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MANUAL OF AIR FORCE LAW

VOLUME II



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MANUAL OF AIR FORCE LAW

VOLUME II

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FOREWORD

1. This manual has been brought out to meet the requirement of an authoritative commentary on the provisions of the Air Force Law. Primarily the Air Force Act, 1950 and Air Force Rules, 1969 encompass the provisions of Air Force Law. Volume I of this Manual contains detailed commentaries underneath each section of Air Force Act, 1950. Volume II consists of such commentaries on the provisions of Air Force Rules, 1969. Several relevant appendices including extracts from the Constitution are also incorporated therein.

2. The authoring of such a book was a challenging task because it involved considerable research and written work. By covering such a vast field this publication should become a comprehensive source book on matters of air force law. This Manual contains information which would be of great legal and administrative value as its contents are quite comprehensive, upto date and

lucid. I have no doubt that this would be a really useful volume and would go a long way to effect improvements in the administration of justice in the Air Force.

December 1988

**(PK Jain)
Air Marshal
Air Officer-in-
charge
Administration**

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The Department of Judge Advocate General (Air), Air Headquarters acknowledges with thanks the valuable contribution of Gp Capt NAK Sarma (5629) Adm in bringing out this Manual

December 1988

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Air Cmde
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LIST OF ABBREVIATIONS

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

'A'

AA	Army Act, 1950
AC	Aircraftsman
Actg	Acting
Admin	Administration
AF	Air Force
AFA	Air Force Act, 1950
AFAR	Air Force Act Rules, 1932
AFCAO	Air Force Central Accounts Office
AFI	Air Force Instruction
AFIC	Armed Forces Identity Card
AFO	Air Force Order
AFR	Air Force Rules, 1969
AMG	Army Medical Corps.
A&N Islands	Andaman & Nicobar Island
Annex	Annexure
AOA	Air Officer-in-Charge Administration
AOC	Air Officer Commanding
AOC-in- C	Air Officer Commanding-in- Chief

AOF	Air Officer-in-Charge Personnel
APM	Assistant Provost Marshal
Appx	Appendix
AR	Army Rules, 1954
Art	Article
Arts	Articles
AWL	Absent Without Leave

[Back](#)

‘B’

‘C’

CAC	Central Air Command
Capt	Captain
CAS	Chief of Air Staff
CC	Confinement to Camp
CDJA	Command Deputy Judge Advocate
Chap	Chapter
C J A	Command Judge Advocate
Cl	Clause
Cls	Clauses
CM	Court Martial
CO	Commanding Officer
COAS	Chief of Army Staff
COs	Commanding Officers
CPC	Civil Procedure Code, 1908

Cpl	Corporal
Cr PC 1898	Criminal Procedure Code, 1898
Cr PC 1973	Criminal Procedure Code, 1973

Back

‘D’

DCM	District Court Martial
DJAG	Deputy Judge Advocate General (Air)

Back

‘E’

EAC	Eastern Air Command
eg	example
etc	etcetera
et seq	at sequens (and that which follows)
Ext	Extraordinary

Back

‘F’

Fg Offr	Flying Officer
Flt Lt	Flight Lieutenant

‘G’

GCM	General Court Martial
GOI	Government of India
Govt	Government

Back

‘H’

HC	High Court
----	------------

HP Himachal Pradesh

HQ Headquarters

I

i/c In charge

ie that is

Back

J

JA Judge Advocate

JAG Judge Advocate General
(Air) (Air)

J & K Jammu & Kashmir

K

L

LAC Leading Aircraftsman

Lt Col Lieutenant Colonel

Ltd Limited

Back

M

Maj Major

MCO Movement Control Office

MOD Ministry of Defence

MT Mechanical Transport

N

NA Navy Act, 1957

NCO Non Commissioned Officer

NC(E) Non Combatant (Enrolled)

Nk Naik
No Number

Back

‘O’

‘P’

P Page
P&A Pay and Allowances
P&A Pay and Allowances
Regs Regulations
Pt Part
PT Physical Training
PSI President Service Institute

Back

‘Q’

R

S

‘T’

‘U’

UP Uttar Pradesh

‘V’

V Versus

‘W’

WAC Western Air Command
w.e.f. With effect from
WO Warrant Officer

WOs

Warrant Officers

Back

'X'

'Y'

'Z'

For Official Use Only

CHAPTER I



PRELIMINARY

THE AIR FORCE RULES, 1969

(Published Vide SRO 310/69, corrected vide SRO 358/70)

CHAPTER I - Preliminary

1. **Short title** - (1) These rules may be called the Air Force Rules, 1969.
- (2) They shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

NOTES

1.1 The Air Force Rules, 1969 were published vide SRO 310/69 dated 24 Sep 69. See Gazette of India, 1969 part II, S.4, dated 01 Nov 69. They were corrected vide SRO 358/70.

1.2 These rules came into force on 01 Jun 72 vide SRO 9 (E) dated 23 May, 72.

1.3 The AFR were amended by

- (a) SRO 83/71
- (b) SRO 24E/74
- (c) SRO 186/72
- (d) SRO 68/86
- (e) SRO 5E/90
- (f) SRO 127/95
- (g) SRO 47/97

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

- (a) "The ACT" means the Air Force Act, 1950;
- (b) "Form" means a Form set forth in the Schedule;
- (c) "Minor punishment" means punishment inflicted without the intervention of a court—martial under section 82 or section 86;
- (d) "Proper air force authority" when used in relation to any power, duty, act or matter means such air force authority as, in pursuance of the Act or these rules or the regulations for the air force or the usages of the service, exercises or performs that power or duty or is concerned with that act or matter;
- (e) "Schedule" means a Schedule appended to these rules;
- (f) "Section" means a section of the Act.

NOTES

1. The following general principles govern interpretation of the definition in these rules:—

- (a) The definitions do not take away the ordinary and natural meaning of the word or phrase.
- (b) The definition will determine the application of the word or phrase defined, but the definition itself must first be interpreted before it is applied.
- (c) When the definition of a word gives it an extended meaning, the word is not to be interpreted by its extended meaning every time it is read, for the meaning ultimately depends on the context.
- (d) Definitions are to be applied only when there is nothing repugnant in the context or subject; and this is particularly so when such a qualification as 'unless the context otherwise requires' is expressly stated in the Rules (see opening words of R.2 AFR).

(e) The word 'means' has been used as the interpretation clause in all the clauses under the rule. The word 'means' affords an exhaustive explanation of the meaning which, for the purposes of the Rules, must inevitably be attached to those words or expressions.

2. **Clause (a)**— See S.1 AFA and Notes thereto.

3.1 **Clause (b)**—See R.4 AFR and Notes thereto.

3.2 Schedule means a Schedule appended to AFR.

3.3 There are seven Schedules to AFR and together contain 30 forms.

4. **Clause (c)** — 'court—martial', see S.A (xvi) AFA for definition

5. **Clause (d)**—See also R.5 AFR

6. Words and expressions used in the AFA, if found in the AFR, should be understood in the same sense they would be understood in AFA, except when the context requires otherwise.

3. Reports and applications Any report or application directed by these rules to be made to a superior authority, or proper air force authority, shall be made in writing through the proper channel, unless the authority on account of exigencies of the service of otherwise, dispenses with the writing.

NOTES

1. For definition of 'proper air force authority', see R. 2(d) AFR.

4. Forms set forth in the schedules: (1) The forms with such variations as the circumstances of each case 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 any charge, warrant, order, proceedings or other document invalid.

(2) An omission of any such form shall not, by reason only of such omission, render any act or thing invalid.

(3) The note to, and instructions in, the forms shall be considered as instructions which it is expedient to follow in all cases to which such notices and instructions apply, but shall not have the force of the rules.

NOTES

1.1 'forms', means the Forms set forth in the Schedules to AFR.

(a) First Schedule Forms as to enrolment, attestation etc. (A1 to A5).

(b) Second Schedule - Delay Report Form

(c) Third Schedule - Forms of Summons (C1-C2)

(d) Fourth Schedule -Forms for Summary Disposal of Charges under S.86 AFA (D1-D2)

(e) Fifth Schedule - Charge Sheet

(f) Sixth Schedule - Forms as to Courts-Martial (F1 to F3)

(g) Seventh Schedule - Forms of Warrants (G1 to G14)

5. Exercise of power vested in holder of air force appointment - Any power or jurisdiction conferred on, and any act or thing to be done by, to or before any person holding any air force appointment may be exercised by, or done by, to or before any other person for the time being authorised in that behalf according to the usages of the service.

6. Cases unprovided for - In any case not provided for by these rules such course shall be adopted as appears best calculated to do justice.

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CHAPTER II



ENROLEMENT AND ATTESTATION

CHAPTER II

Enrolment and Attestation

7. Enrolling officers and form of enrolment

(1) The following officers shall be enrolling officers for the purposes of sections 13 and 14 namely —

- (a) all recruiting officers;
- (b) all assistant recruiting officers;
- (c) the Officer Commanding a unit of the Air Force.

(2) The Forms of enrolment set forth in the First Schedule are prescribed for the purposes of sections 13 and 14.

NOTES

1. 'commanding officer', 'unit' and 'Air Force', see S.4 (xv), (xxviii) and (iv) AFA for definitions.
2. For procedure and mode of enrolment, see Ss.13 and 14 AFA.
3. An enrolling officer may be designated as O i/c Airmen Selection Centre, etc. But documents in terms of Ss. 13 and 14 AFA should be signed by him in his capacity as Recruiting Officer or Assistant Recruiting Officer.
4. The enrolling officer must himself sign the enrolment form.
5. Sub-rule (2) substituted vide SRO 83 of 1971.

8. Persons to be attested - All combatants shall, when reported fit for the duties of their trade, be attested as provided in section 16.

NOTE

1. See S. 16 AFA and Notes thereto.

9. Oath or affirmation to be taken on attestation

(1) The oath or affirmation to be taken on attestation shall be in one of the following forms or in such other form to the same purport as the attesting officer ascertains to be in accordance with the religion of the person to be attested, or otherwise binding on his conscience.

Form of Oath

I do swear in the name of God

that I 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 Air Force of the Union of India and go wherever ordered by air, land or sea, 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 Air Force of the Union of India and go wherever ordered by air, land or sea, 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 oath or affirmation prescribed in this rule 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 to administer it in the manner described in section 17. If it is not so administered it may be administered by a magistrate, a recruiting officer or an assistant recruiting officer.

NOTES

1.1 The following is a translation into Hindi of the oath and affirmation

"Shapath Patra"

"Main Parmatma Ki Shapath lekar pratigya kartahun kih main qanun dwara nishchit kie hue Bharat ke Vidhan ka sachche man se wafadar rahunga, aur main apne kartavya ke anusar Bharat ki Regular Air Force (Vayu Sena) men imandari aur sachche man se sewa karunga, aur jahan kahil mujhe prithvi, samundar ya hawa Re raste bheja jaega, main khushi se jaunga. Main, Bharat ke Rashtrapati ki aur us officer ki jo mere upar niyukt kia jae, sab agyaon ko manunga aur unka palan karunga; chahe is men mujhe apna jivan bhi balidan karna pare".

"Pratigya Patra"

"Main drirh pratigya kartahun kih main qanun dwara nischit kie hue Bharate Ke Vidhan ka sachche man se wafadar rahunga, aur main apne kartavya ke anusar Bharat ki regular Air Force (Vayu Sena) men imandari aur sachche man se sewa karunga, aur jahan kahin mujhe prithivi. samundar ya hawa ke raste bheja jaega, main khushi se jaunga. Main Bharat ke Rashtrapati ki aur us officer ki jo mere upar niyukt kia jae, sab agyaon ko manunga aur unka palan karunga; chahe is men mujhe apna jivan bhi balidan karna pare".

1.2 In the case of Sikhs/Muslims/Parsis the oath will begin with the words "Main Sri Guru Granth Sahib/ Pak Khudai Taala/Zend Avesta", as applicable.

2.1 'commanding officer', see S.4 (xv) AFA for definition.

2.2 For definition of 'Oath', see S.51 IPC.

3.1 R.9(2) AFR prescribes the persons, in addition to the commanding officer, who can attest enrolled persons.

4. See also Ss.16 and 17 AFA and Notes thereto.

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CHAPTER III



DISMISSALS, DISCHARGES ETC.

CHAPTER III

Dismissal, Discharges, etc.

10. Discharge not to be delayed. - 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 a person shall not be so entitled to be discharged during the period during which the Central Government, by a notification in this behalf, suspends the entitlement to discharge in respect either of all the persons enrolled under the Act, or of any class of such persons to which he belongs.

NOTES

1. For the prescribed authorities competent to authorise discharge, see R.15 AFR and Table annexed thereto.

2.1 The discharge of a person who is under the conditions of his enrolment entitled to be discharged must be authorised by the competent authority and completed with all convenient speed by the proper authorities. See Rr. 12 and 15 AFR. Until the person's discharge is completed, he remains subject to AFA but any undue delay in carrying out the discharge would give him good ground for complaint.

2.2 See proviso to rule for manner in which entitlement to discharge may be suspended.

2.3 See R. 12 AFR for date from which discharge takes effect.

3. As regards discharge on compassionate grounds, see para 352 Regs.

4. Rule substituted vide SRO 83 of 1971.

11. Discharge certificate — A certificate furnished in accordance with the provisions of section 23 hereinafter called a "discharge certificate", may be so furnished either by personal delivery thereof by or on behalf of the commanding officer to the person dismissed, removed, discharged, retired or released or by its transmission by registered post to such person.

NOTES

1. See S. 23 and Notes thereto.
2. The proper form to use is IAFF (P) 53, but a certificate which complies with S.23 AFA would be legally sufficient. See also para 353 Regs.
3. An officer, not being an enrolled person, is not furnished with a discharge certificate.
4. Only two modes of delivery are contemplated, namely, by personal delivery or transmission by registered post.

12. Date from which retirement, discharge, release, removal or dismissal otherwise than by sentence of a court—martial takes effect (1) The dismissal of a person subject to the Act, whose dismissal otherwise than by sentence of court—martial is duly authorised, or the retirement, discharge, release or removal of a person so subject, whose retirement, discharge, release or removal as the case may be, is duly authorised, shall be carried out by the commanding officer of such person with all convenient speed. The competent authority may, when authorising the dismissal, retirement, discharge, release or removal, specify any future date from which it shall take effect:

Provided that if no such date is specified, it shall take effect from the date on which it was duly authorised, or from the date on which the dismissed, retired, discharged, released or removed person ceases to do air force duty, whichever is later.

