reason of unsoundness of mind incapable of knowing the nature of that act (or those acts) (or but was by reason of unsoundness of mind incapable of knowing that that act was wrong (or those acts were wrong) (or contrary to law).

ANNOUNCEMENT OF FINDING(S)

Court re-opened

The Court being re-opened, the accused is again brought before it. The finding(s) is/are read in open Court, and is/are announced as being subject to confirmation.

Signed at.....this..... day of..... 20.....

(Signature) (Signature)

Judge- Advocate Presiding Officer

(Note: If the finding of the court is guilty on any charge, the proceedings are not required to be signed at this stage)

APPENDIX III—*Contd.*

@F

PROCEEDINGS ON CONVICTION

(Before sentence)

@ Fresh Page

†No. ..... Rank..... Name..... Unit..... is duly sworn (or affirmed).

† Insert No., Rank, Name, unit and other description including the religion of the witness.

What record have you to produce in proof of former convictions against the accused and of his character?

I produce a statement (lAFD-905) certified under the hand of the officer having custody of the Regimental (or other official) records.

The statement is read (orally translated), marked ....., signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

Q— Question to the witness.
A— Answer by the witness.

Is the accused the person named in the statement you have heard read?

(Set out)

Q— Question to the witness.
A— Answer by the witness.

Have you compared the contents of the above statement with the Regimental (or other official) records?

(Set out)

Q— Question to the witness.
A— Answer by the witness.

Are they true extracts from the Regimental (or other official) records and is statement of entries in the defaulter sheet a fair and true summary of those entries ?

(Set out)

Q— Question to the witness.
A— Answer by the witness.

Cross-examined by the accused (or by counsel or defending officer).

Re-examined.

or

The accused declines to cross-examine the witness.

[Instructions :—*(1) ARs 141(2), (3) and (4) and 142(2), as applicable, will be complied with and the fact recorded*].

(2) Any further question will be put and any evidence produced which the Court requires as to any point respecting the character and service of the accused on which the Court desires, to have information for the purpose of its sentence.

(3) At the request of the accused, or by the direction of the Court, the Regimental or other official books, or a certified copy of the material entries therein, must be produced for the purpose of comparison with the statement.

The accused is entitled to call the attention of the Court to any entries in the Regimental or other official books, or in the certified copy above-mentioned, and to show that they are inconsistent with the statement.

When all the evidence of the above matters has been given the accused may address the Court thereon.

(4) If by reason of the nature of the service of the accused, the finding of the Court renders him liable to any exceptional punishment, in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact and the Court must enquire into the nature and amount of that additional punishment.

Q— Question to the accused.
A— Answer by the accused

Do you wish to address the Court?

(Set out)

APPENDIX III—*Contd.*

Court closed

@The Court is closed for the consideration of the sentence.

@Fresh Page

SENTENCE

(**Instruction** :—*The provisions of AA.ss. 71 to 75 and 119 must be carefully attended to by the Court in passing sentence*).

Sentence

The Court sentences the accused No.....Rank.....Name.....

Unit.....,

(**Instruction** :—T*he sentence is to be marginally noted in every case*).

Death

(a) to suffer death by being hanged by the neck until he be dead (or to suffer death by being shot to death).

"Certified that the sentence of death was passed with the concurrence of .....(or all members, in the case of SGCM)".

(NOTE.—A JCO or an enrolled person sentenced to death will not be dismissed).

Imprisonment for life.

(b) to suffer imprisonment for life.

RI.....

(c) to suffer rigorous (or simple) imprisonment for.

(NOTE.—Sentence of imprisonment, unless for one or more years exactly, should, if for one month or upwards, be recorded in months. Sentence consisting partly of months and partly of days should be recorded in months and days).

Cashiering

(d) to be cashiered (in case of officers only).

(**Instruction** :—*An officer must be sentenced to be cashiered before he is awarded the punishment of death, imprisonment for life or of imprisonment*).

Dismissal.

(e) to be dismissed from the service.

(Instruction :—*In case a Warrant Officer and a non-commissioned officer, is awarded imprisonment for life, imprisonment, field punishment or dismissal he is deemed to be reduced to the ranks, however, it is desirable to specify the reduction in the sentence, which should precede such sentence*.)

Reduction

(f) In case of warrant officers—
to be reduced to the ranks.

or

to be reduced to (a lower rank).

or

to be reduced to (a lower grade).

or

to be reduced to an inferior class of warrant officer, that is to say.....

or

to be reduced in the list of his rank as if his appointment there to bore date the..... day of.....20..... .

In case of non-commissioned officers :—
to be reduced to the ranks.

or

to be reduced to (a lower rank).

or

to be reduced to (a lower grade)

APPENDIX III—*Contd.*

(g) (In case of an officer, JCO, WO or an NCO)— Forfeiture of seniority of rank.

to take rank and precedence as if his appointment as *.....bore date the .....day of.....20.....

or

*Here insert rank to which the punishment pertains.

to take precedence in the rank of .....held by him, as if his name had appeared (a specified number of places) lower in the (Army list in case of officers and JCOs and list of his rank in the case of WOs and NCOs.

to forfeit.....service for the purpose of promotion Forfeiture of service for promotion.

(**Instructions** :—*This applies, only in case of a person whose promotion depends upon length of service and a sentence can be inflicted in respect of all or any part of his service*).

(h) to forfeit (all or.....years's or.....months) past service for the purpose of Forfeitures

(i) (In case of an officer, JCO, WO and NCO). Severe Reprimand/Reprimand.

to be severely reprimanded (or reprimanded).

(j) to forfeit pay and allowances for a period of (not exceeding 3 months for an offence committed on active service). Forfeiture of pay and allowances.

(k) to fotfeit all arrears of pay and allowances and other public money due to him at the time of his (cashiering or dismissal). Forfeiture of arrears of pay and allowances and public money.

(l) to be put under stoppage of pay and allowances until he has made good the sum of..... in respect of or (and) until he has made good the value of the following articles, viz : Stoppages.

RECOMMENDATIONS TO MERCY

The Court recommend the accused to mercy on the ground that (set out)

ANNOUNCEMENT OF SENTENCE

The Court being re-opened, the accused is brought before it. The sentence (and recommendations to mercy) is/are announced in open Court, the sentence is announced as being subject to confirmation. Court re-opened.

Signed at.....this.....day of.....20.....

(Signature)
Judge Advocate

(Signature)
Presiding Officer

@REVISION @ Fresh Page

At..... on the..... day of..... at..... hrs, the Court re-assembles by order of....., for the purpose of reconsidering its..... .

Present the same members and the Judge Advocate as on the.....20.....

(**Instructions** :—*If a member is absent and the absence will reduce the Court below the legal minimum, and it appears to the members present that such absent member cannot attend within a reasonable time, the Presiding Officer, or in his absence, the senior member present shall thereupon report the case to the convening authority*).

The order directing the re-assembly of the Court for the revision, and giving reasons of the confirming authority for requiring a revision of the finding (or finding and sentence) (or sentence) is read, marked.....signed by the Presiding Officer (or Judge Advocate) and attached to the proceedings.

(Instructions : (1) *If the confirming authority so orders, additional evidence may be taken on revision.*

(2) If a new-Judge Advocate has been appointed, he should be sworn (or affirmed) and a record to that effect made before the revision order is read.

APPENDIX III—*Contd.*

(3) If the accused (or counsel or defending officer) wishes to address the Court, gist of his address should be taken down or his written address be read, marked and attached to the proceedings as usual [AR 92(4) refers].

(4) If the Judge-Advocate wishes to clear any points, he may make an additional summing-up which should be read, marked and attached to the proceedings as usual).

The Court is closed to reconsider their finding or finding(s) and sentence (or sentences). Court closed.

The Court having attentively considered the observations of the confirming authority and the whole of the proceedings:—

(a) do now revoke their finding and sentence and find the accused (guilty) or (not guilty) of the charge(s) and sentence him to.....

or

(b) do now revoke their sentence and now sentence the accused to.....

or

(c) do now respectfully adhere to their sentence (or finding and sentence) or (finding).

Instructions :—(1) *In case the revision pertains to Court's findings on some of the charges only record at (a) above should be made accordingly. If the Court do not adhere to their former finding(s) they must revoke their former finding(s) (and the sentence), and pass a fresh sentence if the revised finding(s) involve(s) a sentence.*

(2) If the new finding entails a sentence, normal proceedings on conviction should be followed, if necessary and form at (a) above amended accordingly.

(3) All the decisions of the Court with respect to the finding and sentence should be announced in open Court as being subject to confirmation and a record made to that effect in normal manner).

Signed at.....this.....day of.....20.....

(Signature)
Judge Advocate

(Signature)
Presiding Officer

CONFIRMATION

1. "Confirmed".

*I direct that the sentence of (rigorous or simple) imprisonment shall be carried out by confinement in military custody (or in civil prison or in military prison).

*such directions to be given in every case where a sentence of imprisonment is awarded and confirmed.

The accused is recommended Division 'A' (or I), or 'B' (or II), or 'C' (or III) while undergoing sentence in the civil prison. If there are only two divisions of prisoners, the accused is recommended Division 'A' (or I) or 'B' (or II)% .

% Such recommendations to be made in every case where a sentence of imprisonment is to be carried out in civil prison.

2. I vary the sentence so that it shall be as follows and confirm the finding and the sentence as so varied.

or

APPENDIX III—*Contd.*

3. I confirm the finding and sentence of the Court, but mitigate (or remit or commute).

or

4. (Where the confirming authority desires partly to reserve his confirmation).

I confirm the finding(s) of the Court on the .....and..... charges and reserve for confirmation by superior authority the findings, on the..... charges and the sentence;

or

5. I confirm the findings of the Court, but reserve the sentence for confirmation by superior authority;

or

6. I confirm the finding(s) of the Court and the sentence of the Court as to..... and reserve the sentence so far as it relates to..... for confirmation by superior authority;

or

7. (Where the finding is not confirmed). Not confirmed.

or

8. (Where a plea in bar of trial had been under AR 53).

"The finding of the Court that the plea in bar is proved (or not proved) is confirmed (or not confirmed)".

9. Where the Court finds that the accused is of unsound mind and consequently incapable of making his defence or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law.

"Confirmed (or not confirmed)."

or

10. "I confirm the finding of the Court on the first charge but do not confirm the finding on the second charge."

I confirm the sentence but mitigate (remit or commute)

Signed at... ..... .this..... .day of ..... 20.....

(Signature of confirming authority) ,

(**Instruction—***Any remark of the confirming authority should be separate and form no part of proceedings*).

@PROMULGATION

@ Fresh page.

Promulgated and extracts taken at.....this.....day of.....20.....

(Signature of Officer-in-Charge of documents)

[**Instructions** :—(1) *Proceedings which are not confirmed must also be promulgated.*

(2) No extracts are required to be taken in respect of the charge(s) on which the accused is acquitted or on which the finding of 'guilty' is not confirmed].

