The Army Rules 1954

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The Army Rules, 1954

In exercise of the powers conferred by section 191 of the Army Act 1950 (46 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: —

CHAPTER I

PRELIMINARY

1. Short title. — These rules may be called the Army Rules, 1954.

2. Definitions. —In these rules, unless the context otherwise requires,—

(a) "The Act" means the Army Act, 1950 (46 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;

(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;

(d-iii) "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 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 capacity on prisoners of war rates of pay shall be included;

(e) "Section" means a section of the Act;

(f) All words and expressions used in these rules and not defined, but defined in the 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 duly complied with in all cases to which they relate, but any omission to comply with any such directions in the notes of 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 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 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.

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.

9. Oath or affirmation to be taken on attestation.—

(1) 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 name of God that I will 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 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.

(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 commanding the station.

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.

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.

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.

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 Officer" means the Director Remounts, Veterinary and Farms.

13A. 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 or the Military Secretary shall call upon the officer to show cause why he should not be compulsorily retired or removed from the service.

(2) In the event of the explanation being considered by the Chief of the Army Staff or the Military Secretary 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 or the Military Secretary 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 explanation, if any, of the officer and the recommendation of the Chief of the Army Staff 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 is sub-rule (2) against such action—

Provided that this sub-rule shall not apply—

(a) Where the service is terminated on the ground of misconduct 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 judgment 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.

15. Termination of service by the Central Government on grounds other than misconduct. —

(1) When the Chief of the Army Staff is satisfied 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 service:

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 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 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.

15A. 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 released 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.

(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. The Central Government may, after considering the petition and the recommendation of the Chief of the Army Staff or the Adjutant General pass such order as it deems fit.

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.

16A. Retirement of officers. —

(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-rule 5 (f) (ii) and (g) (ii) and sub-rule (6), whichever is earlier.

(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 Officers 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 require.

(5) The following shall be the age of retirement for Officers: —

(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 years

General — 60 years

(b) Of Army Service Corps (excluding Food Inspection Organisation), Army Ordnance Corps, Electrical and Mechanical 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 Officers (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 Organization Selection Board 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 — 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 Inspection Selection Board 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 Corps. 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 the 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 sancti

16B. Retirement of an officer at his own request. —

(1) The retirement of an officer at his own request before he becomes liable to 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.

16C. Registration 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 saide 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.

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.

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 cognizance 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.

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 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.

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.

CHAPTER V

INVESTIGATION OF CHARGES AND TRIAL BY COURT-MARTIAL

INVESTIGATION OF CHARGES AND REMAND FOR TRIAL

Power of Commanding Officers

22. Hearing of Charge. —

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

Provided that where the charge against the accused arises as a result of investigation by a Court of inquiry, wherein the provisions of rule 180 have been employed 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 to be proceeded with:

Provided that the commanding officer shall not dismiss a charge, which he is debarred, to try under sub-section (2) of Sec. 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.

23. Procedure for taking down the summary of evidence.—

(1) Where the case is adjourned for the purpose of having the evidence reduced to waiting, 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 to him, but he will not be cross-examined upon it. The accused may then call his witnesses, 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 of 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.

24. Remand of accused. —

(1) 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 when such reference is necessary) or apply to the proper military authority to convene a court-martial, as the case may require.

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 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.

(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 with the accused. The accused shall have full liberty to cross-examine any witness against him, and to call any witness and make a statement in his defence.

(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 *** 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.

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 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 this rule at intervals of every eight days until a court-martial is ordered to assemble, 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 specified 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.

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.

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.

30. Contents of charge. —

(1) 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 facts 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.

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.

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.

Preparation for defence by accused person

33. Right of accused to prepare defence.—

(1) 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 given to him free of charge a copy of the summary of evidence, an abstract of the evidence, 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.

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 or 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.

(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.

35. Joint trial of several accused persons. —

(1) 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.

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, 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.

GENERAL AND DISTRICT COURTS-MARTIAL

Convening of Court

37. Convening of General and District Court-martial. —

(1) 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 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 of 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.

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-martial or district court-martial.

40. Composition of General Court-martial. —

(1) 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 court-martial for the trial of a field officer.

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.

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.

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.

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 names 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 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.

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 ing 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 of 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".

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 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 swear 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."

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 or 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."

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.

Prosecution, Defence and Summing-up

48. Arraignment of accused. —

(1) 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.

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.

50. Amendment of charge. —

(1) 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, omission 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.

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.