(2) The retirement, removal, release, discharge or dismissal of a person subject to the Act shall not be retrospective.

NOTES

1. This rule does not govern cases where the dismissal is by sentence of court-martial. As to date of effect of sentence of cashiering or dismissal, see R.146 AFR.

2.1 In the case of a person serving in India with his unit it will generally be convenient for the authority authorising the dismissal or discharge not to specify any date but permit the CO to relieve the person of air force duty on the most convenient date. In other cases, it may sometimes be more convenient for the authority to specify the date.

2.2 The competent authority cannot make the dismissal or discharge retrospective. If he desires to specify a date, he must specify it at the time he authorises the dismissal or discharge. There is no legal objection to the 'future date' being specified in suitable cases in words such as "date of disembarkation", but wherever possible a precise date should be specified. For dismissal or discharge when out of India, see S.24 AFA.

2.3 If the Central Govt. decides to remit the sentence of dismissal awarded by a court martial to that of discharge, then the person concerned will be deemed to stand discharged from the service wef the date the orders for his discharge were passed by the Rasksha Mantri. In such a situation, a certificate should first be obtained from the airman to the effect that he will not claim the pay and allowances etc. for the period between his dismissal and discharge, unless it is decided to grant the pay and allowances etc., for the intervening period.

3.1 If the dismissal or discharge of a person is found to be illegal, e.g. if it was not authorised by a competent authority, such person will be entitled to pay from the date of his illegal discharge although he performed no air force duty.

3.2 A valid discharge ought not be cancelled without the consent of the discharged

person. See N.6.2 to S.22 AFA.

4. For definition of 'court martial' and 'commanding officer', see S.4 (xvi) and (xv) AFA.

12. This rule applies to SGCM. See R. 142 AFR.

13. Release — A person subject to the Act may be released from the air force in accordance with these rules, or in accordance with any orders or instructions made in that behalf by or under the authority of the Central Government.

14. Retirement - Subject to the other provisions of these rules, a person subject to the Act may be retired in accordance with the terms and conditions of his service by or under the authority of the Central Government.

15. Authorities empowered to authorise discharge

(1) Each of the authorities specified in column 3 of the Table below shall be the authority competent in respect of persons subject to the Act specified in column 1 thereof for the causes specified in column 2 and in the manner specified in column 4, to discharge such persons from the service.

(2) Any power conferred by this rule on any of the aforesaid authorities may also be exercised by any other authority superior to it.

TABLE

Class	Cause of discharge	Competent authority To authorize discharge	Special instructions
Persons enrolled under the Act who have been attested	(a) At his own request on transfer to the pension establishment	Commanding Commandin Officer	To be carried out in accordance with the conditions for enrolment.
	(b) On fulfilling the conditions of his enrolment	Commanding Officer	To be carried out in accordance with the conditions for enrolment
	(c) Having been found medically unfit for further service	Commanding Officer	To be carried out only on the recommendations of an invaliding Board.
	(d) On transfer to the pension establishment or on discharge with gratuity otherwise than at his own request of under item (c)	Air Officer i/c Personnel	
	(e) Having been found inefficient in his rank or trade and being unwilling to	Air Officer i/c Personnel	An airman reported as inefficient will as far as vacancies allow be permitted

	accept reduction or remustering		to remuster and or accept reduction in any rank and trade for which he is reported as suitable. If no such vacancy exists or if he declines to accept such remustering or reduction he will be discharged under t his item.
	(f) At his own request before fulfilling the conditions of his enrolment	Director of personnel (Airmen)	
	(g) His services no longer required : (i) Due to reduction in establishment or to reorganization (ii) Unsuitable for retention in the Air Force	Director of personnel (Airmen Air Officer i/c Personnel	
	(h) All other classes of discharge	Do	
Persons enrolled under the Acts who have not been attested	(i) At his own request before fulfilling the conditions of his enrolment	(i) Air or other Officer i/c of Command. (ii) Director of Personnel (Airmen) In case of units directly under Air Headquarters	The competent authority mentioned in the proceeding column will exercise this power only when he is satisfied as to the bonafidess of the application and that the total strength of the Air Force will not thereby be unduly reduced.

	(j) Unlikely to make an efficient airman	Commanding Officer	Applicable to airmen under going training for airmen.
	(k) All other classes of discharge	Commanding officer	

1. For definition of 'commanding officer', see S.4 (xv) AFA.

2. See R.12 AFR for date from which the discharge takes effect. In no case discharge can be made effective retrospectively.

3.1 When compulsory discharge of an airman is sought on grounds of misconduct, the authority competent to sanction the same should satisfy itself that trial by court-martial of such a person is inexpedient or impracticable and that further retention in service of the individual is undesirable.

3.2 As regards discharge on compassionate grounds, see para 352 Regs.

4. Though there exists no specific provision in AFA or AFR for cancellation of a discharge duly authorised earlier, it could be cancelled with the consent of the person. This could be either without any conditions or subject to such conditions as the discharged person accepts.

5.1 Discharge simplicitor carries no stigma. In such cases there can be no question of imposing the requirement of issue of show cause notice.

5.2 In cases of discharge under clause (g) (ii), (h), (j) and (k) of Table below this Rule, it would be advisable to give the affected person an opportunity to show cause against the proposed order of discharge.

6.1 Discharge under clause (g) (ii) of Table below R.15 AFR is not discharge simplicitor but discharge with stigma. In such cases the accepted judicial view is that issue of show cause notice to the affected person is necessary.

6.2 Discharge under clause (g) (ii) of table below R.15 AFR, or a habitual offender does not constitute double jeopardy. An airman may be guilty of numerous minor breaches of discipline each of which may not merit his dismissal or removal or discharge. But the cumulative effect of all such entries may make him unsuitable for retention in the Air Force.

6.3 In **UOI V. Cpl AK Bakshi**, the Supreme Court held that 'Discharge from Service under Rule 15 (2) (g) (ii) in accordance with the procedure laid down in the Habitual Offender Policy does not amount to removal by way of punishment under Rule 18.

6.4 Where a show cause notice has been issued to an airman for his dismissal/removal under S.20(3) AFA, it will be in order to discharge him under clause (g) (ii) of Table below

R.15 AFR after considering the explanation given by him.

6.5 If an airman is discharged under clause (g) (ii) of Table below this rule, his right to gratuity is not automatically forfeited. If however, it is desired that his gratuity should be forfeited then a show cause notice to this effect is required to be served on the airman.

7. An airman who has not been attested can be discharged by his CO under clause (k) of Table below this rule, for giving false answers to questions enumerated in the enrolment form. But see Note 5.2 above.

8. In all cases the discharge certificate must specify the particular cause of discharge.

9. In Table below this rule, the expression AOP substituted for AOA wherever it occurs vide SRO 186 dt. 2nd July, 1982.

16. Dismissal or removal of officers for misconduct

(1) An officer may be dismissed or removed from service for misconduct by the Central Government, but before doing so and subject to the provisions of sub-rule (2) he shall be given an opportunity to show cause against such action.

(2) Where the dismissal or removal of an officer is proposed on grounds of misconduct which has led to his conviction by a criminal court, or where the Central Government is satisfied that for reasons to be recorded in writing, it is not expedient or reasonably practicable to do so, it shall not be necessary to give an opportunity to the officer of showing cause against his dismissal or removal.

(3) Where an officer has been convicted by a criminal court and the Central Government, after examining the judgement of the criminal court in his case and considering the recommendation about him of the Chief of the Air Staff, is of opinion that further retention of such officer in the service is undesirable, that Government may dismiss or remove such officer from the service.

(4) In any case not falling under sub-rule (3), when the Chief of the Air Staff, after considering the reports on an officer's misconduct, is of opinion that the trial of the officer by a court—martial is inexpedient or impracticable but the further retention of the officer in the service is undesirable, he shall so inform the officer and subject to the provision of sub-rule (5) furnish to the officer all reports adverse to him calling upon him to submit in writing within a reasonable period to be specified his explanation in defence and any reasons which he may wish to put forward against his dismissal or removal.

(5) The Chief of the Air Staff may withhold from disclosure any report adverse to an officer or any portion thereof, if in his opinion its disclosure is not in the interests of the security of the State.

(6) If no explanation is received from the officer within the specified period or if the explanation received is considered to be not satisfactory or, when so directed by the Central Government, the reports against the officer as well as his explanation if any, shall be submitted to the Central Government by the Chief of the Air Staff together with his recommendation as to the dismissal or removal of the officer from the service.

(7) The Central Government may, after considering the reports against the officer and his defence, if any, and the recommendations of the Chief of the Air Staff, dismiss or remove the officer from service.

(8) In this rule and in rule 17 the Chief of the Air Staff while submitting a case to the Central Government may recommend that instead of removing an officer from service, he may be compulsorily retired or that he should be called upon to resign his commission, and the Central Government in passing orders may instead of removing an

officer from service, compulsorily retire him or give the officer an option to submit his resignation and if he refuses to do so, remove him from the service.

NOTES

1.1 See S.I9 AFA and Notes thereto.

1.2 'officer', 'court-martial', 'criminal court' and 'Chief of the Air Staff' - See S.4 (xxiii), (xvi), (xvii) and (xiv) AFA for definitions.

1.3 In **UOI V. Harjeet Singh Sandhu**, the Supreme Court held that "Misconduct" as a ground for terminating the service by way of dismissal or removal, is not to be found mentioned in Section 19 of the Army Act (corresponds to Section 19 AFA). It is to be read therein by virtue of Rule 14 (corresponds to Rule 16 AFR). Misconduct is not defined either in the Act or in the Rules. In the context in which the term "misconduct" has been used in Rule 14, it is to be given a wider meaning and any wrongful act or any act of delinquency which may or may not involve moral turpitude, would be "misconduct", and certainly so, if it is subversive of army discipline or high traditions of army and/ or if it renders the person unworthy of being retained in service. The language of sub-rule(2) of Rule 14 employing the expression "the reports on an officer's misconduct" uses "reports" in plural and misconduct in singular. Here plural would include singular and singular would include plural. A single report on an officer's misconduct may invite an action under Section 19 read with Rule 14 and there may be cases where there may be more reports than one on a singular misconduct or more misconducts than one in which case it will be the cumulative effect of such reports on misconduct or misconducts, which may lead to the formation of requisite satisfaction and opinion within the meaning of sub-rule (2) of Rule 14.

2.1 Action is to be initiated under this rule when the services of an officer are proposed to be terminated by the Central Government on grounds of misconduct. The CAS should be satisfied, before initiating action that the trial of the officer by court-martial is inexpedient or impracticable and that the further retention of the officer in the service is undesirable. It is essential that such satisfaction of the CAS is contained as an order in the files.

2.2 The show cause notice may be signed by the concerned staff officer at Air HQ or Command HQ or by the CO or Station Commander. In such a case it will be signed 'for and on behalf' of the CAS. The show cause notice will state to the effect that after considering the reports on the officer's misconduct, the CAS is of opinion that the trial of the officer by a court-martial is inexpedient or impracticable but that his further retention in the service is undesirable and that thereafter the CAS has directed the issue of the show cause notice.

2.3 While calling upon the officer to submit his written explanation, all reports adverse to him based on which the action to dismiss/ remove is proposed, should be furnished to the officer.

2.4 No show cause notice is required to be given to an officer under this rule if his dismissal/removal is sought on grounds of misconduct which has led to his conviction by a criminal court. See para 687 Regs.

2.5 It is incorrect to take administrative action on the basis of a summary of evidence alone. A show cause notice should be issued even in such cases specifying therein the type of administrative action intended.

2.6 While R.18 (I) makes reference to conviction by both criminal Court and court-martial, R.16(2) contains reference only to conviction by a criminal Court. Hence an officer will not be liable to be dismissed or removed from service under S.19 AFA read with this rule, on the same facts on which he had been tried earlier by a court-martial, or on ground of misconduct which has led to his conviction by a court-martial.

3.1 For the date from which dismissal or removal takes effect, see R.12 AFR and Notes thereto.

3.2 The dismissal or removal cannot be made retrospective, nor can a valid dismissal or removal be cancelled without the person's consent.

4. Dismissal under S.19 AFA read with this rule is not a punishment in terms of S.73 AFA. It merely amounts to termination of an officer's commission/service without his consent. Removal is a less severe form of dismissal.

5. Administrative action is not barred by lapse of time as is the case with disciplinary action under S.121 AFA. However, the time factor should be considered by administrative authorities while deciding each case.

6.1 In **UOI v Capt SK Rao**, the Supreme Court held that Ss.19 and 45 AA are mutually exclusive and so the removal from service under S.19AA read with R.14 AR without a court-martial cannot be said to be in derogation of S. 45 AA, even where the alleged misconduct constituted an offence under S.45AA. The Supreme Court also held that R.14 AR is not Ultravires the AA (S.45AA corresponds to S.45 AFA. R. 14 AR corresponds materially to R. 16 AFR).

6.2 Maj Kukrety was tried by a GCM on four charges. The court martial found him not guilty of all the charges and on revision adhered to the earlier findings. The proceedings were not confirmed by the confirming authority. Thereafter action was initiated under R.14 AR (corresponds to R. 16 AFR) by issue of a show cause notice under orders of COAS. This was challenged by Maj Kukrety. The Supreme Court held in **COAS & Others v Major Dharam Pal Kukrety** that the action of the COAS in issuing the show cause notice was neither without jurisdiction nor unwarranted in law.

6.3 In UOI V. Harjeet Singh Sandhu, the Supreme Court held that trial by Court Martial becoming impracticable because of expiration of period of limitation prescribed by Section 122 Army Act, (Corresponds to Sec 121 AFA), does not ipso facto take away exercise of power under Section 19 and Rule 14 (Corresponds to Section 19 AFA and Rule 16 AFR respectively).