APPENDIX III—*Contd.* (IAFD-907)
(Revised)

FORM OF PROCEEDING OF A SUMMARY COURT MARTIAL

Proceedings of a Summary Court-Martial held at ..... on..... the ..... day of..... 20..... by..... Commanding the..... for the trial of all such accused persons as he may duly have brought before him.

PRESENT

.....

.....

Commanding the.. .....

Attending the trial

.....

.....

Friend of the Accused

.....

.....

Interpreter

.....

The Officers* and Junior Commissioner Officers assemble at ..... and the trial commences at..... hrs.

*Strike out if in-applicable.

The accused No .....

of the ..... is brought ("called" if a non-commissioned officer) into Court

..... , the Court, is duly sworn (affirmed).

..... is duly sworn (affirmed) as Interpreter.

(**Instruction.**—*If the CO of the accused (i.e. the Court) acts as interpreter, he must take the interpreter's oath in addition to the oath prescribed for the Court.).*

All witnesses are directed to withdraw from the Court.

B**

**Fresh page.

The charge-sheet is read (translated) and explained to the accused, marked "B-2" signed by the Court and attached to the proceedings.

(**Instruction—***The sanction of superior authority for trial by SCM should be entered with the date and signature of that authority, at the foot of the charge-sheet, when such sanction is necessary. See AA.s. 120(2)*).

APPENDIX III—*Contd.*

ARRAIGNMENT

By the Court-How say you.....are you guilty or not guilty of the..... charge preferred against you?

Q—Question to the accused.

(Set out)

Are you guilty or not guilty of the .....charge preferred against you?

A—Answer by the accused.

(Set out)

Q—Question to the accused.

The accused having pleaded guilty to…… charge(s) the provisions of AR 115(2) are here complied with.(Certificate in terms of AR 115 (2A) be reproduced)

A—Answer by the accused.

(Signature) (Signature)
(The Accused) (The Court)

NOTE—If the accused pleads guilty to any charge the provisions of AR 115 (2) and (2A) must be compiled with.

[**Instructions**-—*(1) If the accused pleads 'Guilty', proceed to Page C, D, E,F and G and scoreout pages; if he 'pleads' 'Not Guilty', proceed to page D, E, F and G (3) and (4) or (5) and scoreout page C (2); if he pleads 'Guilty to some charge or charges and 'Not Guilty' to other (not alternative), proceed to D, E, F, G, H or I and then to C (3), (4), or (5) and (2)]*.

2. The questions are to be numbered throughout consecutively in a single series).

C*

*Fresh Page

PROCEEDINGS ON PLEA OF GUILTY

The accused (No……..Rank……Name……Regiment……..) is found guilty of the charge (all the charges).

or

is found guilty of the ……..charge, and is found not guilty of the …charge.

(**Instruction**—*If the trial proceeds upon any charge to which there is a plea of "not guilty", the court will not proceed upon the record of the plea of "guilty" until after the finding on those other charges; and in that case the charge on which the record is "guilty" must be read to the accused again (AR 116 (1) refers)*).

The summary of evidence is read (translated), explained, marked Exhibit-'1' , signed by the Court and attached to the proceedings.

[**Instruction**—*If there is no summary of evidence, sufficient evidence to enable the Court to determine the sentence and to enable the reviewing officer to know all the circumstances connected with the case will be taken in terms of para 3 pertaining to plea of not guilty. AR 116(2) refers*].

VARIATION

The Court being satisfied from the statement of the accused (or the summary of evidence, or otherwise) that the accused did not understand the effect of the plea of "guilty" alters the record and enters a plea of 'not guilty'.

[**Instruction**—*The Court will then proceed in respect of this charge as pertaining to plea of Not guilty*.]

* Do you wish to make any statement in reference to the charge or in mitigation of punishment?

Q—Question to the accused.

(set out)

A—Answer by the accused.

* Do you wish to call any witness as to character?

Q—Question to the accused.

(set out)

A—Answer by the accused.

APPENDIX III—*Contd.*

[**Instructions**—*(1) The examination of witnesses as to character will proceed as in paragraph(3).*

(2) Evidence as to character and particulars of service will be taken as in paragraph (6).

D*

*Fresh page.

PROCEEDINGS ON A PLEA OF NOT GUILTY

PROSECUTION

Prosecution 1st witness.

(3)**……..being sworn (affirmed) is examined by the Court.

**(a) Here insert No Rank, Name and Unit or other description.
(b) Hindus and Musalmaans be affiirmed, sikhs and christians be sworn.

Cross-examined by the accused.

Re-examined by the Court.

[**Instructions-**(1) The fact that AR 141, (2), (3) and (4) has been complied with must be recorded at the conclusion of the evidence of each witness.

(2) If the accused declines to cross-examine a witness, the fact must be recorded].

VARIATION

POSTPONEMENT OF CROSS-EXAMINATION

(AR135)

The Court, at the request of the accused, allow the cross-examination of the witness to be postponed.

*Fresh Page

E*

The prosecution is closed.

Q—
Question to the accused.
A—
Answer by the accused.

Do you intend to call any witness in your defence

(Set out)

DEFENCE

The accused is called upon for his defence and states:-

(**Instruction-***the accused may defer such address until he has called his witnesses. AR 118)*

Questions (if any) by the court under AR 118.

Instructions to the court

1. The accused is to be questioned only to afford him an opportunity of offering an explanation, if he so wishes where absence of such explanation would affect him adversely.

2. Questions put to the accused should be such as will enable him to explain any circumstances appearing against him which if unexplained may lead to a conviction.

3. Questions must not be put to the accused in order to supplement the case for the prosecution.

4. Questions to the accused and his answers both will be recorded verbatim as far as possible.

5. No oath shall be administered to the accused.

@Fresh Page
Defence 1st witness.

@F

*(a) Here insert No, Rank, Name, Unit and other descriptions.
(b) Hindus andMusalmaan be affiirmed, sikhs and christians be sworn.

*……being duly sworn (affirmed) is examined by the accused by the Court.

Re-examined by the accused.

[**Instructions-***The fact that AR 141 (2), (3) and (4) has been complied with must be recorded at the conclusion of the evidence of each witness*]

APPENDIX III—*Contd.*

The defence is closed.

@G

REPLY

*…………………………being duly sworn (affirmed) is examined by the Court.

@Fresh Page Reply 1st witness.
*(a) Here insert No., Rank, Name, and unit and other descriptions.

@H

VERDICT OF THE COURT

@Fresh Page

Acquittal on all charges

(4) I am of opinion on the evidence before me that the accused No…………of the ………………..is not guilty of the charge, (or all the charges).

The verdict is read out and the accused released. He is to return to his duty.

Signed at……………..this…………..day of……………….2001

Commanding the ……………..…………..…………..………….

Holding the trial …………...…………...…………...…………...….

The trial closes at………………hrs

@@I

VERDICT OF THE COURT

@@Fresh Page

Acquittal on some but not on all charges.

(5) I am of opinion on the evidence before me that the accused No…………of the ……….is not guilty of the………………..charges(s) but is guilty of the …………charges (s).

Conviction on all charges.

I am of opinion on the evidence before me that the accused No……………..of the …………….is guilty of the charge (all charges)

Special findings (AA.S 139 and AR 121).

I am of opinion on the evidence before me that the accused No…………of the ……….is guilty of the………………..charges(s) and guilty of the ………………charge with the exception of the words (set out) or is not guilty of (deserting the service) but is guilty of (absenting himself without leave)

PROCEEDINGS BEFORE SENTENCE

(6) The following minutes by the Court are read and explained.

(Instructions—*If the Court does not record the accused person's convictions and character of its own knowledge, evidence as to these matters will be taken as in the Form of Proceedings for a GCM or DCM, AR 123 refers*).

*Strike out if in-applicable.

It is within my own knowledge, from the records of the ………………that the accused has/has not been previously convicted by Court-Martial or criminal Court. (A separate statement giving full particulars of any previous conviction to be annexed when necessary). *

That the following is a fair and true summary of the entries in his defaulter sheet of punishments awarded otherwise than by a court martial or a criminal court.

£The offence during the last 12 months must be included under this heading.

Within last 12 months.	£Since enrolment.
For………………….. times	………………………..times.
For………………….. times	………………………..times.

That he is at present undergoing……………………sentence.

That, irrespective of this trial, his general character has been………………..@

@Character to be assessed in accordance with Regs for the Army 1987, para 171

APPENDIX III—*Contd.*

That his age is……………his service……………….and his rank is…………

That he has been in arrest (confinement) during investigation, inquiry or trial relating to the same case for ………days in civil custody and ……….days in military custody, making a total of ………..days.

That he is in possession of or entitled to the following military decorations and rewards:-

NOTE- Any recognized acts of gallantry or distinguished conduct should also be entered here.

@J

SENTENCE BY THE COURT

@Fresh Page.

Taking all these matters into consideration, I now sentence the accused No…

Rank…………………..Name……………………of the …………………..

(a) *to suffer rigorous (simple) imprisonment for………………….(and I direct that the sentence of rigorous/simple imprisonment shall be carried out by confinement in military custody/civil prison)†.(The accused is recommended for Divison 'A' (or I) or B (or II) or 'C' (or III) while undergoing sentence in the civil prison. If there are only two divisions of prisoners, the accused is recommended Divison 'A' (or I) or 'B' (or II).

Rigorus (simple) imprisonment for *Inapplicable words to be struck out and initialled by the court.

(**Instruction**—*sentences of imprisonment, unless for one or more years exactly should if for one month or upwards, be recorded in months. Sentence consisting partly of months and partly of days should be recorded in months and days*)

†Inapplicable in case the accused is sentenced to imprisoment in military custody/Dismissal.

(b) to be dismissed from the service.

(c) (if non-commissioned officer)

(1) to be reduced to the ranks, or

(2) to be reduced to (a lower rank)

Reduction.

Or

(3) to take rank and precedence as if his appointment to the rank of………….........

bore date……….

Forfeiture of seniority.

(4)to forfeit………….service for the purpose of promotion.

(**Instruction**—*This applies only in the case of a non-commissioned officer whose promotion depends upon length of service*)

Forfeiture of service for promotion.

(d) To forfeit…………past service for the purpose of…………….

Forfeiture of service for (pension).

(e) To be severely reprimanded (or reprimanded)

Severe reprimand or reprimand.

(f) (If on active service) to forfeit pay and allowances for a period of…………

Forfeitures.

(g) To forfeit all arrears of pay and allowances and other public money due to him at the time of his dismissal.

Forfeitures.

(h) To be put under stoppage of pay and allowances until he has made good the sum of ………………….in respect of ……………..or (and) until he has made good the value of the following articles, viz……….value….etc.

Stoppage

Signed at this……………day of .... 20……………….