52. General plea of “Guilty” or “Not Guilty”. —

(1) If no special plea to 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 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 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 effect of his plea of “Guilty”, accepts and records the same. The provisions of rule 52 (2) are thus complied with.

(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.

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—

(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;

(c) The period of limitation for trial as laid down in section 122 has expired.

(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 to 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 has 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.

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.

(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 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 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 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 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-rules (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.

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.

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.

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 overrules 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.

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 of 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 ease 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 answer 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 of 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.

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.

60. Summing up by the judge-advocate. —

(1) 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.

Finding and Sentence

61. Consideration of findings. —

(1) The court shall deliberate on its finding in closed court in the presence of the judge-advocate.

(2) The opinion of each member of the court as to the finding shall be given by word of mouth on each charge separately.

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 of “Not Guilty”. After recording the finding on each charge, the court shall give brief reasons in support thereof. The judge advocate or, if these 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.

(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 this 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.

(5) The special finding may find the accused guilty on a charge subject to the statement or 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.

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.

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 section 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 therewith, 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.

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.

66. Recommendation of 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.

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.

Confirmation and Revision

68. Revision. —

(1) Where the finding is sent back for revision under section 160 the court shall reassemble 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.

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.

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.

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.

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 according 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 any one or such charges 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 according as it seems just, having regard to the offences in the charges which with 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.

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 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.

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 or sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of court-martial.

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.

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.

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 any one 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 until 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 of 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 or 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.

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.

80A. 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 held.

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 considers 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.

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.

(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.

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.

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 facts of the death or illness by evidence, and record the same and adjourn, and transmit the proceedings to the convening authority.

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 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.

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.

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.

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.

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 members.

(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 completed.

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 affirm to act as interpreter.

(2) An impartial person may at any time of the trial, if the court thinks it desirable, be sworn or affirm 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.

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.

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, all transactions of that court, and shall be responsible for the accuracy of the record (in these rule 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 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 when 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 of 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 of the trial, but if any such comment or 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.

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.

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.

96. Counsel allowed in general and district courts-martial—In every general and district courts-martial, counsel shall be allowed to appear on behalf of the prosecutor as well as the accused:

Provided the 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.

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.

(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.

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.

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 to sub-rule (3) of rule 77 in the case of the accused.

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.

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 practise 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.

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.

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.

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 relative 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 of 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 findings.

(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.

Summary Court-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, 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.

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 appoints 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 discretion of the court to cause as much to be interpreted as appears necessary.

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.

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 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

"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,.....,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.

110. Swearing of court to try several accused persons.—

(1) 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 any one or more such accused persons until the trials of all such accused persons have been completed.

111. Arraignment of accused.—

(1) After the course 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.

112. Objection by accused to charge. —The accused when required to plead to any charge, may object of the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules.

113. Amendment of charge. —

(1) 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.

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.

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 intelligible 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.

(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. Thr 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.

(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.

116. 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 of these 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 shall 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, effect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

(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 of 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.

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 purpsoe of enabling him to explain any circumstances 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; but ***. No oath shall be administered to the accused.

The accused may then call his witnesses, including also witnesses to character.

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.

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.

121. Form and record of finding. —

(1) The finding on every charge upon which the accused is arranged 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.

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. —

(1) 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.

124. Sentence. —The court shall award one sentence in respect of all the offences of which the accused is found guilty.

125. Signing of proceedings. — The court shall date and sign the sentence and such signature shall authenticate the whole of the proceedings.

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 court-martial when trying charges contained in different charge-sheets shall, so far as may be applicable, be followed.

127. Clearing of court. —

(1) 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.

128. Adjournment. — A summary court-martial may adjourn from time to time and from place to place, and may, when necessary, view any place.

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 advisor 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.

131. Promulgation. — The sentence of a summary court-martial shall (except as provided in rule 132) be promulgated in manner usual in the service, at the earliest opportunity after it has been pronounced and shall be carried out without delay after promulgation.

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.

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.

GENERAL PROVISIONS

Witnesses and Evidence

134. Calling of all prosecutor's witnesses. — The prosecutor or, in the cases 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 *** of evidence of 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.

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 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 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.

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 and for whose attendance the accused has not requested steps to be taken as provided by sub-rule (1) of rule 3.

137. Procuring attendance of witnesses. —

(1) In the case of trial 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.

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.

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.

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.

Forms 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."

141. Mode of questioning witness. —

(1) 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 the 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.

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 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.

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 of entries in the defaulters 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.

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.

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 coanfirming officer or to the authority empowered to deal with the finding under section 162, as the case may be.

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.

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 whatsover 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.