6.4 In **UOI V. Harjeet Singh Sandhu**, the Supreme Court held that when an officer, subject to the Army Act, is alleged to have committed a misconduct and if the alleged misconduct amounts to an offence including a civil offence, Sec 125 (Corresponds to Sec 124 AFA) vests discretion in the officer commanding the Army, Army Corps, Division or

independent Brigade in which the accused person is serving or such other officer as may be prescribed, to decide before which court the proceedings shall be instituted i.e. before a Court-Martial or a criminal court. If the initial decision was to have the delinquent officer tried not by a criminal court but by a Court-Martial, then under sub-rule (2) of Rule 14 (Corresponds to Rule 16 (2) AFR) it is for the Central Government or the COAS to arrive at a satisfaction whether the trial of the officer by a Court-Martial is expedient and practicable whereupon the Court-Martial shall be convened. The Central Government or the COAS may arrive at a satisfaction that it is inexpedient or impracticable to have the officer tried by a Court-Martial then the Court-Martial may not be convened and additionally, subject to formation of the opinion as to undesirability of the officer for further retention in the service, the power under Sec 19 read with Rule 14 (Corresponds to Sec 19 AFA and Rule 16 AFR respectively) may be taken either before convening the Court Martial or even after it has been convened and commenced, subject to satisfaction as to the trial by a Court-Martial becoming inexpedient or impracticable at which stage the Central Government or the COAS may revert back to Sec 19 read with Rule 14. It is not that a decision as to inexpediency or impracticability of trial by a Court-Martial can be taken only once and that too at the initial stage only and once taken cannot be changed in spite of a change in the fact situation and prevailing circumstances.

17. Removal from service of officers on grounds other than misconduct

(1) When the Chief of the Air Staff is satisfied that an officer is unfit to be retained in service due to inefficiency, physical disability or other ground other than misconduct 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 submit in writing, within a reasonable period, any reasons he may wish to urge for not being removed from the service;

Provided that all or any of 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 Air Staff may withhold from disclosure the particulars of any matter adverse to the officer, or any portion thereof, if in his opinion, its disclosure is not in the interests of the security of the State.

(2) If no reply is received from the officer within the specified period, or the reasons submitted by him are considered not satisfactory by the Chief of the Air Staff, the matter shall be submitted to the Central Government for orders, together with the explanation of the officer, if any, and the recommendation of the Chief of the Air Staff for the removal of the officer from the service.

(3) The Central Government may, after considering the explanation, if any, of the officer and the recommendations of the Chief of the Air Staff, and after satisfying itself that the failure, where applicable, to disclose matters adverse the officer was in the interest of the security of the State, may remove or compulsorily retire the officer from the service.

NOTES

1. While R.16 AFR provides for dismissal, removal or compulsory retirement of an officer on grounds of misconduct, this rule provides for removal or compulsory retirement of an officer on grounds other than misconduct, namely, inefficiency, physical disability etc. Under this rule, an officer cannot be administratively dismissed.

2. 'Chief of the Air Staff' and 'officer', see S.4 (xiv) and (xxiii) AFA for definitions.

3.1 For the date from which the termination of service becomes effective, see R.12 AFR and Notes thereto.

3.2 Under this rule service cannot be terminated with retrospective effect, nor can such termination be cancelled without the officer's consent.

4. Where an officer repeatedly fails in the promotion examination, it is permissible to initiate action under this rule for his removal from the service on grounds of inefficiency.

5.1 See generally R.16 AFR and Notes thereto.

5.2 See also paras 204 and 217 Regs.

6.1 In **Capt. Virendra Kumar v UOI**, Supreme Court held the order of termination of service as invalid on grounds of failure to adhere to the procedure laid down in Rr. 15 and 15A,AR.

6.2 In **Capt. Rajender Nath Kumrah v UOI**, Delhi High Court held that the officer should be supplied with the particulars of all matters which are adverse to him alongwith the show cause notice. When such information is not supplied, reply of the officer demanding the said information cannot be construed as explanation to the show cause notice.

18. Dismissal or removal of a person subject to the Act other than an Officer.

(1) Save in a case where a person subject to the Act other than an officer is dismissed or removed from the service on the ground of conduct which had led to his conviction by a criminal court or a court—martial, no such 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.

(2) Notwithstanding anything contained in sub—rule (1), if in the opinion of the officer competent to order the dismissal or removal of such person, it is not expedient or reasonably practicable to comply with the provisions of sub-rule (1), he may after, certifying to that effect order the dismissal or removal.

(3) All cases of dismissal or removal without complying with the procedure prescribed in sub—rule (1) shall, without delay, be reported to the Central Government.

NOTES

1. 'officer', 'criminal court' and 'court—martial', see S.4 (xxiii), (xvii) and (xvi) AFA for definitions.

2. This rule relates to airmen including WOs, while Rr.16 and 17 relate only to officers.

3.1 A show cause notice is required to be given under this rule to an airman whose dismissal or removal from service is contemplated, except when the authority competent to order such dismissal or removal considers it inexpedient or impracticable to give such notice as stipulated in sub-rule (2).

3.2 Show cause notice will not be necessary when the dismissal or removal is sought on grounds of conduct which has led to the individual's conviction by a criminal court or court-martial.

3.3 All cases of dismissal/removal under this rule where the prescribed procedure under sub-rule (1) has not been followed are to be reported to the Central Government. See sub-rule (3).

4. An airman issued with a show cause notice under S.20 (1) or (3) AFA for dismissal or removal from service can validly be discharged under clause (g) (ii) of Table below R.15(2) AFR, by the competent authority, after considering his explanation, instead of being dismissed or removed.

5. In **Naik Ram Singh v UOI**, the Delhi High Court rejected the plea that the show cause

notice issued under R.17 AR (corresponds to R.18 AFR) is bad in law unless it stated specifically the nature of action contemplated, namely dismissal or removal.

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CHAPTER IV



RESTRICTIONS ON FUNDAMENTAL RIGHTS AND PROVISIONS RELATING TO ARRESTS, ETC.

CHAPTER IV

Restrictions on Fundamental Rights and Provisions Relating to Arrests, Etc.

19. Membership of Organisations - No person subject to the Act shall, without the express sanction of the Central Government —

(a) be a member of, or be associated in any way with, any society, institution, association or organisation that is not recognised as part of the Armed Forces of the Union or is not of a purely social, recreational, educational or religious nature.

Explanation — If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational, religious or educational nature, the decision of the Central Government thereon shall be final;

(b) be a member of or be associated in any way with any trade union or labour union, or any class of trade or labour unions.

NOTES

1. See S.21 AFA and Notes thereto.
2. The fundamental right to form associations or unions enjoyed by every citizen under Art 19(1) (c) of the Constitution is restricted in its application to members of the Air Force, under this rule. Similarly Rr.20 and 21 AFR restrict the fundamental right to freedom of speech, expression and of assembly available under Art. 19(1) (a) Constitution. Similar restrictions have been placed on members of the Army, Navy, Coast Guard etc. Art 33 Constitution empowers Parliament to restrict or abrogate the fundamental rights conferred by the Constitution in their application to members of the Armed Forces. Hence S.21 AFA and Rr. 19-21 AFR are not ultra vires the Constitution.
3. Contravention of Rr. 19 to 21 AFR would be punishable under S.65 AFA.
4. The word "or educational" inserted by SRO 24E of 1974.

20. Political and other activities

(1) No person subject to the Act shall attend, address, or take active part in, any meeting or demonstration held for party or political purposes, or belong to or join, or subscribe in 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, Legislature of a State, local authority, or other public body, or act as a member of a candidate's election committee, or in any way actively prosecute a candidate's interest.

NOTE

1. See S.21 AFA, R. 19 AFR and Notes thereto.

21. Communications to the Press, Lectures, etc. - No person subject to the Act shall:

(a) publish in any form or communicate directly or indirectly to the press any matter 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 matter or containing such information, without the previous sanction of the Central Government.

(b) deliver a lecture or wireless address on a service subject or containing any information or views on any service subject without the previous sanction of the Central Government.

Explanation: For the purposes of this rule, service information and service subject mean information or subject, as the case may be, concerning the Forces, the defence or the external relations of the Union.

NOTES

1. See S.21 AFA, R. 19 AFR and Notes thereto.
2. 'the Forces' - See S.4 (xix) AFA for definition.
3. See also paras 598 - 599 Regs.
4. The words "Chief of the Air Staff or any other officer specified by him in this behalf" were substituted by the words "Central Government" in clauses (a) and (b), vide SRO 24 E of 19 74.

22. Manner and extent of custody pending trial or confirmation of court—martial proceedings — (1) Any person subject to the Act who has been ordered into air force custody by a competent authority may be taken into such custody in accordance with the usages of the service

Provided that while being held for trial or after trial pending confirmation of the proceedings, the arrest or confinement imposed upon him shall not be more rigorous than the circumstances require to ensure his physical fitness and security.

(2) Detention in air force custody beyond a total period of sixty days whether continuously or in broken periods, of a person subject to the Act, who is not on active service and for whose trial a court—martial has not assembled, shall require the sanction of the Chief of the Air Staff or any other officer duly authorised, with the approval of the Central Government, by the Chief of the Air Staff in that behalf.

(3) The Chief of the Air Staff or such other officer may sanction further detention of such person as is described in sub-rule (2) for a specified period, which he may extend from time to time, provided that the total period of detention under sub—rule (2) and this sub-rule, whether continuous or broken, shall not exceed ninety days.

(4) No such person as is described in sub—rule (2) shall be detained in air force custody beyond a period of ninety days, whether continuously or in broken periods except with the approval of the Central Government.

(5) As soon as the proceedings of a court—martial have been received by an officer having powers to confirm them, that officer shall as soon as may be, order the release (without prejudice to re—arrest) of the accused if the finding of the court— martial is "not guilty" on the charge, or where there are more charges than one, on all the charges, on which he was tried.

(6) Where the sentence awarded by a court—martial is lower in the scale of punishments set out in section 73, than dismissal the officer referred to in sub—rule (5) shall either order the release of the accused person without prejudice to re—arrest or at his discretion, order that the accused person shall be kept under open arrest.

(7) No person shall be detained in air force custody pending confirmation of the proceedings of a court—martial, for a period in excess of the term of imprisonment or detention to which the court-martial has sentenced him.

NOTES

1.1 For definition of 'air force custody' and 'court-martial', see S.4 (v), and (xvi) AFA.

1.2 The word 'arrest' means apprehension or restraint or the deprivation of one's personal

liberty partially or fully. In service parlance, arrest, whether open or close, amounts to air force custody. See also Notes to S. 102 AFA.

1.3 'air force custody' does not include civil custody. The period of detention or in civil custody should not be included while computing the period of detention in air force custody under this rule.

2.1 'active service', see Ss. 4(i) and 9 AFA and Notes thereto.

2.2 For definition of 'court-martial' and 'Chief of the Air Staff', see S. 4 (xvi) and (xiv) AFA.

3.1 Detention in custody beyond 60 days of a person who is not on active service and in whose case a court-martial has not assembled, requires the sanction of CAS or any other officer duly authorised by him. Such detention beyond 90 days requires the sanction of Central Government.

3.2 If custody beyond a period of 60/90 days is considered necessary, steps should be taken to obtain the sanction well in advance. An accused person should not be kept in prolonged custody in anticipation of a sanction. Detaining an accused in custody beyond 60 or 90 days without sanction, makes such detention illegal and ex post facto sanction would not render such detention legal.

3.3 Unnecessary detention in custody of an accused without bringing him to trial amounts to an offence under S.50 (a) AFA.

4. In **Hussainara Khatoon and others v State of Bihar**, the Supreme Court stressed the need for speedy trial and held that pre-trial detention of persons for period longer than what they would have been sentenced if convicted is illegal, being in violation of Art 21 Constitution. The State cannot avoid its constitutional obligation to provide speedy trial to an accused by pleading financial or administrative inability, added the Supreme Court.

5. In **Bhueneshwar Singh V. UOI**, the Supreme Court held that pre-trial detention of the accused for a period beyond three months without the approval of the Central government as required by Rule 27(3)(ii) of the Army Rules, 1954 (Corresponds to Rule 22(4) AFR) was illegal. However, the illegal detention would neither vitiate the constitution of the District Court-Martial nor affect the trial held by it under the provisions of the Army Act, much less render the conviction and sentence recorded thereat bad.

23. Delay report — (1) In every case where a person subject to the Act, who is not on active service, is in air force custody for a period longer than eight days, whether continuously or in broken periods, without a court—martial for his trial having been assembled or without a punishment having been awarded to him under section 82 or section 86, the Commanding officer shall make a report in the delay report Form contained in the second schedule, to the officer empowered to convene a general or district court— martial for the trial of such person. Such report shall be made at interval of every eight days until a court—martial is assembled or the case is disposed under section 82, or section 86 or such person is released from custody, as the case may be.

(2) A copy of each of the third and subsequent reports submitted under sub—rule (1) will be forwarded directly to the Deputy Chief Legal Adviser of the Command concerned, or in the case of persons belonging or attached to the Air Headquarters or a unit directly under Air Headquarters, to the Chief Legal Adviser.

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NOTES

1. See S. 104 AFA and Notes thereto.
- 2.1 'active service', see Ss. 4(i) and 9 AFA and Notes thereto.
- 2.2 See S.4 (v), (xi), (xv) and (xvi) AFA for definitions of 'air force custody', 'Chief Legal Advisor', 'commanding Officer' and 'court-martial'.
3. 'continuously or in broken periods' - even custody with interruptions will have to be included while reckoning the eight day periods.
4. See Second Schedule to AFR for form of Eighth Day Delay Report.
5. The words 'Command Judge Advocate' and 'Judge Advocate General' were substituted by the words 'Deputy Chief Legal Adviser' and 'Chief Legal Adviser' in sub-rule (2), vide SRO 83 of 19 71.

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CHAPTER V



INVESTIGATION OF CHARGES AND TRIAL BY COURT-MARTIAL

24. Disposal of the charge or adjournment for taking down the summary of evidence - (1) Every charge against a person subject to the Act shall be heard in the presence of the accused. The accused shall have full liberty to cross—examine any witness against him, and to call any witnesses and make any statement in his defence.

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

(3) At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall, without unnecessary delay, either

—
(a) dispose of the case summarily; or

(b) refer the case to the proper superior air force authority for sanction under section 83 or

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

(4) Where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing the 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.

(5) The accused may put questions in cross—examination to any witness, and the questions with the answers shall be added in writing to the evidence taken down.

(6) The evidence of each witness when taken down, as provided in sub-rules (4) and (5), 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. Any statement of the accused shall be added in writing and read over to him.

(7) The evidence of the witnesses and the statement, if any, of the accused shall be recorded in the English language. If the witness or accused, as the case may be, does not understand English the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.