Commanding the …………
holding the trial

The trial closes at…………………hrs.

PROMULGATION

Promulgated and extracts taken at .... this……day of……..20……

(Signature of Officer-in-charge of document)

(Instruction in terms of ARs 131 and 132

Remarks by Reviewing Officer (AA s 162)

---

*Strike out in applicable portion

APPENDIX III—*Contd.*

IAFF-956

FORM FOR ASSEMBLY AND PROCEEDINGS OF A SUMMARY GENERAL COURT MARTIAL

A-ORDER CONVENING COURT

At (place)………………this…………………day of……………..20……

*(1) Beginning of form in case falling under caluse (a) of AA. Sec 112.

Whereas it appears to me…………………………an officer empowered in this behalf by an order of the Central Government/Chief of the Army Staff that the person/persons named in the annexed schedule, and being subject to Army Act has/have committed the offence/offences in the said schedule mentioned;

*(2) Beginning of form in case falling under clause (b) of AA. Sec 112

Whereas it appears to me…………….the /an officer……………commanding the forces in the field (or empowered in this behalf by the officer commanding the forces in the field) on active service that the person/persons named in the annexed schedule, and being subject to Army Act has/have committed the offence/offences in said schedule mentioned.

*(3) Beginning of form in case falling under clause (c) of AA Sec. 112.

Whereas it appears to me…………..……/an officer now in command of….being a detached portion of the Regular Army on active service that the person/persons named in the annexed schedule, and being subject to Army Act has/have committed the offence/ offences in said schedule mentioned and whereas I am of opinion that is not practicable with due regard to discipline and the exigencies of the service that the said offence/offences should be tried by general court martial.

*Only one of three will be used, the remaining which are inapplicable being struck out.

(4) *End of form applicable to all cases.*

I hereby convene summary general court-martial to try the said person/persons and to consist of :- £

£ The members and waiting members (if any) may be appointed by name, or only their Ranks units may be mentioned. In the Latter event the Ranks, Names etc., of the members of the court, as contituted, will be recorded in the proceedings.

(Here enter the special order (if any) under AR 160 and any other order under AA.S. 157).

(Signature of convening officer)

B - CERTIFICATE OF PRESIDING OFFICER AS TO THE PROCEEDINGS

I certify that the above Court assembled on the ………….day of……..20.......... and duly tried the person/persons named in the said schedule and that the plea, finding and sentence in the case of such/each of such persons were as stated in the third and fourth columns of that schedule.

I further certify that the members of the Court the witnesses and the interpreter were duly sworn or affirmed.

Signed at (place)………………….this…………..day of……………20...................

(Signature of Presiding Officer)

*Strike out in applicable portion

APPENDIX III—*Contd.*

C-CONFIRMATION

I have dealt with the finding/findings and sentence/sentences in the manner stated in the last column of the said schedule and, subject to what I have there stated I hereby confirm the above finding/findings and sentence/sentences.*

* Strike out inapplicable portion

I direct that the sentence of rigorous (or simple) imprisonment shall be carried out by confinement in military custody (or in civil prison)

The accused is recommended Division 'A' (or I)'B' (or II) while undergoing sentence in the civil prison. If there are only two divisons of prisoners, the accused is recommended Division 'A' (or I) or 'B' (II)

Signed at (place)……..this……...day of……20…...

(Signature of Confirming Officer)

D-PROMULGATION

Promulgated and extracts taken at …….this……..day of…20….....

(Signature of Officer in charge of documents)

APPENDIX III—*Contd.*

SCHEDULE

DATE……..……..……..……..……..……..……..20……..……..

Name of alleged offender*	Offence Charged	Plea	Finding (s), and if convicted Sentence†	How dealt with by Confirming Officer
	Signature of Convening Officer		Signature of Presiding Officer	Signature of Confirming Officer

*If the name of the person charged is unknown, he may be described as unknown, with such additions as will identify him.

†Recommendation to mercy to be inserted in this column.

APPENDIX III—*Contd.*

IAFD-905
Army Rule 64

PART I

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number, Rank and Name……..of the ……..Regt.

1. The following is a fair and true summary of the entries in the squadron, battery, or company conduct sheet of the accused, exclusive of convictions by a court martial or a criminal court and of summary awards under Sections 83, 84 or 85 of the Army act.

(a) Insert the statement of offence and the relevant section of the Army Act.

Within last 12 months	Since enrolment
For (a)……..times	……..times
For…..……..times	……..times
For ……..times	……..times

Number of Instances of gallantry or distinguished conduct.

Or

There are no entries in the conduct sheet of the accused.

2. Irrespective of this trial, the acccused's general character*is…….

*The character of JCO/OR will be recorded in terms of Regs for the Army, 1987 Para 171.

3. The present age of the accused according to his record of service enrolment papers is…….

4. The date of his commission/ (enrolment) specified in his record of service enrolment papers is……..and his total service is…….

5. (In the case of an officer/JCO). The accused holds the substantive rank of.. dated…… and Actg/Temp. rank of……..dated……...

Character of officers is to be assessed in terms of para 465 A of Regs for the Army, 1987.

6. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of…….years……..

In the rank of…….years……..

In the rank of…….years……..

7. The accused is entitled to reckon…….years service for the purpose of determining his pension/gratuity.

8. The accused is in possession of or entitled to the following military decorations and rewards.

9. The accused has been under arrest/confinement during investigation, inquiry or trial relating to the same case for……..days in civil custody and……... days in military custody, making a total of ……..days.

10. The accused is not under sentence at the present time.

or

The accused at the present time is under sentence for…….beginning on the ……..dayof……..20……

The accused at the present time is under sentence for…….beginning on the ……dayof……..20……..

11. There are no previous convictions against the accused.

Or

The previous convictions of the accused by a court-martial or a criminal court and summary awards under sections 83, 84 and 85 of the Army Act are set out in the Schedule annexed to the statement.

APPENDIX III—*Contd.*

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CRIMINAL COURT AND OF SUMMARY AWARDS UNDER SECTIONS 83, 84 OR 85 OF THE ARMY ACT.

Of accused No……..Rank……Name……...……..of……...…….....

Note:—Verbatim extract from the regimental records stating these convictions must be inserted.

Description of court/authority awarding punishment summarily	Place and date of trial/ summary award	Charges of which convicted	Sentence/ summary award	Minute of confirmation (where convicted by court-martial)	Remarks

I hereby certify that the foregoing schedule of convictions is a true extract from the regimental records in my custody.

Station……...

Date……..20..

.....……..……..…

Commanding Officer

APPENDIX III—*Contd.*

IAFD–901

PART II

FORM FOR USE AT SUMMARY TRIALS OF NCOS AND OTHER RANKS UNDER SECS 80-82 OF THE ARMY ACT 1950

Serial No.……………………........................

……………………................. For week ending……………………………....

OFFENCE REPORT

Charges against no.……………… Battery, Squadron, Company, etc Last report submitted on…………….............

.... Rank.…………………………… Name.…………………………….............

Place and date of offence	Offence	Plea	Name of witnesses	Findings	Punishments awarded	Signature, Rank and designation of officer by whom awarded and date of award	Date of entry in conduct sheet	Remarks
1	2	3	4	5	6	7	8	9

………………......

Signature of OC unit

Instructions :—

Col. 1. In cases of absence without leave/desertion, the date of offence will be the first day of absence.

Col. 2. The section and sub-section of the A.A. under which the charge is preferred will be inserted above the statement of offence.

Col. 4. An officer cannot deal summarily with a case in which he is the sole prosecution witness.

Col. 5.Must be completed strictly in accordance with the heading.

Col. 7. In cases of absence without leave/desertion, the automatic forfeiture of pay and allowances under P & A Regulations must be entered here.

Note:—A Lance Naik is an NCO for the purpose of Army Act Section 80. Punishments of imprisonment, detention and confinement to lines specified in clause (a) (b) and (c) of this section shall not be awarded to NCO

APPENDIX III—*Contd.*

IAFD-919A

PART III

FORMS OF SUMMONS TO WITNESSES

(a) In the case of Summary of Evidence

To

Whereas a charge of having committed an offence triable by court-martial has been preferred before me, against (No.……Rank.……Name.……..Unit.……), and whereas I have directed a summary of the evidence to be taken in writing at……..(place) on the ……day of……..20……..hrs. I do hereby summon and require you (name)…… to attend as a witness at the said place and hour and to bring with you the documents hereinafter mentioned, namely.…….……..

Whereof you shall fail at your peril

Given under my hand at……on the ……..day of.……...20.……..

Commanding Officer of the accused,

(Signature)

IAFD-919B

(b)In the case of a Court Martial

To

Whereas a……..court-martial has been ordered to assemble at…….on the …….day of ……20……of trial of……..of the, Regiment, I do hereby summon and require you A…….(B)……. to attend , as a witness at the sitting of the said court at…….(Place) on the …..day at……hrs…….(and to bring with you the documents herein after mentioned, namely……) and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at…….……..on the……day of …… 20 ……...

..... (Signature)
Convening Officer (or Judge Advocate or
Presiding Officer of the Court or
Commanding Officer of the accused)

(c)In the case of a Court of Inquiry

To IAFD 919 C

Whereas a Court of Inquiry has been ordered to assemble at…….on the …….day of ……20……for investigation into……., I do hereby summon and require you A…….(B)……. to attend , as a witness at the sitting of the said court at…….(Place) on the …..(day) at……hrs…….and to bring with you the documents herein after mentioned, namely……) and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at…….……..on the……day of …… 20 ……...

..... (Signature)

Officer Assembling the Court of Inquiry

APPENDIX III—*Contd.*

PART IV

FORM OF DELAY REPORT

CONFIDENTIAL

No.……

Unit address……...

Date……..

To.……...

(Convening Officer)

SUBJECT –(I[ST]) (2[ND]) (3[RD]) (4[TH]) ETC EIGHT-DAY DELAY REPORT

PURSUANT TO AA SEC. 103 AND ARMY RULE 27

1. Army No.……Rank……Name…….....
2. Offence…….....
3. Date of offence…….....
4. Date offence was discovered…….....
5. Date of (open/close) arrest…….....
6. Date of release to open arrest/release……..without prejudice to re-arrest (If not released, reasons)
7. Summary of evidence recorded on……(If not recorded, reasons)
8. Application for trial made on…….
9. Date due to be tried…….
10. Reason for delay……...

(Rank)

Copy to Officer Commanding……

Brigade/ Sub area commander (if he is NOT also the convening Officer)

Headquarters…….command in the case of (6) and subsequent reports

DyJAG…….....Command

MEMORANDA FOR THE GUIDANCE OF OFFICERS CONCERNED WITH COURTS-MARTIAL

The following memoranda as to courts-martial are intended for the guidance of commanding and convening officers and others with a view to securing uniformity of practice and to avoiding some common mistakes.

These memoranda do not form part of the Appendices to the Army Rules, 1954.