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 of 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 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 he 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.

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 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.

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(2 of 1974).

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 circumstance 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 commission, 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 as 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.

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.

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.

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.

159. Defence. —

(1) 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.

(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 circumstances 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.

160. Record of the evidence and defence. —

(1) 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 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 *** of evidence so read.

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.

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.

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.

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), 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 in sufficient 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), 80A (courts-martial to the public), 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 for prosecution), 99 (counsel for accused), 100 (general rules as to counsel), 101 (qualification of counsel), 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.

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.

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.

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.

168. Sentence of cashiering or dismissal. —

(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, the dismissal shall not take effect until the date on which the prisoner is released from a military prison or from military-custody.

(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.

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.

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, where the confirming authority is the Chief of the Army Staff or the Central Government, through the Adjutant-General at the Army Headquarters and in any other case, through the confirming officer.

(4) 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 considerating the petition, orders that the sentence of death may be carried into effect.

170A. Death warrants. —

(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 provisions 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 until 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, shall be 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 the execution of the sentence.

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 a 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 forced of the Union;

(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 170-A 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.

171. Procedure or 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.

CHAPTER VI

COURTS OF INQUIRY

177. Courts of Inquiry. —

(1) A court of inquiry is an assembly of officers or of officers and junior commissioned officers or 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 any number of officers of any rank, or of one or more officers together with one or more junior commissioned officers or warrant officers or non-commissioned officers. The members of court may belong to any branch or department 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.

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 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.

(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.

(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.

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.

181. Evidences 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 that 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.

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 think sufficient to prove the absence and other facts specified as matters of inquiry in that section.

(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 of 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 or 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.

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.

Losses or Thefts of Arms

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 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 officer, 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.

Rs. A. P.

Gun Machine Bren 303 in. .. 1,200 0 0

Block Breech ... 82 0 0

Barrel .. 100 0 0

Magazine 15 8 0

Gun Machine Vickers 303 in. 2,880 0 0

Block Breech 490 0 0

Barrel 93 0 0

Gun Machine Cal. 30 Browning 3,600 0 0

Block Breech 660 0 0

Barrel 120 0 0

Gun Machine Cal. 50 Browning 4,800 0 0

Block Breech 600 0 0

Barrel .. 180 0 0

Gun Machine Besa 7.2 mm. .. 1,150 0 0

Block Breech .. 110 0 0

Barrel .. 440 0 0

Gun Machine Sen 9mm. .. 95 0 0

Block Breech .. 16 12 0

Barrel .. 15 8 0

Discharge Grenade .. 42 0 0

Projector Grenade .. 15 0 0 Pistol .. 130 0 0

Rifle .. 170 0 0

Rs. A. P.

Bolt .. 25 0 0

Bayonet .. 12 0 0

Ordnance ML 2-in Mortar .. 580 0 0

Barrel .. 300 0 0

Ordnance ML 3-in Mortar .. 860 0 0

Barrel .. 480 0 0

Base Plate .. 110 0 0

Launcher Rocket Anti-tank .. 600 0 0

Barrel .. 480 0 0

Base Plate .. 110 0 0

Launcher Rocket Anti-tank .. 600 0 0

Barrel .. 480 0 0

Grenades .. 18 0 0

(2) Such fine will be assessed as a percentage on the pay of the individuals on whom it falls.

CHAPTER VII

PRESCRIBED OFFICERS, AUTHORITIES AND OTHER MATTERS

187. 'Corps' prescribed under section 3 (vi). —

(1) 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 of these rules, except rule 13, 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 and Farms Corps.

(j) The Army Medical Corps.

(k) The Army Dental Corps.

(l) The Army Ordnance Corps.

(m) The Corps of Electrical and 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.

(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.

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 or 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 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 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.

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 1.

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 do 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.

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.

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 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.

197A. 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 officer 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 person 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 (8) 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 therefor 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 being 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.

APPENDICES TO THE ARMY RULES

(Not reproduced)

Appendix I. -Enrolment Forms.

Appendix II. Form of Charges.

Appendix III.

Part I. — Forms as to courts-martial.

Part II. — Forms as to summary disposal of charges against non-commissioned officers and other ranks.

Part III. — Forms of summons to witnesses.

Part IV. — Form of delay report.

Appendix IV.

Part I. — Form as to summary disposal of charges against officers, junior commissioned officers and warrant officers.

Part II. — Forms of warrants of commitment to prison in cases of sentences of transportation or imprisonment

Appendix V.

Forms of warrants to commitment to prison in cases of sentence of death.