(8) 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 commanding officer or the officer taking the summary (to be certified in writing by the commanding officer or such officer), 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.

(9) (a) Any witness who is not subject to the air force law may be summoned by order under the hand of the commanding officer of the accused to attend the hearing of the charge under sub-rules (i) or to attend the adjourned hearing for the purpose of having the evidence reduced to writing under sub-rule (4).

(b) The summons shall be in Form C. 1 as provided in the Third Schedule

NOTES

1. Natural justice requires that no person shall be condemned unless he has been given an opportunity to explain and further that no person shall be a judge in his own cause. The procedures for trial under the AFA, whether before the subordinate commander, or commanding officer, or before a court martial or other authority conform to the principles of natural justice. It is for this reason that this rule requires that a commanding officer (or officer exercising powers of commanding officer) shall not order recording of a summary of evidence or dispose of a charge by awarding a punishment, until the evidence against the accused has been heard by the CO. in his presence; the accused has been allowed to cross-examine the witnesses against him and has been given an opportunity to make a statement and to produce witnesses in his favour. An officer, an offence against whom is the subject of investigation should also abstain from trying such offence; and in no case, is he to try such offence if he happens to be the sole witness against the accused.

2.1 See S.4 (xv) and (xxii) AFA, for definitions of 'commanding officer' and 'offence'.

2.2 For definition of 'proper superior air force authority' see Rr 2(d) and 3, AFR.

3.1 Non-compliance of this rule will constitute an illegality, except under circumstances stated in R.42 AFR.

3.2 Where an acquittal is based on the compounding of an offence and the compounding is invalid under law, the acquittal would be liable to be set aside.

4.1 Provisions of this rule apply to the investigation of a charge by a subordinate commander, subject to the fact that a subordinate commander has no power to order a summary of evidence. Further, a subordinate commander has no power to hear charges against officers and WOs., See R.30 AFR.

4.2 Though not a CO, an officer may yet exercise the powers of CO under S.82 AFA if he has, with the approval of the Central Government, been specified for that purpose by the CAS. The principles and procedures relating to investigation of charges by CO are, so far as practicable, applicable to such officer. See R.26 AFR.

4.3 Minor punishment for an offence falling under any of the sections mentioned in S.83 AFA cannot be awarded summarily to an airman by a CO without the previous written sanction of an officer having power to convene a DCM. A punishment awarded without

such prior sanction is illegal and non-est in law. See S.83 AFA and Notes thereto.

4.4 The provisions of S.120 AFA (Prohibition of Second Trial), S.12I AFA (Period of Limitation for Trial) and of the IEA are applicable to hearing of charges by a CO or by an officer empowered by or under S.86 AFA, in the same manner as to court-martial.

5. Proceedings of courts of inquiry or formal investigation are inadmissible in evidence during summary trials unless the charge avers false evidence before such court of inquiry or formal investigation; or to the extent that the accused person decides to rely upon such proceedings for the purpose of cross-examination.

6.1 So far as it is practicable, investigation of charges under this rule should not be delayed. See para 661 Regs. Inordinate delay or omission to order an investigation may raise an inference of condonation of the offence, if -

(a) the CO or competent authority knew all the facts of the case;

(b) the CO or competent authority knew that those facts disclosed an offence; and

(c) the CO or competent authority deliberately and intentionally did not order an investigation, with the intention, either express or implied, of not proceeding with the offence so disclosed.

6.2 The CO must dismiss the charge if there is no evidence of any offence under the AFA having been committed or if the accused has been previously acquitted or convicted of the alleged offence by any court, military or civil, or has been summarily dealt with under Ss.82 or 86 AFA or the charge has previously been dismissed (S. 120 AFA and R.61 (1) (a) AFR). He may dismiss it, if he considers that the evidence is doubtful or the case is trivial or, in the exercise of his discretion, for any reason e.g, the good character of the accused.

7.1 Under S.134 AFA police and other civilian witnesses may be summoned to attend before the CO if it is considered desirable to compel their attendance by the service of a summons. Witnesses cannot be sworn or affirmed. It is not permissible under S.136 AFA to issue commission for examination of witnesses of a hearing of charge under this rule.

7.2 For form of summons, see Third Schedule to AFR.

7.3 The accused cannot claim to be represented by counsel at the hearing of the charge under this rule or at the recording of a summary of evidence.

8.1 A person subject to AFA has no right to elect to be tried by a court-martial except as provided in S.86 (a) and (c) AFA.

8.2 A CO under the AFA has unfettered discretion to arrive at his own findings based on facts and evidence adduced before him and if he finds a person not guilty of the offence, he is bound to dismiss the charge. Approval of the CAS or other superior authority is not at all necessary for disposal of the charge(s) by dismissal. Thus it will be illegal to issue administrative orders requiring the CO or other punishing authority to award a particular punishment in a case or in a class of cases, or to direct that specific cases should be

dealt with only by court-martial.

8.3 A CO may dispose of the case summarily by awarding one of the punishments specified under S.82 AFA and which he can award. A term of detention awarded by CO should be awarded in days and will commence to run from the day of award. In law (in the absence of any special provision), there is no division of a day, and therefore, however, late in the day a prisoner is commenced at the first minute of that day that is, the first minute after midnight. The sentence will therefore, begin on the first minute of the day of award, and end at sunset of the day it expires.

8.4 The award is considered final when the accused has been removed from the presence of the CO. A CO has no power to review a punishment awarded by him under 5.82 AFA; but he may decrease such punishment before it has been carried out. See S.82 AFA, R 33 AFR and Notes thereto.

9.1 In all cases where a summary of evidence is ordered to be recorded by a CO or other competent authority he should complete and sign the form laid down for the purpose.

9.2 **Maj GS Sodhi V. UOI**, the Supreme Court held that recording of the summary of evidence is only to find out whether there is a prima facie case to convene the court-martial.

9.3 **Maj GS Sodhi V. UOI**, the Supreme Court held that for an additional summary of evidence no special provision (under the Rules) is necessary because it is only in addition to the summary of evidence already commenced and once the summary of evidence is permitted under the Rule, the additional Summary of evidence is its necessary concomitant.

10.1 The adjourned hearing for the purpose of reducing the evidence to writing should if possible be held on the same day as the investigation. The CO may direct another officer to take down the evidence, but an officer who has given material evidence at the investigation must not be appointed for this purpose. He should be an officer of some experience and with a good knowledge of the vernacular. The record of evidence under this rule is called 'the summary of evidence'. The summary of evidence can be ordered only by the CO of the accused or by an officer exercising the powers of a CO, but not by a subordinate commander.

10.2 Summary of evidence cannot be taken on oath or affirmation.

10.3 The statement (so far as it is relevant and admissible) of every witness who gave evidence before the CO must be taken down unless good reason renders it reasonably in practicable to call him. The evidence of witnesses who did not appear before the CO may also be taken of either prosecution or defence, so long as it appears to be relevant. In reducing the evidence to writing immaterial statements may be omitted and all hearsay and irrelevant matter should be excluded. To enable him to record the evidence in a coherent form, the officer recording the summary of evidence may ask questions to a witness as he gives evidence, to clear any ambiguities.

10.4 The accused must be allowed to put any reasonable question to a witness, and

especially to put questions respecting any variance between the evidence taken down and that given before the CO. If the accused declines to cross-examine any witness the fact should accordingly be stated.

10.5 A confession made by the accused person to his CO during the hearing under this rule may, if it is otherwise relevant and admissible, be proved by the prosecutor at a subsequent trial by court-martial of such accused person. This legal position will be unaltered even if the CO to whom the confession was made happens otherwise to be a provost marshal. But, at a court—martial, after the accused has made his statement, any previous statements made by him may be proved by the prosecutor only where it is permitted under R.68 (2) or R.121 (4) AFR.

10.6 The formal caution must be given to the accused as soon as the evidence for the prosecution is closed. If it is necessary to take additional summary, the accused must again be formally cautioned before he makes any further statement. The fact that he was duly cautioned should be recorded in the summary. It is advisable to have an independent officer or WO Present when the accused is cautioned and when he makes the statement. Such independent witness apart from the officer recording the summary, would also be competent to prove the statement of the accused at the trial subsequently, if necessary. The officer who takes the summary normally prosecutes at the trial and it is avoidable that the prosecutor is a witness.

10.7 The statement of an accused person can be given in evidence at the trial only if it is voluntary. If it was made voluntarily, the mere fact that the caution was not given will not prevent it from being used as evidence. In no case must he be compelled to make any statement. Nor should he be cross examined or asked any questions.

10.8 The accused may call witnesses on his behalf, and their evidence will be taken down and included in the summary. Once a witness deposes before the CO, witness cannot be withheld at the recording of the summary of evidence.

11.1 Statement at a court of inquiry or formal investigation should not be included in a summary of evidence except when admissible under S. 32, IEA or R. 156 (6) AFR.

11.2 Where precise information as to the locality of the offence is likely to be of use in understanding a case, a plan drawn to scale should accompany a summary of evidence submitted to superior authority, If it is considered necessary that matters of evidence should be shown on this plan, (e.g., place where the body was found in a murder case, or position of accused or a witness) the plan should be in duplicate, and these matters should only appear on one copy. If the plan is subsequently produced at the trial, the unmarked copy will be used, being put in and sworn/affirmed to, by the person who made it. These matters of evidence will then (if necessary) be marked on it, in accordance with the evidence given at the trial, and a note to that effect made in the proceedings.

11.3 Vernacular documents attached to a summary of evidence should be accompanied by a translation in English.

12. Legally there is no provision for cancelling a summary of evidence already recorded.

13.1 In many cases, the provisions of sub-rule (8) will effect a saving of time and expense, e.g., where a civilian witness is required to prove some fact not really in dispute. Such witness must, however, attend in person at the trial.

13.2 The certificate referred to in sub-rule (8) can conveniently be written below the signature of the absent witness on his written statement.

14. As to procedure where a criminal court and court-martial have each jurisdiction in respect of a civil offence, see Ss. 124 and 125 AFA and Notes thereto and R. 167 AFR. See also para 683 Regs.

15. For power to dispense with provisions of sub-rules (4) to (7), see R. 42 AFR. Only the recording of the summary of evidence may be dispensed with. The hearing under sub-rule (1) can in no case be dispensed with.

16. If it is found necessary to call at the trial some witness for the prosecution whose evidence is not included in the summary, notice of such intention shall be given to the accused and when notice is not given the court shall proceed as per R. 113 AFR.

17.1 In **Fg Offr S Sundararajan v UOI**, the Delhi High Court held that mere non-compliance of R. 15 AR (corresponds to R. 24 AFR) does not affect the jurisdiction of court-martial and does not vitiate the trial or the ultimate conviction, unless there has been substantial miscarriage of justice due to its application.

17.2 In cases of concurrent jurisdiction, it is not open to the Army authority to take proceedings for determining prima facie whether there is substance in the allegations made against the accused army officers and decline to try them by a court-martial or take other effectual proceeding against them even where a Magistrate has taken cognizance of the offence and has given a finding that there is a case for trying the accused. See **UOI v Maj SK Sharma**. The Supreme Court went on to say that in such case the Army authority is not entitled to ignore the proceedings taken by the Magistrate and to invoke the provisions of R. 22 AR and related rules.

18. See also Chapter XII, Section 4 Regs.

19. Amended as follows by SRO 24E of 1974.

(a) The word 'for sanction under section 83' added at the end of Cl (b) of sub-rule (3).

(b) The words 'material to his defence' deleted from sub-rule

20. In **UOI V. Maj A Hussain**, the Supreme Court held that when there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the Court Martial unless it is shown that accused has been prejudiced or a mandatory provision has been violated.

25. Remand of accused (1) The evidence and statement, if any, taken down in writing in pursuance of rule 24 (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 court—martial; or

(b) refer the case to the proper superior air force authority for sanction under section 83 or disposal under section 86 or

(c) if he thinks it desirable, re—hear the case and dispose it of summarily.

(2) If the accused is remanded for trial by court—martial, the commanding officer shall without unnecessary delay apply to the proper air force authority to convene a court—martial.

(3) The summary of evidence, or a true copy thereof, shall be furnished to the convening authority with the application to convene a court-martial, and shall be laid before the court—martial before which the accused is tried on the assembly of the court,

NOTES

1.1 'Commanding Officer' and 'court-martial', see S. 4(xv) AFA for definitions.

1.2 For definition of 'proper air force authority', see R. 2(d) AFR.

2. The evidence in the summary may not correspond with that given at the original investigation and the case may appear in a new aspect. The CO may, therefore, decide to re-hear the case, and thereafter if he thinks fit, dispose it of summarily or dismiss it.

3. For power to dispense with this rule, see R. 42 AFR.

4. In a case where there is an allegation of an offence against an airman, and a summary of evidence has been recorded, trial should be the normal course to be adopted, except where the summary does not disclose prima facie evidence to support the charges, or for some other valid reasons, the holding of the trial appears inexpedient or impracticable.

5. The summary of evidence, or a true copy thereof, should accompany the application for a GCM, DCM or summary disposal under S. 86 AFA.

6. See also Note 8.4 to R. 24 AFR.

7. Cl (b) to sub-rule (1) substituted vide SRO 24 E of 19 74.

26. Application of rules 24 and 25 to officers exercising powers of a commanding officer. The provisions of rules 24 and 25 shall, so far as practicable, also apply to an officer exercising the powers of a commanding officer.

NOTES

1. See Rr. 24 and 25 AFR and Notes thereto.
2. For definitions of 'officer', and 'commanding officer' see S.4 (xxiii) and (xv) AFA.

27. Action by officer having power to convene a district court-martial An officer having power to convene a district court— martial to whom an application for the convening of a court—martial is made or to whom the case is referred under the provisions of clause (b) of sub—rule (1) of rule 25, may, at his discretion:—

(a) authorise in writing the commanding officer or other officer exercising the powers of a commanding officer to dismiss the charge or dispose of the case summarily; or

(b) refer the case to a superior authority; or

(c) order the assembly of a district court-martial for the trial of the accused person.

NOTES

1. This rule substituted vide SRO 24 E of 1974.

2. For definitions of 'officer', 'commanding officer' and 'court-martial', see S. 4(xxiii), (xv) and (xvi) AFA.

3.1 In fit cases the authority having power to convene a DCM may authorise the CO to dismiss the charge, under clause (a) of this rule. In fact if the summary of evidence does not reveal a prima facie case against the accused and additional evidence is not forthcoming, the charge should be directed to be dismissed. The power under clause (a) to dismiss the charge may be exercised even where the case has been referred for sanction under S. 83 AFA or for disposal under S.86 AFA.