SUMMARY OF EVIDENCE

1. The officer detailed to record a summary of evidence should-

(a) Make himself acquainted with all the circumstances of the case and the testimony of the witnesses who gave evidence before the CO, and carefully consider whether any additional evidence is relevant and necessary (See AR 23 (1). Intelligent and patient investigation will often result in the discovery of a missing link in the chain of evidence, or corroborating evidence, or of evidence tending to exculpate the accused. It may even save an unnecessary or abortive court-martial.

(b) Before taking down the evidence.

(i) Consider what offence or offences appear to have been committed.

(ii) Consider the essential elements of such offence, of each offence.

(iii) Consider what facts and circumstances must be proved in order to establish not only the commission of an offence but also the commission of it by the accused. i.e. what facts are relevant to the issue.

APPENDIX III—*Contd.*

(iv) Consider what evidence should be adduced in order to prove each material fact; in other words, how it is proposed to prove each of the necessary facts by admissible evidence. He will generally find it convenient to ascertain from each witness roughly what evidence that witness can give before actually taking down the evidence.

(c) When reducing the evidence of witnesses to writing:-

(i) Take down the evidence and arrange it, both in the statements of witnesses and in the summary, as far as possible so that events are set out in chronological order and the court may have a connected story to consider.

A statement of evidence as to facts should commence by recording the place, date and time (if material), to which the evidence refers.

(ii) Ensure that only such evidence as is admissible in law is adduced; particularly eliminate all irrelevant and hearsay statements.

(iii) Avoid attempting to tell the story of the crime by recording conversation at which accused was not present.

(iv) Ascertain that any document intended to be produced is legally admissible in evidence. Every document intended to be produced to the court must be produced by a witness and described and,where necessary, identified by a witness, who is able to do so. For example, where a document has been acknowledged as correct or signed by an accused, evidence must be given to show that he has acknowledged it or his signature must be identified. [Mark and number documents according to order of production].

(v) Arrange for the preparation, production and proof of plans where necessary (see Notes to AR 24)

(vi) Record the evidence of witnesses as nearly as possible in their own words and expressions. When evidence is not given in English, it will be interpreted and recorded in English.

(vii) If the accused has said to any person or at any time anything by way of explanations or admission of any of the facts in issue, consider the circumstances in which the statement was made and if it is admissible let a witness be called to prove it.

(viii) Remember that, when it is proposed to tender evidence of an admission or confession, it is desirable that evidence should first be adduced by the prosecution of the circumstances in which it was made to show that it was voluntary, though under the law the onus lies upon the accused of showing that a confession made by him was not voluntary (See Part I, Chapter V)

(ix) With regard to the attendance of witnesses, take advantage where desirable of the provisions or AR 23 (5). Before obtaining written statement of witnesses, the proposed questionare should be circulated to the accused to enable him to suggest any questions from his side. The written statements of such witnesses when received must be signed and certified as required by the said rule before being attached to the S of E.

(x) Remember that a civilian witness can be compelled to attend the taking of the summary [AA. Ss 135 and 136 and AR 23 (6)].

(xi) At the close of the evidence of each witness who is not cross-examined by the accused, make a note that "accused declines to cross-examine" [See AR 23 (2)]

(xii) Ensure that the evidence of each witness is signed by the witness [(AR 23 (3)]

(xiii) Ensure that the record of any statement made by the accused is prefaced by a note that he was formally "cautioned"[AR 23(3)].

(xiv) Enter at the end of the summary of evidence a statement that the requirements of AR 23, (1), (2), (3) and (4) have been complied with, and sign the summary, the place and date should be stated.

APPENDIX III—*Contd.*

2. Evidence in special cases-

(a) Where the charge is for deficiency of kit, unless IAFD 918 is to be produced in evidence, the fact that the accused has been at some time previously in possession of a complete kit, or of the articles alleged to be deficient, the date and place of discovering any subsequent deficiencies , and that none of the articles have since been recovered, should be included in the summary of evidence. Any articles recovered will be omitted from the charge.

(b) Where a cetified true copy of a record in any Regimental book is to be produced [AA.s. 142(4)] the copy should show clearly that the record purports to have been signed by the CO or by the officer whose duty it was to make the record [AA. S. 142 (3)].

(c) Where the charge is for neglecting to obey a battalion or similar order, the order should be proved as provided in AA. S. 142(3) or (4) Sec (b) above , but if the order is not included in the "Regimental books" (Regs Army para . 610, as for example a station or a company order or an order for sentries, the original order must be produced.

(d) Where IAFD-918 is to be produced, it must be signed by the officer having the custody of the books from which it is compiled. The original declaration of the court of inquiry, even if in existence, is not admissible is evidence. Nor is IAFD 918, unless the entry in the court-martial book (of which it is a certified copy) purports to have been signed by the officer in actual command of the accused's corps or department, as required by AA.s. 106.

(e) A certificate of surrender or apprehension under AA.s 142(6) (IAFD-910) or under AA.s. 142 (5) should only state the fact, date and place of the surrender or apprehension of the absence and the manner in which he was dressed and is only admissible as evidence of those facts and only in cases of desertion or absence without leave. The circumstances of the surrender or apprehension must be proved by a witnesss. The certificate must be signed by a police officer not below the rank of an officer in charge of a police station. For the surrender/apprehension certificate under AA.s. 142 (5), see regs Army para 378.

The CO of the deserter or absentee should forward IAFD-910 without unnecessary delay to the officer in charge of the police station for completion and signature.

(f) Many cases depend on the identification of persons or things. Evidence should be recorded to show that each witness identifies the accused, and any other person or thing mentioned in his evidence whose identity is relevant to the charge; e.g. on a charge for theft, the articles, the subject of the charge, must be produced and identified or their absence satisfactorily accounted for.

Articles alleged to have been damaged should be produced and identified.

(g) Where the charge is for any offence which has occasioned any expense, loss damage or destruction for which it is expedient to award stoppages under AA.s. 71(l), values should be assessed and evidence taken as follows:-

(i) When an article which has an official value has been lost or rendered unserviceable, a witness is required who can prove the value (inclusive of authorized departmental expenses) of the article at the date of loss upon a basis of its age and/or to condition and by reference to the regulations which should be produced for fixing the value of the article at that age or in that condition.

(ii) When the article has no official value, competent evidence is required to prove the approximate value.

(iii) When an article has been damaged but not rendered unserviceable, competent evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the loss of value caused by the act of the accused, if it cannot be repaired, or the cost of repair plus any ultimate loss of value due to the act of the accused.

APPENDIX III—*Contd.*

(iv) In the case of absence of desertion, the deficiencies to be alleged in a charge under AA.s. 54 (b) are those ascertained when the soldier rejoins, not necessarily those found on the commencement of the absence, or by a court of inquiry. Evidence should not be taken of the values of personal clothing and necessaries the property of a person subject to AA, the value of which has not to be made good to the public.

(h) where the charge is for misappropriation or losing by neglect money or stores, etc, the evidence should show-

(i) The period during which the accused held office and was responsible for certain money or stores, etc.

(ii) That at the opening of this period the accounts, money, stores, etc., were correct.

(iii) Receipts and expenditure of money, stores, etc. during this period.

(iv) That at the close of this period there was a specific deficiency of money, stores, etc.

Items (ii), (iii), (iv) must, as a rule, be proved by the production by a witness of the original account books, and vouchers, and evidence that they were kept or signed by the accused. Witnesses should then give evidence explaining the deficiency, which is checked with the original books, etc and recorded.

(i) In cases of attempts to commit suicide, medical evidence giving an opinion on the state of mind of the accused at the commission of the alleged offence should be taken.

(j) In cases of self-maiming the medical witness or witness should be asked whether the injury sustained by the accused will render him unfit for further service.

3. Where the accusation arises out of complaint made by an individual who has not yet identified the person whose conduct is complained of, the complainant, and any other alleged eye-witness in the same circumstances, should have an opportunity of picking out from a group the person against whom they are prepared to give evidence. For this purpose an identification parade should be held in the presence of an officer before the witness(es) give evidence at the summary, or otherwise see the accused in circumstances which may suggest that they are expected to recognize one particular person as the offender. At such parade a witness should not be permitted to see or hear anything which might include him to take a cue from the behaviour of another witness. Regs Army para 406 refers.

4. If in any case two or more persons are suspected of complicity in an offence, and it is found necessary to call one of them as a witness for the prosecution against the other or others charged in connection with the offence, one of two courses must be taken either.

(a) Proceedings against him must be abandoned and any charge therein already preferred against him dismissed; or

(b) Steps must be taken to ensure that the case against him is disposed of summarily or tried by court-martial, before the trial of persons concerned against whom he is to give evidence; and that he is, only tendered as a witness when he has already been acquitted or convicted.

In all such cases the circumstances and the course proposed should be fully set out in a covering letter to the covening officer.

COMMANDING OFFICERS

5. A CO will take care that an accused person is not detained in custody beyond 48 hours without the charge, being investigated, unless investigation is impracticable, in which case a report will be made to the officer to whom application to convene a GCM or DCM would be made (AA. 102)

APPENDIX III—*Contd.*

6. Before applying for the trial of an offender, a CO should satisfy himself :—

(a) That the accused is subject to the AA, and is charged with an offence which is an offence against that Act

(b) That the offender is not exempted from trial under the provisions of AAs 122;

(c) That the offence is not one which he should dispose of himself summarily or one which he should and can try by SCM (Regs Army para 447) without reference [(AAs 120(2)] or, if it is one of those offences, that from its gravity, or from the previous character of the accused, he ought not to deal with it on account of the inadequacy of his powers of punishment;

(d) That the summary of evidence is properly recorded (see paras 1 and 2 ante);

(e) that the evidence justifies the trial of the offender on the charge;

(f) That the charge is properly framed under the appropriate section (see ARs 28 to 30 and Notes thereto)

(g) That an officer has given the accused a copy of the summary of evidence as soon as practicable after he had been remanded for trial and that his rights as to preparing his defence and of being assisted or represented at the trial have been explained to him by that officer [AR 33(7)].

7. When making application for the trial of the offender, the CO should satisfy himself, that the following provisions are complied with:-

(a) The application for trial (IAFD-937) must be accompanied by all necessary documents as therein specified; and the medical officer's certificate at the foot completed;

(b) The convening officer must be informed whether or not the accused desires to have a defending officer assigned to represent him at the trial;

(c) The information required as to officers who have investigated the case; or sat on a court of inquiry, must be given with great care;

(d) The charge-sheet must be signed by the officer in actual command of the unit to which the accused belongs or is attached, and should state the place and date of signature;

(e) Sufficient space should be left at the foot of the charge-sheet for the orders of the convening officer, or officer sanctioning trial under AAs 120 (2) to be entered. The place and date should be entered by the officer signing such orders;

(f) The section of the AA under which each charge is framed should be entered in the margin, opposite the charge to which it refers;

(g) When it is intended to prove any facts in respect of which any deduction from the pay and allowances (i.e.stoppages) of the accused can be awarded in consequence of the offence charged, those facts must be clearly shown in the particulars of the charge and sum of the loss or damage it is intended to charge[see para 2(g) above)]

(h) IAFD-905 by whomsoever produced, is to be signed by the officer having custody of the books from which it is compiled; custody includes temporary custody for the purpose of the trial. In preparing this form, minor offences may be grouped as "miscellaneous". Offences of the same class as that being charged should be shown in a separate group.

8. After trial has been ordered the CO should satisfy himself that the following provisions are complied with :-

(a) The accused must be warned for trial not less than 96 hours (24 hours where he is on active service) before the court assembles, must be informed by an officer of every charge on which he is to be tried, must be given a copy of the charge-sheet and a vernacular translation of the same and of the summary of evidence, and notice of the intention to call witnesses whose evidence is not contained in the summary and an abstract of their evidence, and must be informed of the ranks, names and units of the officers who are to form the court as well as of any waiting members (AR 34)

APPENDIX III—*Contd.*

(b) The accused must be informed that on his giving the names of any witnesses for the defence, reasonable steps will be taken to procure their attendance;

(c) The accused must be afforded proper opportunity for preparaing his defence.

(d) The CO must not detail as a member of the court an officer who is ineligible or disqualified to serve under the provisions of AR 39;

(e) The accused must be seen by a medical officer on the morning of each day the court is sitting for his trial and the medical officer's report should be produced by the prosecutor to the court immediately after it opens;

(f) In a case of a joint trial, the accused persons should be informed of the intention to try them together and of their right under AR 35(4) to claim separate trials if the nature of the charge admits of it.

9. After confirmation (or refusal thereof), the CO must see that the following provisions are complied with:-

(a) The proceedings must be promulgated as laid down in Regs for the Army para 472;

(b) The record of the promulgation must be entered in the proceedings in form shown on page 291 and, if the proceedings have been confirmed, extracts recorded in the Regimental books;

(c) After promulgation the proceedings must be forwarded without delay to DyJAG of the command direct. Regs Army para 477 refers.

CONVENING OFFICER

10. The convening officer should satisfy himself as regards the matters mentioned in para 6 and 7 (above); and in addition he will ensure:-

(a) in all cases for trial by GCM, and in all cases of indecency, fraud, theft (except ordinary theft), and civil offences; and in all other cases which present doubt or difficulty, that the charge sheet and summary (or abstract) of evidence are submitted to the Deputy or Assistant Judge Advocate General concerned before trial is ordered (See regs, Army 459);

(b) That he holds the necessary court-martial warrant empowering him to convene the description of court-martial that he consideres appropriate;

(c) That the court which he has decided to convene is properly composed in accordance with the AA, see also AR 40 any opinion of the convening officer with respect to the composition of the court under the said rule should be stated in the convening order;

(d) That no officer is detailed to serve on the court who is ineligible or disqualified under AR 39;

Note-In the case of theft from an officers' mess, all the officers of that mess are regarded as interested, and are therefore disqualified.

(e) That application is made to the Deputy or Assistant Judge Advocate General concerned for the services of a JA when the appointment of a JA is legally required or is desirable (See AAs 129);

(f) That the No, Rank, Name and unit of each officer detailed to serve are stated in the convening order correctly;

(g) That in trials by GCM and in complicated cases a prosecutor is specially selected for his experience and knowledge of military law.

(h) That the order for trial at the foot of charge-sheet is signed by him.

(i) That the convening order is signed by him.

APPENDIX III—*Contd.*

11. Where the convening officer, or the senior officer, on the spot considers that military exigencies or the necessities of discipline render it impossible or inexpedient to observe any of the Rules referred in AR 36, he must make on IAFD-920 a decalaration to that effect specifying the nature of those exigencies or necessities.

12 The convening officer must ascertain whether the accused desires to have a defending officer assigned to assist him at his trial, and, if so, must endeavour to meet his wishes. Should no suitable officer be available, the convening officer must notify the Presiding Officer in writing (See AR 95(2)]

13. The convening officer must send to the senior member of the court-martial the convening order and charge-sheet and, where no JA has been appointed copy of the summary of evidence. He should also send, to all the other members, copies of the charge-sheet and to the JA when one has been appointed, a copy each of the charge-sheet, convening order and summary of evidence, AR 37(4) refers. Except in the case of joint trial of two or more persons a separate copy of the convening order should be supplied in respect of every person to be tried.

GENERAL

14. The original convening order must be before the court and the Presiding Officer must satisfy himself that the court is duly constituted according to its terms. The court must not make any alteration or correction in the convening order, save as allowed by AR 50(1) in the charge-sheet.

15. In any case of doubt as to constitution of the court, or any other matter affecting jurisdiction of the court or validity of the charges, the Presiding Officer should consult the convening officer before the court assembles, or if the court has assembled, before proceeding with the trial.

16. When, in accordance with AR 89, the court is sworn/affirmed at one time in the presence of several accused persons who are to be tried separately in succession the time at which the convening order is read should be recorded on page 'A' of each IAFD-906, as the time at which the trial of each of the accused commences. In such cases it is desirable that the time of arraignment of each such accused should be inserted on page 'B' of each IAFD-906 before the words; "The accused is arraigned", etc.

17. The full name and description of the accused should be entered on the first page of the proceedings.

18. Care should be taken that, whether a Court of inquiry has been held, the relevant certificate (on the first page of the proceedings) is properly completed.

19. Any person addressing the court or examining or cross-examining a witness, should always do so standing.

20. Every witness, including the officer, producing IAFD-905 must be sworn or affirmed in the presence of the accused to whom his evidence refers; he must not be examined on a former oath taken in the presence of another accused person.

Every prosecutor or other person producing documents must be sworn/affirmed. By the custom of court-martial, however, the accused is allowed to hand in letters, and certificates of character purporting to be in the handwriting of absent officer of former employees, and unless there is reason to doubt their authenticity, they may be accepted.

21. The evidence will usually be taken down in narrative form, questions and answers recorded verbatim will be numbered consecutively ("Q 1", "A 1", etc) throughout.

22. When original documents are not retained by the court and copies are attached to the proceedings, it must be stated in the proceedings that the copies have been compared with the original and found to be correct. As a rule, it is preferable to attach copies and not original documents, to the proceedings. See Notes to AR 67.

APPENDIX III—*Contd.*

23. In accepting IAFs D-905, D-918, D-910 and certified copies or records in Regimental books, attention should be given to para 7(i), 2(d), (e) and (b) ante respectively. Where these documents are given in evidence it is sufficient to record upon the proceedings the mere fact of their production without setting out the facts, which they purport to prove, but the record of evidence should always show that witness identified the accused as the person to whom the particular document relates.

24. A certified true copy of a record in a Regimental book (e.g.., on IAFD-918 of an entry in the court-martial book) is sufficient evidence thereof; it is not necessary for the court to compare the copy with the Regimental book.

25. Where the value of arms, ammunition, equipment or public clothing lost or damaged is proved, the accused if convicted should be sentenced to be put under stoppages, notwithstanding the fact that he may also be sentenced to be dismissed from the service, in case the latter part of the sentence should be remitted.

26. Arrears of pay and allowances forfeited by sentence of court-matial under AAs. 71 (k) cannot be applied as compensation for loss or damage. If, therefore, loss or damage has been averred and proved, stoppages should be awarded, even if the accused is also sentenced to forfeiture of arrears, so that compensation may first be paid and any balance remaining over forfeited.

27. Included in IAFD-906 are two sets of pages "C" and "D"-one for proceedings on a plea of "Not guilty" and one for proceedings on a plea of "Guilty", or all "Guilty", to the set pertaining to the plea or pleas recorded is alone to be used, and the unused set should be removed from the proceedings.

When some of the pleas are "Not guilty" and some "Guilty" both sets will be used, the court proceedings first on the plea or pleas of "Not guilty" up to and including the findings, and then on the plea or pleas of "guilty". It is not necessary to insert before page"D" a separate sheet containing the findings of the court upon the plea or pleas of "Not guilty".

28. Where two or more persons are charged and tried jointly on a charge-sheet, only one set of proceedings should normally be used, the relevant pages of IAFD-906 being adapted accordingly, and the replies of each of the accused to the questions set out therein being separately recorded . A separate sheet, however, should be used for the finding and proceedings on conviction, and for the sentence in each case.

29. Where trial proceeds on more than one charge-sheet, all printed matter on page 'A' and the two printed lines at the top of page 'B' should be struck out in the case of the second or any subsequent charge-sheet, the word "second", "third" (or as the case may be) being inserted before the word "charge-sheet" on page 'B".

30. The charge-sheet is to be inserted in the proceedings after "B" and marked as "B 2", all other documents are to be attached at the end of the proceedings in the order of their production to the court.

31. Every document attached to the proceedings should be signed by a Presiding Officer (or JA) and marked with a reference number, preferably not one used in IAFD-906.

32. In case of a plea of "Guilty", the summary of evidence is to be annexed to the proceedings. In case of a plea of "Not gulty" it will be annexed if it or any part of it has been put in evidence at the trial. In other cases the summary will merely be enclosed with the proceedings when sent to the confirming officer.

33. All erasures of written or printed matter, and all interlineations and corrections should be initialed by the Presiding officer or JA, See Notes to AR 92.

34. Pages should be numbered consecutively up to the end of the proceedings after they have been put together in the order prescribed. In case of revision, the latter proceedings are added at the end, and the numbering of pages carried on.

APPENDIX III—*Contd.*

35.Care must be taken that the proceedings are both signed and dated by the Presiding Officer and the JA (if any). AR 67 (2) refers.

DUTIES OF PROSECUTOR

36. For the general duties of a prosecutor see AR 77(1) and notes thereto.

37. **Duties before trial**- The prosecutor should have previous knowledge of the subject matter of the charge or charges. For that reason the officer detailed as prosecutor must make it his business to acquaint himself with the circumstances, and assure himself that the various rules relating to procedure before trial have been complied with (see Note to AR 43). He will, as a rule, be the officer who recorded the summary of evidence. The court will look to him for an explanation of any defect or omission apparent or alleged by the accused.

On being detailed for duty he should-

(a) Obtain a copy of the charge-sheet and summary of evidence, and enquire whether there is any correspondence or other material related to the case, which he should peruse and note.

(b) If he thinks there is any legal defect, irregularity, or serious omission in either the charge-sheet or the summary of evidence, he should refer to the CO of the accused's unit. The ability to detect irregularities connotes a working knowledge of the Army Rules 1954, and of the laws of evidence.

(c) Satisfy himself that ARs 33 and 34 and in the case of joint trial AR 35, have been complied with.