3.2 Where the case has been referred for sanction under S. 83 AFA, a DCM can be ordered to assemble under clause (c), even though no application for trial by court-martial has been submitted by the CO.

28. Action by officer having power to convene a general court-martial — An officer having power to convene a general court— martial to whom an application for the convening of a court—martial is made or to whom a case is referred under the provisions of clause (b) of sub-rule (1) of rule 25, or of clause (b) of rule 27 may, at his discretion:—

- (a) return the case to the commanding officer or other officer exercising the powers of a commanding officer authorising such officer in writing to dismiss the charge or dispose of the case summarily; or
- (b) deal with the case summarily, as provided in rule 31; or
- (c) order the assembly of a court-martial for the trial of the accused person; or
- (d) refer the case to a superior authority.

NOTES

1. This rule substituted vide SRO 24 E of 19 74.
2. For definitions of 'officer', 'commanding officer' and 'court-martial', see S. 4(xxiii), (xv) and (xvi) AFA.
3. An officer having power to convene a GCM, may order assembly of a court martial even when no application for trial has been made provided that the case was referred to him earlier for summary disposal under S.86 AFA or for sanction under S. 83 AFA. In all other cases an application for trial must be received before the officer having power to convene a GCM may order a court-martial.
4. See also Note 3.1 to R. 27 AFR which applies to this rule as well.

29. Limitation of powers of minor punishment according to rank. (1) A commanding officer or other officer exercising the powers of a commanding officer, if of the rank of Squadron Leader or above, may, without the intervention of a court—martial, award the minor punishments specified in section 82.

(2) A commanding officer, or other officer exercising the powers of a commanding officer, of the rank of Flight Lieutenant, shall have the powers of punishment specified in the said section, provided that he shall not award detention or field punishment for a period exceeding seven days.

(3) A commanding officer, or other officer exercising the powers of a commanding officer, who is below the rank of Flight Lieutenant shall have the powers of punishment specified in the said section, except the following in the case of non-commissioned officers namely.

(a) severe reprimand;

(b) deprivation of acting rank; and

(c) penal deduction under clause (g) of section 92; and in the case of persons below non-commissioned ranks, forfeiture of badge pay:

Provided that such officer shall not award detention or field punishment for a period exceeding seven days, or confinement to the camp for a period exceeding ten days.

(4) Notwithstanding anything contained in sub—rules (2) and (3) where a commanding officer or other officer exercising the powers of a commanding officer is below the rank of Squadron Leader, an officer superior in command to such commanding or other officer, may, if he considers desirable, restrict the powers under the said sub—rule of such commanding officer or other officer to any extent that he thinks fit.

NOTES

1.1 For definitions of 'commanding officer' and 'court-martial', see S.4 (xv) and (xvi) AFA.

1.2 For definitions of 'officer' and non-commissioned officer', see S.4 (xxiii) and (xx) AFA.

1.3 For definition of 'minor punishment', see R.2(c) AFR.

2. For list of minor punishments, see S.82 AFA.

3. The limitation of powers contained in sub-rules (2) to (4) are in addition to those contained in S.84 AFA. See Notes to S. 84 AFA.

4. The Table below contains a summary of the powers of a CO, as limited by S.84 AFA and this rule.

Rank of CO	Punishments which he may award to NCOs	Punishments which may be awarded to airmen below NCO rank
1. Squadron Leader or above	(a) Deprivation of acting rank. (b) Severe Reprimand or Reprimand. (c) Penal deductions under S.92(g) AFA (d) Admonition.	(a) Detention upto 28 days. (b) Confinement to camp upto 14 days (c) Extra guards or duties not exceeding three in number (d) Forfeiture of badge pay. . (e) Fine upto 14 days pay in any one month. (f) Penal Deduction under S.92 (g) AFA. (g) Admonition. (h) In the case of person on active service, any prescribed field punishment up to 28 days.
2. Flight Lieutenant	Same as a CO of the rank of Squadron Leader may award	Same as a CO of the rank of Squadron Leader may award, except that he shall not award detention or field punishment, for a period exceeding seven days.
3. Flying Officer or Pilot Officer	(a) Reprimand (b) Admonition	(a) Detention for a period not exceeding seven days. (b) Confinement to camp upto days. (c) Extra guards or duties

not exceeding three in number

(d) Fine upto 14 days pay in any one month.

(e) Penal education under S. 92(g) AFA.

(f) Admonition. A

(g) in the case of person on active service, any prescribed field punishment for a period not exceeding seven days.

30. Powers of minor punishment of Subordinate Commanders.— (1) Subject to the provision of sub—rule (2), an officer other than a commanding officer, who has with the consent of the Central Government been specified by the Chief of the Air Staff as a "Subordinate Commander", may award such minor punishments and to such extent as specified in this rule.

(2) The subordinate commanders specified in column 1 of the Table below, if authorised in this behalf by the commanding officer exercising the powers of a commanding officer, may award to the persons specified in column 2 of the minor punishments specified in column 3 thereof provided that, save when an officer of the rank of Flight Lieutenant is officiating in an appointment normally held by an officer of higher rank, or when no subordinate commander of the rank of Squadron Leader or above is available, an officer of the rank of Flight Lieutenant shall not be authorised to award the punishment of fine.

TABLE

Authorities competent to award punishment	Person who may be punished	Punishment
1. Officer of the rank of Flight Lieutenant or above	(a) Non-commissioned	(i) Reprimand. (ii) Admonition.
	(b) Airman below non-commissioned rank	(i) Confinement to the camp for a period not exceeding seven days. (ii) Extra guards or duties not exceeding 3 in number. (iii) Admonition. (iv) Fine not exceeding four days Pay provided that an airman shall not be fined more than seven days pay in any one month.
2. Officer below the rank of Flight Lieutenant	(a) Non - Commissioned Officer	Admonition
	(b) Airman below non-commissioned rank	(i) Confinement to the camp for a period not exceeding three days

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| | | (ii) Extra guards or duties not exceeding three days.

(iii) Admonition. |
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NOTES

1.1 'officer', 'commanding officer' and 'Chief of the Air Staff', See S. 4(xxiii), (xv) and (xiv) AFA for definitions.

1.2 For definition of 'minor punishment', see R.2(c) AFR.

2.1 A subordinate commander is an officer other than a CO, who has, with the consent of the Central Government, been specified by the CAS in this behalf. Such specification appears in AFO 34/97 in the following terms:

"(a) The position regarding appointment of Subordinate Commanders at Air Force unit has been reviewed. With the consent of the Central Government, the following officers are specified under Section 82 AF Act read with AF rules 30(1), who may subject to provisions of AF Rules 30(2), exercise powers of punishment as Subordinate Commanders; namely:

(i) An officer placed in Command of a Flight, Section or Sub-section of the Unit, who is Subordinate to the CO of the Unit for disciplinary purposes. (For this purpose the Senior Administrative Officer/Chief Administrative Officer and the Adjutant will be deemed to be in Command of Head quarters Section or Flight).

(ii) An officer who, by the terms of his appointment or by the usage of the service, discharges the functions of the officer specified under sub-para (a) above during the absence of such an officer. (Powers in such cases shall be exercised only during the actual absence of that officer).

(b) An officer commanding any Air Force Unit (Whether independent or lodger) may authorise a Subordinate Commander to exercise powers of punishment under AF Rules 30(2). It is further stipulated that no officer below the rank of Squadron Leader shall be so authorised; nor more than one officer at any one time shall be so authorised at a unit except at units normally commanded by officers of the rank of Group Captain or above.

(c) Every authorisation by a Commanding Officer under AFR 30(2) shall be published in the Station/Unit Routine Orders for general information."

2.2 As far as possible, the 'subordinate commander' should have administrative or functional control over the airmen whom he is expected to punish.

3. A subordinate commander has no power to hear charges against officers and WOs.

4. An officer exercising the powers of a commanding officer under S.82 AFA may also appoint a subordinate commander.

5. See Table below this rule, for list of minor punishments by a subordinate commander.
6. See also Notes to S. 82 AFA.

31. Summary disposal of charge against officers and warrant officers - (1)

When a charge against an officer or warrant officer is to be summarily disposed of under section 86, a copy of the summary of evidence shall be delivered to him free of charge as soon as practicable after its preparation, and in any case not less than forty-eight hours before such disposal.

(2) The officer dealing with the case summarily under section 86 shall hear the witnesses, if any, in the presence of the accused, but may dispense with the hearing of any or all witnesses, if the accused person consents in writing thereto.

(3) If the accused person demands that the evidence be taken on oath, the officer dealing with the case summarily, shall administer to each witness before he gives his evidence, the oath or affirmation as prescribed in rule 118, but the accused person shall not be sworn.

(4) The accused may put questions in cross-examination to any witness, call any witnesses and make a statement in his defence.

(5) The proceedings shall be recorded as far as practicable in accordance with Form D. 1 or Form D.2 (as may be appropriate) of the forms for use for summary disposal of charges against officers and warrant officers contained in the Fourth Schedule and in every case in which a punishment is awarded, the original and a certified true copy of the proceedings together with the summary of evidence shall be forwarded through the proper channel to the superior air force authority as defined in section 89.

NOTES

1.1 For definitions of 'officer' and 'warrant officer', see S. 4(xxiii) and (xxix) AFA.

1.2 For definition of 'superior air force authority', see S.89 AFA.

2. As regards form of oath and affirmation, see R. 118 AFR.

3. In every case in which a punishment is awarded, the original and a certified true copy of the proceedings are to be forwarded to the superior air force authority as defined in S. 89 AFA.

4. See S. 86 AFA and Notes thereto.

5. Sub-rules (1) and (3) amended vide SRO 24E of 1974.

6. The words, letters or figures were substituted in rule ibid vide SRO 83 of 1971 as follows:-

(a) in sub rule (2), for the words "such hearing", the words "the hearing of any or all witnesses";

(b) in sub rule (3), for the words "oath or affirmation shall be administered", the words "oath or affirmation as prescribed in Rule 118 shall be administered"; and

(c) in sub rule (5), for the words, letters and figures "Form E.1 or Form E.2", the words, letters and figures "Form D.1 or Form D.2".

12. This rule applies to SGCM. See R. 142 AFR.

32. Summary award of punishment by commanding or other officer. — when a commanding officer, or other officer having power to dispose of an offence summarily has once awarded a punishment for that offence, he cannot afterwards increase the punishment for that offence.

NOTES

I. For definitions of 'officer', 'offence' and 'commanding officer', see S. 4(xxiii), (xxii) and (xv) AFA.

2.1 Award of a minor punishment is complete as soon as the officer holding the trial has pronounced the punishment to the accused person and the accused is marched out from his presence.

2.2 A commanding officer has no power to review a punishment awarded by himself; but he can decrease such punishment, before it has been carried out. For example, punishments like 'Severe Reprimand', take effect immediately on award and cannot be decreased subsequently; but, unexpired portion of punishments such as detention and confinement to camp can however, be decreased. See Note 6 to S. 82 AFA.

3. See generally S.82 AFA and Notes thereto.

33. Revision of minor punishments awarded under section 82. - (1) If a minor punishment awarded under section 82, appears to the Central Government , the Chief of the Air Staff, or any officer superior in command to the officer who awarded the punishment, to be wholly illegal, such authority shall, direct that the award be cancelled and the entry in the records of the accused be expunged.

(2) If such minor punishment appears to the authority specified in sub—rule (1) to be in excess of the punishment authorised by law, such authority may vary the punishment awarded so that it shall not be in excess of the punishment authorised by law, and the entry in the records of the accused shall be varied accordingly.

(3) If such minor punishment appears to the authority specified in sub-rule (1) to be unjust or too severe having regard to all the circumstances of the case, such authority may mitigate or remit the punishment awarded or commute that punishment for any other punishment or punishment lower in the scale laid down in section 82, which the commanding officer or other officer exercising power under that section could have validly awarded, and such mitigation, remission or commutation shall be entered in the records of the accused;

Provided that for the purpose of this sub-rule, the punishment of field punishment shall be deemed to be higher in scale than detention;

Provided further that the punishment of field punishment shall not be commuted for punishment of detention for a term exceeding the term of such field punishment and the punishment of field punishment or detention shall not be commuted for a punishment of confinement to the camp for a term exceeding the term of such field punishment or detention.

(4) Any authority specified in sub-rule (1) may, in addition to or without any order passed under sub—rules (1), (2) or (3), issue such direction in any case as may appear to such authority to be necessary for doing justice in the matter.

NOTES

1. For definitions of 'Chief of Air Staff' and 'commanding officer, see S. 4(xiv) and (xv) AFA.

2. Neither the AFA nor the AFR lay down the period during which the competent authority is to exercise the power of revision. Therefore as per the law, the authority having power to review a minor punishment may do so any time after the award. However para 711 (C) Regs lays down that where a minor punishment appears to be too severe having regard to all the circumstances of the case, the superior air force authority may exercise the power of review only within two years from the date of the award. At a summary disposal under

S. 82 AFA, neither any evidence is recorded nor is a record made of the procedure followed by the punishing authority. Hence a belated review is neither expedient nor advisable.

3.1 In the case of an airman posted to or attached to an Army Unit, an 'officer superior in command' to the CO of that unit can exercise the powers of review under this rule, provided such officer is an 'officer' within the definition of this term in S. 4(xxiii) AFA.

3.2 In all cases, the Central Government and the CAS are competent to exercise the power under this rule.

3.3 Apart from the authorities specified in this rule, the President has powers under Art. 72 Constitution to review the minor punishments awarded under AFA.

4. This rule merely lays down the authorities who can review a minor punishment. If an airman deems himself aggrieved by a minor punishment awarded to him, he can submit an application under S. 26 AFA. If not satisfied with the decision of intermediate authorities, he may seek remedy from higher authorities in terms of para 621 Regs.

5.1 Where a minor punishment is awarded in contravention of S. 83 AFA, such punishment is illegal and 'non-est' in the eyes of law. See Note 2 to S. 83 AFA.

5.2 Award of detention to a NCO is wholly illegal in view of S. 84(4) AFA and falls under sub-rule (1). On the other hand award of 21 days CC to a LAC falls under sub-rule (2) being a punishment in excess of what is authorised by law.