(d) Satisfy himself that proper steps are being taken to secure the attendance of all necessary witnesses.

(e) Obtain or prepare a record of the accused's service (IAFD-905) for production at the trial if required. This form must be signed by the officer having the custody of the Regimental book.

(f) Consider whether an opening address is desirable, or is likely to be required from him by the court [AR 56 (3)]. If so, prepare such an opening address, setting out in the form of a narrative the facts which are alleged against the accused, and the nature of the evidence by which those facts are to be proved. The opening address must be as impartial as he can make it, free from unnecessary comment, denunciation or prejudice. There must be no reference in it to any allegation which is not to be proved in evidence subsequently at the trial. An opening address is not ordinarily required in disciplinary cases of a simple nature, but is valuable where accounts are involved or the evidence is largely circumstantial.

(g) On the morning of the trial take with him to the court a certificate by a medical officer stating that he has examined the accused on that morning, and that he is fit for trial.

(h) Assure himself that all witnesses and necessary exhibits are present.

38. **Duties at the trial:-**

(a) On the opening of the Court the prosecutor presents the medical cerrificate to the Presiding Officer.

(b) If any material, witness is absent, the prosecutor should inform the court at once, and if necessary apply for an adjournment (AR 138).

(c) If a court of inquiry has been held respecting a matter upon which a charge against the accused is founded, the prosecutor should hand to the court a list of

APPENDIX III—*Contd.*

names of the officers who sat, on the court of inquiry. The written record of the proceedings of such court of inquiry must not be laid before the court-martial (AR 41)

(d) As to the prosecutor's right to address the court and call witnesses in reply in the event of a special plea of plea in bar of trial, see ARs 49, 51 and 53.

(e) Where the accused pleads 'Guilty", the duties of the prosecutor are confined to calling such witnesses as may be necessary if the summary be insufficient [AR 54 (3)], and producing IAFD-905.

(f) Where the accused pleads "Not guilty", the prosecutor makes his opening address if any, and it is in writing, hands it in and calls his first witness.

(g) Before calling the witnesses, and as the case proceeds, the prosecutor must consider whether he should call all those whose evidence is in the summary of evidence, and whether if it is his duty to call as a witness any person whose evidence is not contained in summary (ARs 134 and 135)

(h) As to accomplices as witnesses for the prosecution see para 4 ante.

(i) After a witness for the prosecution has been sworn or affirmed, the prosecutor will ascertain the witness's No. Rank, Name, unit station, address, occupation,etc, as may be material and will elicit from the witness the relevant facts to which the witness can speak. This may be done by means of questions of a non-leading Character (see Part I, Chapter V paras 102-106), or by permitting the witness to tell his own story, questions being subsequently asked to make good any omissions. A series of short simple questions will generally assist the witness to recount facts in chronological order, and the Presiding Officer or JA in making the record.

(j) The rules which govern cross-examination are described in Part-I, Chapter V, paras 107-113. The limits within which re-examination is permitted are set out in para 116. It may happen that a question in cross-examination has been so framed as to compel the witness to answer simply "yes or No", whereas there is within the prosecutor's knowledge an explanation which should in fairness be made. In such a case the prosecutor may in re-examination refer the witness to that question and answer, and ask him if he has anything to add or explain. The prosecutor should not dismiss a witness until he has ascertained whether the court desires to question him and until AR 141 (2), (3), (4) has been complied with.

(k) The prosecutor must take care that each exhibit which he desires to put before the court is produced and identified by one of his witnesses. If an exihibit (e.g., the property in respect of which theft is alleged to have been commiteed) is to be referred to by more than one witness, each witness who refers to it must be invited to look at the exhibit, and say whether he identifies it. If the prosecutor is himself producing documents he should do so, after being sworn or affirmed as a witness, before he calls his other witnesses [AR 56(5) and Note thereto]. Neither the prosecutor nor a witness may refer to the contents of a document which is not before the court, unless evidence is given accounting for its absence (See Part I, Chapter V, paras 76-77)

(l) The prosecutor having called his witnesses, the case for the prosecution is closed. The subsequent procedure depends upon the exercise by the accused of his rights and is fully set out in ARs. 58 and 59.

(m) If the accused calls any witnesses to the facts, it is the duty of the prosecutor to assist the court to test the value of their evidence by cross-examination. The result of omission to cross-examine is frequently that the evidence for the defence

APPENDIX III—*Contd.*

stands unchallenged, and the prosecutor cannot properly, in a subsequent address, characterize as untrue a defence which he has not attempted, by question to the witnesses at the proper time, to impugn cross-examination is not limited to the matters dealt with in the examination in chief. It must however, be confirming to matters relevant, directly or indirectly, to the issue. Leading questions may be asked in cross-examination, but not questions which assume that facts have been given in evidence which have not been given (See Part I, Chapter V, para 109). As to injurious questions see para 110 *ibid*. As to calling witnesses in reply to the defence, see AR 143 and notes thereto.

(n) The desirability of making a closing address at the appropriate time as provided in ARs 58 and 59, it is a matter for the prosecutor's discretion. If there is any evidence or argument put forward by the defence which he thinks might seriously mislead the Court, he should comment on it. He is entitled to sum up the evidence generally and to point out any weakness in the defence, and to suggest the inferences which the court may draw from the fact which has not been proved in evidence (see Notes to AR 77).

(o) If the accused is convicted on any charge, the prosecutor or some other person in a position to do so, is sworn or affirmed (if he has not already been sworn or affirmed as a witness in the case) and produces evidence (IAFD 905) of the character, age, service, rank, etc., of the accused (See AR 64 and Notes thereto)

DUTIES OF DEFENDING OFFICER

39. Duties before trial:—

(a) The defending officer, like the prosecutor requires a working knowledge of the Army Rules, 1954 and of the laws of evidence. He must also make himself acquainted with the details of the case.

(b) The proper preparation of the defence :

Note to AR 95 includes,—

(i) Study of the charge-sheet and summary of evidence and consideration of legal points which he may raise, or which may arise upon them, e.g., objection to a charge, plea to the jurisdiction, plea in bar of trial, admissibility of a confession or of other evidence.

(ii) Ascertaining from the accused what is his answer, if any, to each charge.

(iii) Communication with possible witnesses for the defence, to ascertain if they are able to give evidence in support of the accused's case, and the taking of appropriate steps to secure their attendance at the trial [ARs 34(1) and 136].

NOTE.—He is not entitled to interview witnesses for the prosecution without special authority.

(c) The defending officer must bear in mind that the ultimate responsibility for the decision on the plea which is to be offered on each charge must rest upon the accused himself. He may properly advise on this point, but should put no pressure on the accused, except to disuade him from pleading guilty, where he appears to have an answer, however, slight, to the charge. The defending officer's duty at the trial will be to present the accused's defence in the best possible manner. He may properly prepare arguments on fact or law, which his own reason of ingenuity may suggest, but it would he improper for him to advise or suggest to the accused an account of the facts, other than that which the accused himself desires to give.

APPENDIX III—*Concluded*

(d) The defending officer is not called upon to judge the truth or otherwise of the accused's defence, nor is he permitted to express his own opinion or belief (AR 100). To avoid, however, giving countenance to a line of defence which is incompatible with his duty as an officer, he should apply through his CO to the convening officer for permission to withdraw from the case.

40. Duties at the trial.

(a) Having the rights, duties, and obligations of counsel, the defending officer must himself conduct the case as representing the accused, i.e., he will himself cross-examine witness for the defence, take any objections, make any submissions, and address the court on the accused's behalf.

(b) The defending officer has the right to make an application for adjournment [AR 34(4)] and to address the court in support of it. It should not be made on the ground of a technical irregularity or omission, merely as a protest, where no benefit can accrue to the presentation of the defence from the postponement of the trial. .

(c) It is the defending officer's duty to question each witness for the prosecution on any matter which is to be alleged in defence in so far as this matter is or should be within the witness's knowledge (See Part I, Chapter V, paras 107 to 113). As to injurious questions, see para 110.

(d) The defending officer may take objection to any question put by the prosecutor to a witness for the prosecution on one of the following grounds; the objection should be made if possible before the witness answers (AR 141(1)]:—

(i) That it is a leading question.

(ii) That it invites hearsay, or an account of an involuntary confession, or evidence of the accused's bad character when that character has not been put in issue. etc., (Part I, Chapter V, para 60).

(e) At the close of the case for the prosecution, the defending officer may submit that the accused has no case to answer, and therefore, should not be called upon for his defence, because, the prosecution has not produced evidence in support of one or more essentials in the charge (AR 57).

NOTE.—This submission must be to the effect that there is no evidence at all on the point or points, and not that the evidence is untrustworthy.

(f) Where a witness not examined at the summary of evidence is called by the prosecutor, the defending officer may apply for an adjournment, or postponement of cross-examination (AR 135).

(g) The defending officer is entitled to consult the JA, if one has been appointed, on any question of law or procedure relating to the charge or trial [AR 105(1)]

(h) The defending officer must throughout the proceedings treat the court with respect and candour.

APPENDIX IV

PART I

FORM 1

Form for use at summary trials of Officers. JCOs and WOs under Sections 83 to 85 of the Army Act

ACCUSED .....

RANK AND NAME.....

UNIT.....

When the authority dealing summarily with the case decides (with the written consent of the accused) to dispense with the attendance of witnesses—

Questions to accused

1. Have you received a copy of the charge-sheet and summary of evidence?

ANSWER.....

2. Have you had sufficient time to prepare your defence?

The charge-sheet is read. ANSWER.....

3. Are you guilty or not guilty of the charge(s) against you which you heard read? ANSWER.....

The summary of evidence is read aloud or the authority dealing summarily with the case informs the accused that he has already perused it.

4. Do you wish to make a statement? ANSWER.....

If the accused desires to make a statement, he should do so now.

If at the conclusion of the hearing the authority dealing summarily with the case considers that the charge should be dismissed, he is to examine the accused's record of service or conduct sheet.

If the authority dealing summarily with the case proposes to award a punishment other than a reprimand, severe reprimand, or penal deductions, in the case of an officer, a JCO or a WO, he shall put the following question to the accused :—

5. Do you elect to be tried by court-martial or will you accept my award ?

ANSWER.....

FINDING.....

AWARD.....

STATION.....

DATE..... Signed .....

NOTE l.—The oral statement of the accused made in answer to question 4 will be either recorded or a gist thereof prepared and attached.

NOTE 2.—After disposal of a charge, if the finding is that of guilty, this form accompanied by Army Form IAFF-3013 (in duplicate), summary of evidence, statement of the accused and written consent of the accused will be forwarded through the usual channels to Headquarters Command concerned who will show them to the Dy JAG of the Command. In the case of punishments awarded by GOC-in-C of a Command, these documents will be forwarded to the Adjutant General (PS-l), Army Headquarters, DHQ. PO NEW DELHI-11. When the finding is that of not guilty, only the finding will be communicated to Headquarters Command concerned in the case of JCOs and WOs and to Army Headquarters in the case of officers.

In the case of a JCO or a WO this form together with the summary of evidence, statement of the accused and the written consent of the accused will be returned to the unit for attachment to his Regimental Conduct Sheet (IAFF-3013).

APPENDIX IV—*Contd.*

FORM 2

Form for use at summary trials of Officers, JCOs and WOs under sections 83 to 85 of the Army Act

ACCUSED.....

RANK AND NAME.....

UNIT.....

When the authority dealing summarily with the case does not decide to dispense with the attendance of witnesses or when the accused requires their attendance.

Question to accused—

1. Have you received a copy of the charge-sheet and summary of evidence?

ANSWER.....

2. Have you had sufficient time to prepare your defence?

ANSWER.....

The Charge-sheet is read.

3. Are you guilty or not guilty of the charge(s) against you which you heard read? ANSWER.....

The witnesses give their evidence, accused being permitted to cross-examine.

4. Do you wish to make a statement?

ANSWER.....

5. Do you desire to call any witnesses?

ANSWER.....

The accused makes a statement and his witnesses give evidence.

If at the conclusion of the hearing the authority dealing summarily with the case considers that the charge should not be dismissed; he is to examine the accused's record of service or conduct sheet.

If the authority dealing summarily with the case proposes to award a punishment other than a reprimand, severe reprimand or penal deductions, in the case of an officer, a Junior Commissioned Officer or a Warrant Officer, he shall put the following question to the accused:—

6. Do you elect to be tried by court-martial or will you accept my award?

ANSWER.....

FINDING.....

AWARD.....

STATION.....

DATE..... Signed .....

Note.—The oral statement of the accused made in answer to question 4 will be either recorded or a gist thereof prepared and attached.

After disposal of a charge, if the finding is that of guilty, this form accompanied by Army Form IAFF-3013 (in duplicate) summary of evidence and the statement of the accused will be forwarded through the usual channels to Headquarters Command concerned who will show them to the Dy JAG of the Command. In the case of punishments awarded by GOC-in-C of a Command, these documents will be forwarded to the Adjutant General (PS-1), Army Headquarters DHQ PO. New Delhi-11.

When the finding is that of not guilty, only the finding will be communicated to Headquarters Command concerned in the case of JCOs and WOs and to Army Headquarters in the case of officers.

In the case of a JCO or a WO this Form together with the summary of evidence and the statement of the accused will be returned to the unit for attachment to his Regimental Conduct Sheet (IAFF-3013).

APPENDIX IV—*Contd.*

PART II

WARRANTS UNDER SECTIONS 168, 169(2) AND 173 OF THE ARMY ACT

FORM A

Warrant of commitment for use when a prisoner is sentenced for life imprisonment (SRO 404/60) (Army Act Section 168).

To

The Superintendent of the (a) ..... prison.

Whereas at a (b).....court-martial, held at .....on the..... day of ..... 20..... (Number, Rank, Name).....of the..... Regiment.....was convicted of (the offence to be briefly stated here as "desertion on active service", "corresponding with the enemy", as the case may be).

And whereas the said (b).....court-martial on the..... day of..... 20..... passed the following sentence upon the said (Name).....that is to say:—.....

.....

.....

.....

(Sentence to be entered in full, but without signature).

And whereas the said sentence has been duly confirmed by (c) as required by law (d).

This is to require and authorise you to receive the said (Name)....., into your custody in the said prison as by law is required, together with this warrant, until he shall be delivered over by you with the said warrant to the proper authority and custody for the purpose of undergoing the aforesaid sentence of imprisonment for life, The aforesaid sentence has effect from the (e).....

Given under my hand at..... this the.....day of.....20.....

Signature (f)

(a) Enter name of civil prison.

(b) General, or summary general.

(c) Name and description of confirming authority.

(d) Add if necessary "with a remission of.....".

(e) Enter date on which the original proceedings were signed.

(f) Signature of commanding officer of prisoner or other prescribed officer, See AR 166.

FORM B

Warrant of commitment for use when a prisoner is sentenced to imprisonment which is to be undergone in a civil prison

[Army Act, Section 169(2)]

To

The Superintendent.....of..... the (a).....Prison.

Whereas at a (b),.....court-martial held at.....on the..... day of .....20....., (Number, Rank, Name).....of the..... Regiment.....was duly convicted of (the offence to be briefly stated here, as "desertion", "theft", "receiving stolen goods", "fraud", "disobedience of lawful command" or as the case may be) .....

(a) Enter name of civil prison.

(b) General, district, summary general or summary.

APPENDIX IV—*Contd.*

And whereas the said (b)..... Court-Martial..... on the ..... .day of..... 20..... passed the following sentence upon the said (Name)..... that is to say :—

(Sentence to be entered in full, but without signature).

And whereas the said sentence.

(c) has been duly confirmed by (d)..... as required by law (e)..... ..... is by law valid without confirmation.

This is to require and authorise you to receive the said (name) into your custody together with the warrant, and there carry the aforesaid sentence of imprisonment into execution according to law. The sentence has effect from the (f).....

The period spent by (name)..... in civil/military custody during the investigation, inquiry or trial of the same case is (g)..... and the said period (ff)..... shall be set off against the aforesaid sentence of imprisonment.

Given under my hand at ..... this the ..... day of ..... 20.....

Signature (g)

(c) Strike out in applicable words.

(d) Name and description of confirming authority.

(e) Add if necessary "with remission of .....".

(f) Enter date on which the Original proceedings were signed.

(ff) Enter the exact period (years, months and days) spent in military /civil custody during investigation, inquiry or trial in the same case.

(g) Signature of commanding officer of prisoner or other prescribed officer, see AR 166.

FORM C

Warrant of commitment for use when a prisoner is sentenced to imprisonment which is to be undergone in a military prison.

[Army Act. Section 169(2)]

To

The Commandant..... of the Military Prison at..... .....

Whereas at (a)..... court-martial held at ..... on the..... day of.....20..... (Number, Rank, Name)..... of the.:..... Regiment..... was duly convicted of..... (the offence to be briefly stated here as "desertion", "theft", "receiving stolen goods", "fraud", "disobedience of lawful command" or as the case may be).

And whereas the said (a)..... court-martial on..... the ..... day of.....20..... passed the following sentence upon the said (Name) ..... that is to say;

(Sentence to be entered in full, but without signature)

And whereas the said sentence has been duly confirmed by (b).

*as required by law (c).

* is by law valid without confirmation.

APPENDIX IV—*Contd.*

This is to require and authorise you to receive the said (Name)..... into your custody together with this warrant, and there carry the aforesaid sentence of imprisonment into execution according to law. The sentence has effect from (d).....

The period spent by (name) ..... in civil custody/military custody during the investigation, inquiry or trial of the same case is (dd)..... and the said period (dd)..... shall be set off against the aforesaid sentence of imprisonment.

Given under my hand ..... this ..... day of ..... 20.....

Signature (e)

*Strike out inapplicable words.

(a) General, district, summary general or summary.

(b) Name and description of confirming authority.

(c) Add if necessary "with remission of.....".

(d) Enter date on which the original proceedings were signed.

"(dd) Enter the exact period (years, months and days) spent in military/civil custody during investigation, inquiry or trial in the same case"

(e)Signature of commanding officer 'of prisoner or other prescribed officer See AR 166.

FORM D

Warrant for use when a prisoner is pardoned or his trial set aside, or when the whole sentence, or the unexpired portion thereof, is remitted.

(Army Act, Section 173).

To

The Superintendent/Commandant of the (a) ..... Prison.

Whereas (Number, Rank, Name)..... of the Regiment is confined in the (a)..... Prison under a warrant issued by (b)..... in pursuance of a sentence of (c)..... .passed upon him by a (d)..... court-martial held at..... on..... and whereas (e).....has in the exercise of the powers conferred upon him by the Army Act, passed the following orders regarding the aforesaid sentence that is to say: —(f).....

This is to require and authorise you to forthwith discharge the said (Name)..... ..... .from your custody unless he is liable to be detained for some other cause; and for your so discharging him this shall be your sufficient warrant.

Given under my hand at.....this the.....day of..... 20.....

Signature (g)

(a) Enter name of civil or military prison.

(b) Enter name or designation of officer who signed original warrant.

(c) Enter original sentence (if this was reduced by the confirming officer or other superior authority the sentence should be entered thus) :

"2 years' rigorous imprisonment reduced by confirming officer to 1 year".

(d) General, district, summary general or summary,

(e) Name and designation of authority pardoning prisoner, mitigating sentence or setting aside trial.

(f) Order to be set out in full.

(g) Signature of prescribed officer, See AR 167.

APPENDIX IV—*Contd.*

FORM E

Warrant for use when a sentence of imprisonment for life is reduced by superior authority to one of a shorter period of the same

(Army Act, Section 173)

To

The Superintendent.....Prison

Whereas (Number, Rank. Name) of the Regiment is confined in the (a)..... prison under a warrant issued by (b).....in pursuance of a sentence..... of (c).....passed upon him by a (d).....court-martial held at..... on..... and whereas (e)..... has, in the exercise of the powers conferred upon him by the Army Act, passed the following order regarding the aforesaid sentence: that is to say : (f).....
.....
.....

This is to require and authorise you to keep the said (Name).....in your custody together with this warrant, in the said prison as by law is required until he shall be delivered over by you with the said warrant to the proper authority and custody, for the purpose of his undergoing the punishment of imprisonment for life under the said order. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof the warrant is issued. The period of such imprisonment for life will reckon from the (g).....

Given under my hand at.....this the.....day of..... 20.....

Signature (h)

(a) Enter name of civil prison.

(b) Enter name or designation of officer who signed original warrant.

(c) Enter original sentence (If this was reduced by the confirming officer or other superior authority the sentence should be entered thus):

"..... years" rigorous imprisonment reduced by confirming officer to..... years".

(d) General or summary general.

(e) Name and designation of authority varying the sentence.

(f) Order to be set out in full.

(g) Enter date on which original sentence was signed.

(h) Signature of prescribed officer. See AR 167.

FORM F

Warrant for use when a sentence of imprisonment is reduced by superior authority or when one of imprisonment for life is reduced to one of imprisonment (Army Act, Section 173).

To

The Superintendent/Commandant of the (a).....Prison.

Whereas (Number, Rank, Name) of the Regiment is confined in the (a)..... prison under a warrant issued by (b).....in pursuance of sentence of (c)..... passed upon him by a (d).....court-martial held at ..... on..... and whereas (e) has, in the exercise of the powers conferred upon him by the Army Act, passed the following order regarding the aforesaid sentence that is to say :- (f).....
.....
.....

APPENDIX IV—*Concluded*

This is to require and authorise you to keep the said (Name).....in your custody together with this warrant, and there to carry into execution the punishment of imprisonment under the said order according to law. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such improvement will reckon from the (g).....