6. Though punishing authority has no power to remit a minor punishment awarded by himself, he can nonetheless, decrease such punishment, before it has been carried out. See Note 6 to S. 82 AFA and Note 2.2 to R. 32 AFR.

7. This rule pertains only to review of minor punishments awarded under S. 82 AFA. As regards summary awards under S. 86 AFA, see S.88 AFA for power to review.

8. Rule substituted vide SRO 24E of 1974.

Framing Charges

34. Charge-sheet and charge. - (1) A charge-sheet shall, so far as practicable, conform to the form of charge—sheet specified in the Fifth Schedule and shall contain the whole issue or issues to be tried by a court-martial at one time.

(2) A charge means an accusation contained in a charge—sheet, that a person subject to the Act has been guilty of an offence.

(3) A charge-sheet may contain one charge or several charges.

NOTES

1.1 The 'charge-sheet' referred to in this rule is the formal written charge-sheet upon which the accused is to be tried as distinct from the charge or complaint mentioned in S. 102 AFA and R. 24 AFR which give rise to the preliminary investigation.

1.2 Multiplicity of charges should be avoided as it may lead to unnecessary enhancement of punishment to the accused.

1.3 A charge-sheet should be free from any corrections or erasures.

1.4 As to forms of charges refer specimen charges given under respective sections of AFA. For illustration of a complete charge-sheet, see Fifth Schedule to AFR.

2. For definition of 'offence' and 'court-martial', see S. 4(xxii) and (xvi) AFA.

3. The convening officer may direct that all the charges shall be in one or more charge-sheets (see R. 86 AFR); but the court can only deal with one charge sheet at a time. When there are two or more charge-sheets, they must be consecutively numbered. As regards joint trial of several accused persons charged together, see R. 41 AFR.

4.1 All charges, including the alternative charges, must be consecutively numbered. As to insertion of charges in separate charge-sheets, see R.86 AFR and Notes thereto.

4.2 An alternative charge should not be preferred, where, a special finding is possible under S. 138 AFA e.g. on a charge of desertion there is no need to prefer a charge of absence without leave as an alternative charge. See S. 138(1) AFA.

5.1 The charge-sheet is usually prepared by the CO or adjutant of the accused unit; but in the case of a trial by GCM or DCM, R. 43 AFR makes the convening officer equally responsible for its correctness. It must be signed by the officer in actual command of the unit to which the accused belongs. If the accused is attached to another unit, the charge-sheet must be signed by the CO of the unit to which he is so attached. The order for the trial must be endorsed at the foot of the charge sheet and signed by the convening officer or by a staff officer "for" him. Charge-sheet cannot be endorsed for trial by a staff officer as such.

5.2 It must be made apparent from the description of the CO's appointment which follows his signature that he is the CO of the unit to which the accused, in the heading of the charge-sheet, is stated to belong or attached.

6. When the accused has elected to be tried by a court-martial, the charge sheet should be endorsed on top "The accused has elected to be tried by court-martial..... on (all) charge(s)". See S. 86(a) and (c)AFA for occasions when accused has right to elect to be tried by court-martial.

7. See also Paras 693 to 699 Regs.

8. Sub-rule (1) substituted vide SRO 83 of 19 Dec 70.

35. Commencement of charge-sheet - Each charge-sheet shall begin with the name and description of the person charged, and state, in the case of an officer, his rank, name, number and in the case of a warrant officer, or other enrolled person, his number, rank, name and unit. When the accused person does not belong to the regular air force, the charge-sheet shall show by the description of him, or directly by an express averment, that he is subject to the Act in respect of the offence charged.

NOTES

1. The name or description of a person charged is immaterial so long as the identity is established. See also Rr. 38 and 58 AFR. An officer, WO, or person enrolled in the Air Force is always subject to AFA. Accordingly, a statement in the description of the accused that he belongs to the Air Force will be sufficient to aver and it need not be expressly stated that he is subject to AFA.

2. If the accused is subject to AFA under specified conditions (e.g. an enrolled person of the Auxiliary Air Force), the description must contain an averment as to how he is subject to AFA. See Notes under Section 1, Fifth Schedule to AFR.

3. When an accused holding an acting rank is brought to trial by a court martial he is to be arraigned in his substantive rank with the acting rank shown as under:

No.....Corporal (Actg Sergeant).....of Unit.....

4. For definition of 'officer', 'warrant officer' and 'offence', see S. 4(xxiii), (xxix) and (xxii) AFA.

5. For relative ranks, see para 31 Regs.

36. 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) The statement of the offence; and

(b) the 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 that offence, but not necessarily 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 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.

NOTES

1.1 A single charge disclosing two separate offences would be bad. For example a charge under S.40 AFA for using threatening and insubordinate language to his superior officer, or a charge under S. 52 AFA for committing theft and dishonestly retaining Government property. Thefts of property of the same owner which took place at different times, even on the same day from the same store, should not be included in the same charge. But the use of the word "and" in the statement of offence is permissible where the charge discloses only one offence e.g. a charge under S. 54 (b) AFA for losing by neglect arms, equipment and clothing the property of the Government, because an accused is not charged with two offences, but with a single offence which is constituted by his having lost by neglect the various articles specified in the charge.

1.2 The rule against duplicity is also applicable to the particulars of the charge e.g. in a charge under S.36(d) AFA an averment that the accused left his post without orders from his superior officer and remained absent for a specified period, is not permissible as the

particulars disclose two separate offences. Similarly, in a charge under S. 44 AFA, it is not permissible to aver two false answers to two separate questions set forth in the enrolment form or in a charge under S.40(c) to aver two separate instances of use of insubordinate language.

1.3 A single transaction, though technically disclosing more than one offence, should not, as a rule be made the subject of more than one charge. For instance, where use of criminal force to a superior officer is accompanied by insubordinate language, the use of criminal force alone should be charged (assuming the evidence to be satisfactory), the language being admissible in evidence to show the intent. On the other hand, if it seems desirable, a man can legally be charged in two separate charges with escape from arrest and absence without leave (following such escape).

1.4 The incidental mention of a separate offence in the particulars, however, would not of itself invalidate the charge e.g. the mention in the particulars of a charge under S. 40(a) AFA for assaulting his superior officer, use of insubordinate language chargeable under S. 40(c) AFA which accompanied a menacing gesture and showed its purport.

2.1 A person may be charged with committing theft of property in one charge and alternatively with dishonestly receiving such property in another charge.

2.2 Where under S. 138 AFA the person charged with a certain offence may be found guilty of another offence, there is no need to include an alternative charge of having committed the lesser offence. But a person charged only with the lesser offence can never be found guilty of a more serious offence.

3.1 Where the statement of offence discloses an offence under AFA and one or more essential elements of that offence are omitted from the particulars e.g. the word "dishonestly" in a charge of "dishonestly misappropriating" or the words "knowing it to be stolen" in a charge of receiving, the omission of that element from the particulars would not invalidate the charge, if taken as a whole, it informs the accused of the allegations he is called upon to meet, and the offence for which he is arraigned.

3.2 For statements of offences, see Appendix 'A'.

4.1 The statement of particulars should state shortly in ordinary language what the accused is alleged to have done. All the ingredients necessary to constitute the offence should be specified, e.g. if the charge is under S.41(2) AFA for disobeying a lawful command, the particulars must state the command, rank and name of the superior officer who gave the command, and the fact that the accused disobeyed it. Where a state of mind e.g. intention or knowledge, is an essential ingredient of an offence, such state of mind should be averred in the particulars.

4.2 The statement of the particulars must support the statement of the offence; e.g. if the statement of an offence laid under S. 52(a) AFA alleged that the accused committed theft in respect of property of the Government, particulars stating only that the accused dishonestly received, or was in unauthorised possession of the property would not support the statement of the offence and the charge would be a bad charge, and the fact that the accused pleaded guilty to it would not affect the matter. But a merely technical difference,

e.g., where the word assault is used in the statement of offence and the particulars disclose the use of criminal force, would not invalidate the charge if the statement of offence and the particulars taken together supply the court and the accused with sufficient information of the nature of the offence which the court is to try and the accused to meet.

4.3 Vague statements must be avoided, e.g., in a charge for using insubordinate language to his superior officer or for making a false statement to his CO, it is not sufficient to state that the accused used insubordinate language or made a false statement well knowing the statement to be false; the words alleged to have been spoken or written must be set out in the particulars. Similarly in a charge under S. 42(e) AFA it is not sufficient to state that the accused neglected to obey station orders by doing a particular act; the order it is alleged the accused neglected to obey must be set out in the particulars.

4.4 The exact or approximate date of the offence should be averred in the particulars. Such averment would prima-facie show whether or not the trial in respect of the offence is time-barred. See S. 121(1) AFA.

4.5 If for reasons of security it is considered undesirable to disclose the place of offence, the words "at field" may be averred in the particulars instead of the actual place of offence.

4.6 When particulars in one charge are framed wholly or partially by reference to the particulars in another charge and the accused is convicted of the former but acquitted of the latter, the conviction when recorded should specify what facts are deemed to form part of the former charge. See sub-rule (5).

4.7 Stoppages cannot be awarded under S. 73(m) AFA unless particulars contain a specific averment regarding the value of the loss or damage caused and the same is proved in, evidence.

5.1 When an offence is punished more severely, when committed under particular circumstances, the particulars should contain an averment about such circumstances e.g. in a charge under S. 41(2) AFA for disobeying a lawful command of his superior officer, an averment to the effect that the offence was committed when on active service, should be made, where necessary, since the said offence when committed on active service is more severely punished than otherwise.

5.2 However evidence may be adduced to show or the court may take judicial notice of the fact, that an offence was being committed on active service, even when the fact is not stated in the particulars of the charge, where the sole purpose of proving or taking judicial notice that the offence was committed on active service is to enable the court to award a different kind of punishment (as distinct from a higher degree of punishment) which can be awarded only in the case of offences committed on active service, for example, forfeiture of pay and allowances under section 73 (k) AFA.

5.3. Whenever it is necessary for either of the above purposes (i.e. to establish the particulars in the charge rendering the accused liable to a higher degree of punishment or to enable the court to award a particular kind of punishment) for a court to take judicial notice that the offence was committed on active service, the prosecutor must invite the

court to take such judicial notice and a note to this effect and to the effect that the court has taken such judicial notice should be entered in the record of the proceedings. See S. 133 AFA and Notes thereto.

6. When civil offences are tried by court martial under S. 71 AFA, although technical terms need not be used in the charge, the essence of the civil offence must be expressed.

7. For definition of civil offence' and 'offence', see S.4(xii) and (xxii) AFA

37. Signature on Charge-sheet. The charge sheet shall be signed by the Commanding officer of the accused or by the officer who, in respect of the accused, is an officer empowered under section 82 to exercise the powers of a commanding officer and shall contain the place and date of such signature.

NOTES

1. see Note 5 to r. 34 AFR. The charge sheet must be signed by the CO of the accused. It cannot be signed by any other officer for him. There should be no corrections or erasures.
2. For definitions of 'commanding officer' and 'officer', see S.4(xv) and (xxiii) AFA
3. The charge sheet should contain the place and date of signature. It for reasons of security it is inadvisable to disclose the place of signature, it may be shown as "field", the date of signature is of assistance in ascertaining whether or not provisions of R. 40 AFR regarding warning of the accused for trial, have been complied with.
4. Rule substituted vide SRO 24 E of 1974.

38. Validity of charge sheet – (1) A charge sheet shall not be invalid by reason only of any mistake in the name or description of the person charged, if he does not object to the charge sheet during the trial, and it is not shown that injustice has been done to the person charged.

(2) In the construction of a charge sheet or charge, there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included though not expressed therein.

NOTES

1. Although the trial of an offender is not invalid on account of mistake in the name of the accused, such mistakes are dangerous, in so far as they may lead to mistakes of substance. Where, however, a person has been enrolled and is commonly known under an assumed name, he may be described by that name. The court has power to amend the charge by correcting any mistake in the name or description. Of an accused person, under R. 58 AFR

2. Sub-rule (2) must not be relied upon as an excuse for carelessness in the preparation of charge-sheet. This sub-rule enables a court-martial, or any authority dealing with the case summarily under S. 82 or 86 AFA to presume matters which, though not stated in the charge, are necessary to support its validity, and can reasonably be implied from it.

Preparation of Defence by Accused persons

39. Opportunity for accused to prepare defence – An accused person for whose trial a court martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses, and with any friend or legal adviser whom he may wish to consult.

NOTES

1. As to definition of 'court-martial', see S.4 (xvi) AFA.

2.1 The freest communication which is consistent with the necessities of discipline and with the safe custody of the accused should be allowed. Failure to give the accused full opportunity of preparing his defence, and free communication with others for the purpose, may invalidate the proceedings.

2.2 The accused, his defending officer, defence counsel or friend of the accused is not entitled to interview for the purpose of general examination or interrogation any prosecution witness or a witness who has already given evidence for the prosecution at the taking of the summary of evidence, unless the prosecution have before the trial, definitely decided not to call such witness as a witness for the prosecution. If the accused or his defending officer or counsel desires to put any specific question(s) to a witness for the prosecution with a view to ascertaining some specific facts (s) which it may be of assistance in the preparation of the defence to know, the convening officer may permit such question or questions to be put subject to any safeguard such as the presence of a representative of the prosecution as the Convening Officer may think fit. The converse holds good as regards interviews by the prosecution of witnesses for the defence.

3. For power to dispense with this rule, see R.42 AFR.

4. As to defending officer and friend of accused, see R. 102 AFR, as to counsel at GCM and DCM, see Rr. 103 to 108 AFR to the right of the accused to consult the JA on any question of law or procedure, see R.111 AFR.

5. See also paras 692, 731 and 740 Regs.

6. In *Hardev Singh V UOI*, where the court martial initially adjourned for letting the accused prepare his defence and on resumption the accused signified his assent for the commencement of trial, the Delhi High Court held that reasonable opportunity had been given to the accused to prepare his defence.

40. Warning of accused for trial - (1) The accused before he is arraigned shall be informed by an officer of every charge on which he is to be tried; and also that, on his giving the names of witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.

The interval between his being so informed of the charges against him and his arraignment must be such as to allow him to have his witnesses present, and to consider his defence.

(2) The officer at the time of so informing the accused shall give him a copy of the charge-sheet and, if the recording of summary of evidence has not been dispensed with under Rule 42, a copy of the summary of evidence, and, if he desires it, a vernacular translation of the same, and shall if necessary, read and explain to him the charges brought against him.

(3) If he desires it, a list of the names, ranks, and units of the officers who ate to form the court, and where officers in waiting are named, also of these officers, will be given to the accused.

(4) If it appears to the court that the accused is liable to be prejudiced at his trial, by any non-compliance with this rules, the court shall take steps and, if necessary, adjourn to avoid the accused being so prejudiced.

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NOTES

1. The duty of complying with the provisions of this rule will usually devolve upon the prosecutor in the case of courts-martial, who should, in any case, satisfy himself before the trial that it has been properly performed. Even if this rule is dispensed with under R. 42 AFR, the accused must have information of the charge and opportunity of calling his witnesses.

2.1. A copy (and translation where necessary) of the charge sheet must always be given, unless this rule has been dispensed with under R. 42 AFR. Even where it is not dispensed with, the charges must be clearly explained to the accused, as otherwise he may not have proper opportunity to prepare his defence. If the accused objects to the charge he will have an opportunity of making his objection when called upon to plead. See R. 53 AFR.

2.2. The list of names, rank and units of the members of the court should normally be delivered to the accused, irrespective of any demand on his part, as soon as the names of the members are known.

2.3. The interval refereed to in provisio to sub-rule (1) shall not be less than ninety-six hours, and where the accused person is on active service, not less than twenty-four hours. Paras 692 and 740 Regs. refer..

3.1. The duty of procuring attendance of witnesses at GCM and DCM devolves, under R. 115 AFR upon the CO or convening officer and after assembly of the court, the presiding

officer.

3.2. Prima facie a request from the accused for procuring the attendance of a witness will be reasonable, if the witness is able to give evidence relevant to the charge or to the character of the accused. But the convening officer, CO, etc. are entitled to take into consideration the relative importance of the evidence to be given by the witness and the inconvenience to the service and the expense to the public which may be caused by taking the witness away from his normal duty. If he thinks it necessary he may ask the defence what is the nature of the evidence which the witness is required to give.

3.3. the request of an accused person for witnesses to be called on his behalf should only be refused if it is quite clear that their evidence would be immaterial, or if their attendance cannot be secured within a reasonable time. The request may also be refused on the ground that is made for the purpose of vexation or delay or for defeating the ends of justice. If a material witness is absent, the court should always adjourn for the purposes for enabling him to attend or of procuring his examination on commission.

3.3. For form of summons to witnesses, see Third schedule to AFR.

4. For definition of 'officer' see S.4(xxiii) AFA.

5. For power to dispense with this rule, see R. 42 AFR.

6. Rule amended vide SRO 24 E of 1974.

7. In **UOI V. Ex Flt Lt GS Bajwa**, the Supreme Court held that there is nothing wrong in the Court calling upon the delinquent officer to disclose the relevancy of each witness and the point on which the officer wishes to examine him as a large number of witnesses were sought to be examined by the accused and he had also sought a long adjournment of 14 days for this purpose.

41. 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, whether charged jointly or not, 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 persons are so charged under sub rules (1) or (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 persons at the time of his being informed of the charge, and any accused person may claim, either by notice to the authority convening the court, or, when arraigned before the outré, by notice to the authority convening the court, that he or some other accused person 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 person 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 persons whose separate trial has been claimed, shall be tried separately.

(5) Where any such claim as is referred to in sub-rule (4) has been made and disallowed by the authority convening the court, or by the court, the disallowance of such claim shall 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.

(6) Where the proceedings of any court-martial in respect of any charge against an accused person are not confirmed on the ground stated in sub-rule (5) such accused person may be tried again on that charge.

NOTES

1.1. At times the nature of the charge may not admit of a separate trial, e.g., in the case of conspiring to cause or joining in a mutiny, the essence of the charge is combination between the accused person. Certain offences, on the other hand, cannot from their nature be committed collectively, e.g., intoxication, sentry sleeping upon or leaving his post; malingering; giving false evidence, cowardice, etc. and speaking generally, all offences where a person's individual state of body or mind is of the essence of the offence. In case of doubt the accused should be tried separately.

1.2. To admit of a joint charge and trial, the accused persons must have acted together with the common purpose of committing the offence charged. If the acts on which the charges are founded are so connected that it is in the interest of justice that they be tried together.

1.3. If two accused persons are charged separately with committing the same offence, they cannot, even at their own request, be tried together, because they have not been charged jointly.

2. Where a joint or a separate summary of evidence is recorded against the accused persons, they can still be charged jointly and tried together under the circumstances specified in this rule.

3. As to swearing of court to try several accused persons, see R. 96 AFR and Notes thereto.

4. If one accused pleads guilty and another not guilty, the trial of the latter up to and including the finding must be carried out before the court deals with the case of the accused who has pleaded guilty.

5. For definition of ' offence', see S.4(xxii) AFA.

6. Rule substituted vide SRO 24 E of 1974.

Exception from Rules

42. Suspension of rules on the ground of the exigencies of the service or the necessities of discipline .- Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that exigencies of the service or the necessities of discipline, render it impossible or inexpedient to observe any of the provisions of sub-rule (4), sub-rule(5), sub rule (6) and sub-rule (7)of rule 24 and of rules 25, 39 and 40 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 the declaration may be made with respect to all or any of the provisions of the rules aforesaid.

Provided that the accused shall full opportunity or making his defence, and shall be offered every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

NOTES

1. For definition of 'officer' and 'court-martial', see S.4 (xxiii) and (xvi) AFA.

2.1 The power conferred by this rule should rarely be exercised except on active service and even then, only if absolutely necessary.

2.2 In exercising the powers conferred by this rule, it is not necessary to dispense with all the provisions mentioned e.g., it may be expedient to comply with the relevant provisions of sub-rules (4) to (7) of R. 24 AFR but not with R. 39 AFR.

3.1 If sub-rules (4) to (7) of R. 24 AFR are suspended, steps must be taken to inform the accused before hand of the nature of the charge, the names of the witnesses and the effect of their evidence, and the court must take care that the accused is not prejudiced by reason of the suspension, as, for instance, by not having a summary of evidence.

3.2 The power of dispensing with R. 39 AFR is only intended to be exercised where it is necessary to try a person before he can communicate with a witness or friend at a distance. The said rule should never be dispensed with except in extreme cases and even then, the accused must be allowed free communication with any witness or friend on the spot.

3.3 R. 40(3) AFR should always be complied with. If sub-rules (1) and (2) of R. 40 AFR are not complied with within the time therein mentioned, they should be complied with as far as possible before the court assembles.

3.4 The accused will not have full opportunity of making his defence unless he receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witness evidence, or to acquaint himself with the charge, or requests the postponement of cross-examination of a witness, the court should

grant the request, and may adjourn for the purpose. A refusal to do so might be held to be non-compliance with the proviso to the rule and thus to invalidate the trial. For the same reason, the court, even in the absence of any such request, must take care that the accused is not prejudiced by being taken by surprise, either by the charge or the evidence of witness.

4. A declaration under this rule is not to form part of the convening order but is to be a separate order. For form of declaration, see Form F.1 to Third schedule to AFR.

SECTION 2.- General and District Courts-Martial-Convening the Court

43. Convening of general and district courts-martial.

1. An officer before convening a general or district courts-martial shall first satisfy himself that the charges to be tried by the court martial are for offences within the meaning of the Act, and framed in accordance with law, and that the evidence justifies a trial on those charges, he may amend the charges if he deems fit, and if not so satisfied 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 description of court-martial 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. After the convening officer has appointed or detailed the officers to form a court-martial under sub-rule (3), convening order of the court-martial and endorsement on the charge -sheet for trial of the accused by the court-martial may either be signed by the convening officer or by a staff officer on his behalf. The charge-sheet on which the accused to be tried, the summary of evidence and convening order for assembly of court-martial shall then be sent to the senior officer of court-martial and the Judge Advocate, if appointed.

NOTES

1.1 In brief the convening officer should satisfy himself that

(a) each charge and the attendant circumstances have been carefully examined, see para 732 Regs.

(b) advise of the JAG(Air) or CJA of the Command has been obtained and considered; see para 734 Regs.

(c) that a prima facie case exists with respect to each charge. The essential requirements of a prima facie case have been vividly spelt out in **Martin & Brown Ltd v RN Banerjee** that a prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same was believed. While determining whether a prima facie case has been made out, the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion which could be arrived at on that evidence.

(d) he holds the necessary court-martial warrant empowering him to convene the description of court martial that he considers appropriate; see para 735 Regs.

(e) the court is composed in accordance with AFA and AFR; see Rr. 46-48 AFR and para 737 Regs.

(f) no officer who is ineligible or disqualified is appointed as a member or JA or waiting member; see Rr. 45 and 110 AFR.

(g) a trial judge advocate is appointed in all cases required under law and in all other cases where desirable, ; see S. 128 AFA and para 738 A Regs. In case of a DCM or SGCM, where difficult legal points are involved procedural issues are likely to arise, a judge advocate must be appointed.

(h) if the accused does not understand English, an interpreter in the language of the accused person has been detailed; see R. 98 AFR.

1.2 An officer having power to convene a GCM may order a GCM in a case where no application for trial has been made, provided that the case was referred to him for summary disposal under S. 86 AFA.

1.3 While complying with R. 43(1) AFR, the convening authority has inherent powers to reframe the charge or to include additional alter native charge(s), provided by doing so no prejudice is caused to the accused in his defence.

1.4 In **Naib Subedar Baleshwar Ram V. UOI**, the Supreme Court held that though under the inquiry under Rule 22 (Corresponds to Rule 24 AFR) the charge related to an offence which came under Sec 63 of the Army Act (Corresponds to Sec 65 AFA) while the charge he was called upon to face in the GCM was one of theft punishable under Sec 52 (a) of the Army Act (Corresponds to Sec 52 (a) AFA), but the basic facts said to constitute that allegation were nothing else than removal of the food stuff which constituted the charge of theft, therefore, it is clear that no prejudice has been caused to the accused.

1.5 In **Uol V. Gurnam Singh**, the SC held that the officer who records the satisfaction under Rule 37 (1) (Corresponds to Rule 43 (1) AFR) and the officer who actually convenes the Court Martial under sub-rule (3) of Rule 37 (Corresponds to Rule 43 (3) AFR) can be two different officers, but both must be competent under Section 109 of the Army Act. (Corresponds to Sec 110 AFA)

2.1 Where the convening officer is of opinion that it is impracticable having due regard to the public service, to follow the rules as to appointing members from different units (R.48 AFR), or as to rank of members (Rr. 46 and 47 AFR), such opinion should be stated in the convening order.

2.2 The declaration under R. 42 AFR dispensing with the observance of certain rules should be in a separate order. See. Note 4 to R.42 AFR.

3.1 When the trial is likely to be prolonged, it is desirable to detail more than the minimum number of members so that in case of sickness etc, the court will not have to be dissolved.

3.2 It is customary for the court to be composed of an odd number of members, including the presiding officer.

3.3 Officers who are due to retire shortly should not be detailed as members since it may result in the court being reduced below the legal minimum, if such officer retires before conclusion of the trial. Similarly, to avoid practical difficulties re-employed officers may not be detailed as members.

3.4 It will usually be desirable, in the case of both GCM and DCM to add two or more waiting members, in order to fill the places of officers retiring on challenge, or who are not available to serve owing to illness, etc. Waiting member should be carefully chosen so as to ensure that the court will be properly constituted if such waiting member were to take the place of a retiring or absent member,

4. Where the convening authority does not detail any waiting member(s), but directs the CO of the unit where the trial is held to detail one or more waiting members, the Station Routine Order or other document through which such waiting member was detailed should be examined by the court and enclosed with the proceedings, if any such waiting member is subsequently required to take the place of a member of the court.

5. In order to provide experience, one or more junior officers should be detailed, whenever possible, to attend court-martial for instruction. An officer attending for purposes of instruction, need not be one who is not ineligible or disqualified in terms of R. 45 AFR. But an officer who is or is likely to be a witness should not be so detailed. Officers attending for purposes of instruction shall be sworn (see R. 54 AFR) but they shall not vote.

6. Where a JA has been appointed it is his responsibility to inform the convening officer of any informality or defect in the charge or in the constitution of the court. See R. 111 (c) AFR.

7. Where several persons are to be tried separately by the same court, a copy of convening order should be prepared for each accused. The original charge-sheet and convening order will subsequently be annexed to the proceedings.

8. The object of sub-rule (4) is to enable the senior member of the court-martial to have an idea of the charge(s) on which the accused is to be arraigned. Where a JA has been appointed, a copy each of the charge-sheet and summary of evidence, should be Sent to him.

9.1 During the trial if the evidence given by a witness materially differs from his statement contained in the summary of evidence, the presiding officer may question him thereon.

9.2 Members of the court must take care that they are not unduly influenced by any statement appearing in the summary of evidence, though they will naturally have regard in testing the credibility of a witness, to the fact that his evidence given at the trial is contradictory to any proved statement at the summary. It is usually expedient that the presiding officer alone should refer to the summary.

10.1 The summary of evidence must be read in court if the accused pleads guilty, and

may be used for determining the sentence. See R. 62(3)(a) AFR. It may be used at the trial for the purpose of showing that a witness had previously made a particular statement, or is giving evidence which differs from that given by him when the summary was taken. Any statement of the accused contained in the summary, which is relevant to the charge, may be read to the court as evidence before the close of the prosecution case, but before reading such statement formal proof should be given that it was made voluntarily; see R. 24 (6) AFR. Except in the above instance, the summary cannot be used as evidence.

10.2 Where the accused pleads guilty, the summary of evidence is to be annexed to the proceedings as exhibit. If the accused pleads 'not guilty', the summary should be enclosed with the proceedings when sent to the confirming officer, but it should only be annexed to the proceedings if it has been used in evidence.

11. For definition of 'officer', 'offence' and 'court-martial', see S.4 (xxiii), (xxii) and (xvi) AFA.

12. See also para 732 Regs.

13. As regards SGCM this rule does not apply; but see R.130 AFR

44 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 the 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 required minimum, proceed recording their reasons for so doing.