Given under my hand at..... this the .....day of..... 20.....

Signature (h)

(a) Enter name of civil or military prison.

(b) Enter name or designation of officer who signed original warrant.

(e) Enter original sentence (if this was reduced by the confirming officer or other superior authority the sentence should be entered thus:

'2 years' imprisonment reduced by confirming officer to 1 year".

(d) General, district, summary general or summary.

(e) Name and designation of authority varying the sentence.

(f) Order to be set out in full.

(g) Enter date on which original proceedings were signed.

(h) Signature of prescribed officer. See AR 167.

FORM G

Warrant for use when prisoner is to be delivered in to military custody. (Army Act, Section 173).

To,

The Superintendent/Commandant.. .....of the (a)..... Prison.

Whereas (Number, Rank, Name) .....of the Regiment is confined in the (a).....Prison under a warrant issued by (b).....in pursuance of a sentence of (c).....passed upon him by a (d).....court-martial held at.....and whereas (e)..... has, in the exercise of the powers conferred upon him by the Army Act passed the following order regarding the aforesaid sentence that is to say (f):—.....

This is to require and authorise you to forthwith deliver the said (Name)..... to the officer, junior commissioned officer, warrant officer, or non-commissioned officer bringing this warrant.

Given under my hand at.....this the,.....day of..... 20.....

Signature (g)

(a) Enter name of civil or military prison.

(b) Enter name or designation of officer who signed original warrant.

(c) Enter original Sentence (if this was reduced by the confirming officer or other superior authority the sentence should be entered thus);

"2 years' rigorous imprisonment reduced by confirming officer to 1 year".

(d) General, district, summary general or summary.

(e) Name and designation of authority issuing order.

(f) Order to be set out in full.

(g) Signature of prescribed officer. See AR 167.

APPENDIX V

WARRANT UNDER ARMY RULES, 169, [170A][1] AND 171

FORM H

Warrant committing to civil prison custody of a person sentenced to death. (Army Rule 169)

To

The Superintendent of the (a).....Prison.

Whereas a (b)..... court-martial held at ..... on the..... day of..... 20.....

(Number, Rank, Name) of the.....Regiment was convicted of (offence to be briefly stated);

And whereas the said (b)..... court-martial on the.....day of ..... passed sentence of death on the said

(Name).....

This is to require and authorise you to receive and hold said (Name)..... into your custody in the said prison as by law is required together with this warrant, until such time as a further warrant in respect of the said (Name) shall be issued to you,

Given under my hand at ..... this the.....day of..... 20.....

Signature (c)

(a) Enter name of civil person.

(b) General or summary general.

(c) Signature of commanding officer of person.

FORM I

Warrant to obtain person sentenced to death from civil prison custody in order to carry out such sentence [Army Rule 170A][1]

To

The Superintendent of the (a). ... . .Prison.

Whereas (Number, Rank. Name).....of the Regiment having been sentenced to suffer death on the day of..... 20..... by a (b)..... court-martial held at.....is held in the said prison under a warrant issued by (c).....

And whereas, the said sentence having been duly confirmed by (d) as by law required an order to carry out the said sentence has been issued to me (e)..... .....(Name and Rank).....

This is to require and authorise you to deliver forthwith the said (Name)..... to the officer/Junior commissioned officer/warrant officer/non-commissioned officer bringing this warrant.

Given under my hand at.....this.....day of..... 20.....

Signature (f)

(a) Enter name of civil prison,

(b) General or summary general.

(c) Enter name or designation of officer who signed original warrant

(d) Name and description of confirming authority.

(e) Name and designation of the officer to whom the order is issued.

(f) Signature of the officer by whom the order is issued.

[1] Substituted vide SRO 17(E) dated 6th December, 1993.

APPENDIX V—*Contd.*

FORM-1A

Warrant of Execution of Sentence of Death by Military Authorities
(Army Rules 170A and 170B)

PART I

To,

(a).....

Whereas (Number, Rank, Name)..... of the ..... (unit) having been sentenced to suffer death on the ..... day of ..... 20..... by it (b)..... court martial held at ..... (c), is held in the (d)....., is held in the prison under warrant issued by (e).....

AND Whereas, the said sentence having been confirmed by (f).....,a copy of the order of the confirming authority certifying the confirmation of the sentence being annexed hereto;

This is to authorise and require you to carry the said sentence into execution by causing the said..... TO BE HANGED BY THE NECK UNTIL HE BE DEAD AT (g)..... to be shot to death at (g)……and to return this warrant to (h)..... with an endorsement certifying that the sentence has been executed.

Dated, this..... day of..... 20.....

Signature (i).....

PART II

Return of Warrant

The above sentence passed on (number)..... (rank)..... (name)..... was carried into effect at (g)..... hours on the ..... day of.....20.....

Signature (j)

PART III

Certificate of Medical Officer

I……(Number, rank, name), hereby certify that I have …… examined the body of (Number) …… rank …….. (name) ……upon whom the sentence of death was carried into effect, this day, at (g)……and that on such examination I found……..the said person was dead.

Signed at (place)……this the……(day of) …..…….. 20……

Signature (j)……

Rank, and Unit
Commissioned Medical Officer of the
Armed Forces of India

(a) Enter the rank, name and designation of provost marshal or other officer responsible for carrying the sentence of death into effect.

(b) Insert "General" or "Summary General"

(c) Enter the place of trial.

(d) Enter the name of the prison.

(e) Enter name and designation of officer who signed the original Warrant.

(f) Name and description of confirming authority.

(g) Time, date and place of execution.

(h) The officer commanding the Army, Army Corps or Division or an Officer Commanding Forces in the field, who has issued the warrant.

(i) Signature of the officer by whom the warrant is issued.

(j) Signature of the officer executing the sentence.

APPENDIX V—*Contd.*

FORM-1B

WARRANT OF EXECUTION OF SENTENCE OF DEATH IN CIVIL PRISON

(Army Rules 170A and 170B)

PART I

To,

The superindent of the (a)……Prison whereas (Number, Rank, Name)……..……of the ……(Unit) ……..... having been sentenced to suffer death on the ……day of.……20……by a .....

(b) court martial held at……..(c), has been by a warrant issued by (d)…… committed to your custody.

AND Whereas, the said sentence having been confirmed by (e)..... a copy of the order of the confirming authority certifying the confirmation of the sentence being annexed hereto; This is to authorize and require you to carry the said sentence into execution by causing the said……..TO BE HANGED BY THE NECK UNTIL HE BE DEAD AT (f)……and to return this warrant to (g)..... with an endorsement certifying that the sentence has been executed.

Dated, this……..day of……..20……

Signature (h) ……

PART II

Return of Warrant

The above sentence passed on (number)…… (rank)…….....(name)…….…….....……was carried into effect at (g)….....……...hours on the……..day of……..20……...

Signature (i) ……

(Superintendent of Prison)

(a) Enter name of civil prison

(b) Insert "General" or "Summary General"

(c) Enter the place of trial

(d) Enter name and designation of officer who signed the original warrant.

(e) Name and description of confirming authority.

(f) Time, date and place of execution

(g) The officer commanding the Army, Army Corps or Division or an officer commanding forces in the field, who has issued the warrant.

(h) Signature of the officer by whom the order is issued.

FORM J

Warrant for use when the sentence of a person under sentence of death and committed to custody in a civil prison is commuted to a sentence of imprisonment for life
(Army Rule 171*)*

To

The Superintendent of the (a).....Prison.

Whereas.....(Number, Rank and Name) of the..... Regiment, is held in the (a)..... prison under a warrant issued by (b).....in pursuance of a sentence of death passed upon him by (c).....court-martial held at..... on.....and whereas (d).....has in exercise of the powers conferred upon him by the Army Act, passed the following order regarding the aforesaid sentence that is to say : (e).....
.....

This is to require and authorise you to keep the said (name).....in your custody together with this warrant in the said prison as by law is required until he shall be delivered over by you with the said warrant to the proper authority and custody for the purpose of his undergoing the punishment of imprisonment for life, under the said order. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such imprisonment for life will reckon from the (f).....

Given under my hand at.....this the.....day of 20.....

Signature (g)

(a) Enter name of civil prison.

(b) Enter name or designation of officer who signed original warrant.

(c) General or summary general.

(d) Name and designation of authority commuting the sentence.

(e) Order to be set out in full.

(f) Enter date on which original sentence was signed.

(g) Signature of commanding officer.

APPENDIX V—*Contd.*

FORM K

Warrant for use when the sentence of a person under sentence of death and committed to custody in a civil prison is commuted to a sentence of imprisonment to be served in the same prison.
(Army Rule 171)

To

The Superintendent the (a).....Prison.

Whereas.....(Number, Rank and Name) of the..... Regiment, is held in the (a)..... prison under a warrant issued by (b)..... in pursuance of a sentence of death passed upon him by a (c).....court-martial held at..... on.....and whereas (d)..... has in the exercise of the powers conferred upon him by the Army Act, passed the following order regarding the aforesaid sentence, that is to say:— (e) ……
.....

This is to require and authorise you to keep the said (name).....in your custody together with this warrant, and there to carry into execution the punishment of imprisonment under the said order according to law. And this is further to require and authorise you to return to me the original warrant of commitment in lieu whereof this warrant is issued. The period of such imprisonment will reckon from the (f).....

Given under my hand at..... this the.....day of.....20.....

Signature (g)

(a) Enter name of civil prison.

(b) Enter name or designation of officer who signed original warrant.

(c) General or summary general.

(d) Name and designation of authority commuting the sentence

(e) Order to be set out in full.

(f) Enter date on which original proceedings were signed.

(g) Signature of commanding officer.

FORM L

Warrant for use when a person who, after having been sentenced to death, has been committed to custody in a civil prison is to be delivered into military custody for a purpose other than carrying out the sentence of death
(Army Rule 171)

To

The Superintendent of the (a).....Prison.

Whereas.....(Number, Rank and Name) of the Regiment is held in the (a).....prison under a warrant issued by (b)..... in pursuance of a sentence of death passed upon him by a (c).....court-martial held at..... on .....and whereas (d)..... has in the exercise of the powers conferred upon him by the Army Act passed the following order regarding the aforesaid sentence: that is to say:— (e)……
.....

APPENDIX V—*Contd.*

This is to require and authorise you to forthwith deliver the said (Name)..... to the officer, junior commissioned officer, warrant officer or non-commissioned officer bringing this warrant.

Given under my hand at.....this the..... day of .....20.....

Signature (f)

(a) Enter name of civi1 prison.

(b) Enter name or designation of officer who signed original warrant.

(c) General or summary general.

(d) Name and designation of authority issuing order.

(e) Order to be set out in full.

(f) Signature of commanding officer.

GENERAL INDEX

MGIPRRND—2188 Army/06—10,000.