(2) If the court adjourns for the purpose of the appointment of fresh members whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

NOTES

1. For definition of 'officer', see S.4 (xxiii) AFA.

2. A GCM for which, say, seven members have been detailed, should not ordinarily begin the trial with less than seven. It may be assumed that the convening officer, in detailing seven members when five would have legally sufficed, had in view the possible prolongation of the trial or the desirability, in the circumstances of the case, of submitting the issues to be decided to the arbitration of a larger court. But under this rule, the court may proceed, unless reduced below the legal minimum.

3. No court can be formed if the number of officers is, from whatever cause, below the legal minimum, nor can the proceedings even, if properly commenced, be continued. In either case a report of the circumstances must be made to the convening officer by the senior officer present. For legal minimum, see Ss. 114 and 115 AFA.

4. After the trial has once begun, fresh members cannot be appointed in any circumstances. The trial is said to have commenced when the accused is arraigned. See R. 93 (2) AFR and also S. 117 (1) AFA.

5. If one of the members has disclosed that he is a friend of the accused or has a personal interest in the case, and therefore the court feels that he is disqualified to serve as member, the record in his proceedings should be on the following lines :-

"Squadron Leader xxxxxxxxxxxx () xxxxx of , having declared that he has a personal interest in the case (or first charge etc.), because of , the presiding officer appoints a qualified waiting member to take his place."

6. Sub-rule (2): if another court is convened, a member of the previous court-martial which tried the accused is ineligible to serve as member in the subsequently convened court. See R.45 (2) (c) AFR.

7.1 As to ineligibility and disqualification, see R. 45 AFR.

7.2 As regards composition of courts-martial, see para 737 Regs.

7.3 As to challenges, see S. 129 AFA and R.52 AFR.

8. So far as practicable, this rule will apply to SGCM as if SGCM were DCM. See R. 142 AFR.

45. Ineligibility and disqualification of officers for court-martial -

- (1) An officer is not eligible to serve on a court-martial unless he is subject to air force law.
- (2) An officer is disqualified for serving on a general, or district court-martial if he
 - (a) is the 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 flight, squadron, station, unit 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 unit to which the accused is attached or belongs; or
 - (e) has a personal interest in the case.
- (3) A provost-marshal or assistance provost-marshal is disqualified from serving on a general or district court-martial.

NOTES

- 1.1 The term 'eligible' is used with reference to the officer being subject to air force law and to his status as such officer; it involves no personal consideration.
- 1.2 The term 'disqualified' is used with reference to the personal qualification of an officer. Except so far as is provided by R. 48 AFR the unit to which an officer belongs is immaterial as regards his eligibility or disqualification to serve on a court-martial.
2. An officer will not be detailed to sit on any court-martial even if otherwise qualified, until the commanding officer deems him competent to perform the duties of a member of a court-martial. See para 722 Regs.
3. Once an accused has been arraigned by a court-martial the members of the court-martial should be considered disqualified in terms of R. 45 (2) (c) AFR to act as members of another court-martial convened to try the same accused for the same offence.
4. The term 'personal interest' will extend to even a remote or very small personal interest.
5. When the court is deliberating on the question of disqualification of a JA at a trial, the

JA should continue to occupy his place and not leave the court.

6.1 For definition of 'officer', 'court-martial' and 'offence' see S.4 (xxiii), (xvi) and (xxii) AFA.

6.2 For definition of 'commanding officer' and 'unit', see S.4 (xv) and (xxviii) AFA.

6.3 'provost marshal' - see Ss.4 (xxv) and 108 AFA.

7. As per R.142 AFR, this rule does not apply to SGCM; but see R.130 (3) AFR.

46. Composition of general court-martial

(1) The senior member of a general court-martial shall be of a rank not below that of a Group Captain, unless in the opinion of the convening officer, to be stated in the order convening the court and to be conclusive, an officer of the rank is not (having due regard to the public service) available.

(2) All members of a general court-martial for the trial of an officer shall be of equal if not superior rank to the accused, unless in the opinion of the convening officer, to be stated in the order convening the court and to be conclusive, officers of the required rank are not (having due regard to the public service) available;

Provided that in no case shall an officer below the rank of Flight Lieutenant be appointed a member of a court-martial for the trial of an officer of or above the rank of Squadron Leader.

NOTES

1. For definition of 'officer' and 'court –martial', see S.4 (xxiii) and (xvi) AFA.
2. The expression of the convening officer's opinion justifying a departure from the general rule should be inserted in the convening order. See form F.2 (a), Sixth Schedule to AFR.
3. The effect of the proviso to sub-rule (2) is that if the accused is a Squadron Leader or above, no member below Flight Lieutenant can be detailed.
4. While deciding the composition of a court-martial, the convening authority should consider the nature of the charges and detail, whenever necessary officers of appropriate branch and experience. For example, if the charge is under S.62 (a) AFA, one or more officers of the Flying Branch may be detailed. If the charge is under S.46 (b) AFA, an officer of the medical branch should desirably be detailed.
5. See also para 737 and 738 Regs as regards composition of court-martial.
6. This rule does not apply to SGCM. See R.142 AFR.

47. Composition of a district court-martial - The senior member of a district court-martial shall be of a rank not below that of Squadron Leader, unless in the opinion of the convening officer, to be stated in the order convening the court and to be conclusive an officer of that rank is not (having due regard to the public service) available.

NOTES

1. For definition of 'officer' and 'court-martial', see S.4 (xxiii) and (xvi) AFA.
2. The expression of the convening officer's opinion justifying a departure from the general rules should be inserted in the convening order. see form F.2(a), Sixth Schedule to AFR.
3. See Notes 4 and 5 to R. 46 AFR.
4. This rule does not apply to SGCM. See R.142 AFR.

48. Units of Members of court-martial - A general or district court-martial shall not be composed exclusively of officers of the same unit, unless the convening officer states in the order convening the court that in his opinion other officers are not (having due regard to the public service) available, and in no case shall it consist exclusively of officers belonging to the same unit as the accused.

NOTES

1. For definition of 'court-martial', 'officer' and 'unit', see S. (xvi), (xxiii) and (xxviii) AFA.
2. The expression of the convening officer's opinion justifying a departure from the general rule should be inserted in the convening order. See form F. 2 (a), Sixth Schedule to AFR.
3. See Notes 4 and 5 to R.46 AFR.
4. This rule does not apply to SGCM. See R.142 AFR.

Procedure at Trial — Constitution of Court

49. Inquiry by court as to legal constitution - (1). On the court assembling, the order convening the court shall be read, and also the names, rank and unit of the officers appointed to serve on the court and it shall be the first duty of the court to satisfy itself that the court is duly constituted that is to say -

(a) that, so far as the court can ascertain, the court has been convened in accordance with the Act and these rules;

(b) that the court consists of number of officers not less than the required minimum, and, save as mentioned in rule 44, 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.

(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 acting at that court-martial.

(3) The court, if not satisfied on the above matters, shall report its opinion to the convening authority, and may adjourn for that purpose.

NOTES

1. The inquiries necessitated by this and the following rule should be conducted in closed court. The court is not 'open' at this stage and the accused is not brought before the court yet.

2.1 The convening order, charge sheet and the summary of evidence are placed before the court to facilitate the compliance of provisions of this rule and R 50 AFR. See also R. 43(4) AFR.

2.2 Provided that the convening order is on the face of it correct and duly signed, the court may, unless they have reason to believe to the contrary, assume that the convening officer was authorised under AFA to convene the court-martial and that the provisions of R.43 AFR have been complied with.

3. Where members are detailed by rank and unit and not by name, then only officers of the actual rank and unit stated in the convening order can serve as members.

4. It is essential that the court should ascertain as far as it lies in its power, that it has jurisdiction. For form of convening order see Appendix 'C1'.

5. In the case of a GCM or DCM, the convening order must be signed by the convening officer or "for" him by a staff officer. The absence of a properly signed convening order is a fatal flaw although an order for trial is endorsed on the charge-sheet. Apart from the specific requirements of this rule, the court must be satisfied that it is constituted strictly in accordance with the convening order.

6. The court, in considering whether it is convened in accordance with the AFA and AFR can only look at the convening order. The convening officer is responsible to satisfy himself that he holds the necessary Court martial warrant empowering him to convene the court, and the court is not required to satisfy itself in this respect.

7.1 As regards composition of the court, see Ss. 114 and 115 AFA and Rr.46 and 47 AFR.

7.2 For eligibility and disqualification of members, see Ss. 114 and 115 and R.45 AFR.

8. For the appointment of JA, see S. 128 AFA. For disqualification of JA, see R.110 AFR.

9. For definition of 'unit' and 'officer', see S.4 (xxviii) and (xxiii) AFA.

10. This rule does not apply to SGCM. See R.142 AFR.

50. Inquiry by court as to amenability of accused and validity of charge -

(1) The court, when satisfied on the above matters, shall satisfy itself in respect of each charge about to be brought before them

(a) that it appears to be laid against a person subject to the Act and to the jurisdiction of the court, and

(b) that each charge discloses an offence under the Act and is framed in accordance with these rules, and is so explicit as to enable the accused readily to understand what he has to answer.

(2) The court, if not satisfied on the above matters, shall report its opinion to the convening authority and may adjourn for that purpose.

NOTES

1. The inquiry by the court under this and the preceding rule should be in closed court.
2. The convening order, charge-sheet and summary of evidence are placed before the court to facilitate the compliance of this rule and R.49 AFR. See R.43 (4) AFR.
3. For amenability to air force law, i.e. to the AFA, see Ss.2 and 3 AFA and notes thereto.
4. As to validity of charge, see Rr. 34 to 38 AFR.
5. For definition of 'offence', see S.4 (xxii) AFA.
6. This rule does not apply to SGCM. See R.142 AFR.

Procedure at Trial Challenge and Swearing

51. Appearance of accused and prosecutor. - When the court is satisfied as to the above facts, it shall cause the accused to be brought before the court, and the prosecutor who must be a person subject to air force law, shall take place.

NOTES

1.1 The presiding officer should cause the court orderly to announce that the court is open, whereupon the accused, defending officer (or defence counsel and/or friend of the accused) and prosecutor take their places and members of the public take their seats. The accused is marched in with his escort, and if an officer or WO, may be marched in by the escort himself. The witnesses may be brought in at this stage to hear the court sworn, but their attendance is not compulsory and may, if there is a large number, be dispensed with. They must leave the court before the accused is arraigned.

1.2 The accused should be in uniform. He will be deprived of his belt and, except in case of sikhs, of his head dress too.

2. See para 417 Regs as regards wearing of head dress by members of court, witnesses etc.

3. If at the trial, the accused person is in a position to comprehend the proceedings and is not incapable of making his defence due to unsoundness of mind or from any other cause, then he may be tried irrespective of his medical category.

4.1 The duty of appointing the prosecutor devolves on the convening officer who ordinarily selects the officer who recorded the summary of evidence; but the convening officer should not appoint himself to be the prosecutor.

4.2 In trials by GCM, and in, complicated cases a prosecutor should be specially selected for his experience and knowledge of air force law. As far as possible, he should be relieved of other air force duty, so that he is able to master the case. In ordinary cases one of the officers mentioned in R.45 (2)(c) may be detailed to act as prosecutor.

4.3 The prosecutor cannot confirm the finding and sentence of a court-martial. See R.81 AFR.

5.1 As to duties of the prosecutor, see Rr.64 to 68 AFR.

5.2 As to counsel, see Rr.103 to 108 AFR.

6. See S.4 (vi) AFA for definition of 'air force law'.

7. Under R.142 AFR, this rule has not been specified to be applicable to SGCM. Even so, the trial at a SGCM can proceed only after the accused has been brought before the

court. But the requirement that the prosecutor must be a person subject to air force law does not apply to SGCM.

52. Proceedings for challenges of members of court - The order convening the court and the names of the presiding officer and members of the court shall then be read over to the accused and he shall be asked, as required by section. 129, whether he objects to be tried by any officer sitting on the court. Any such objections shall be disposed of in accordance with the provisions of section 129:

Provided that -

- (a) the accused shall state the names of all the officers to whom he objects 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 officer lowest in rank shall be disposed of first; and on an objection to an officer, the remaining officers of the court shall in the absence of the challenged officer, vote on the disposal of such objection, notwithstanding that objections have also been made to any of those officers;
- (d) when an objection to an officer is allowed that officer shall forthwith retire, and take no further part in the proceedings;
- (e) when an officer objected to retires, and there are any officers in waiting, the vacancy shall be forthwith filled by one of the officers in waiting being directed by the presiding officer to serve in lieu of the retiring officer. If there is no officer in waiting available, the court shall proceed as directed by rule 44;
- (f) the eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy shall be ascertained by the court, as in the case of other officers appointed to serve on the court.

NOTES

1. See S. 129 AFA and Notes thereto.
2. It is desirable to ascertain before the accused is brought before the court whether the waiting member is eligible and qualified to serve if called upon. An objection to a waiting member called upon to serve will be dealt with immediately, if he is junior to any other officers who have been objected to; if he is not, the objections to junior officers will first be disposed of and he will have to vote on such objections.
3. Each member should answer to his name as it is called, so that the accused can identify each officer who is to try him.

4.1 The accused must make each objection separately; he cannot object to the court collectively, except upon a plea to the jurisdiction, under R.59 AFR. If the accused persists in objecting to the court collectively the court should treat the objection as made to all the members individually, and the procedure provided by this rule should be strictly followed. In practice an objection to a member may be equivalent to a plea to the jurisdiction, as for example when on the trial of a Sqn Ldr one of the members is objected to because he is below the rank of Flt Lt. In such a case the objection should be dealt with under this rule, although it might more properly have been raised under R. 59 AFR.

4.2 If the accused objects to any of the members, before such objection is taken up for consideration, the question 'Do you object to any other person?' should be repeated until all the objections are ascertained.

4.3 The objections must be objections to the officers as individuals. An objection to the jurisdiction must be considered under R. 59 AFR.

4.4 The accused has no right to object to the prosecutor or JA. But if the JA is disqualified, he should not serve at the court-martial. See R. 110 AFR.

5. An officer objected to on the ground of personal enmity, prejudice or malice or for having formed and expressed an opinion on the case, should, unless the objection is obviously groundless, request and be permitted to retire. An officer successfully objected to on the ground of personal interest is disqualified from serving as a member. See R. 45 (2) (e) AFR.

6. The witness called by the accused in support of his plea cannot be examined on oath or affirmation since the court is not yet sworn or affirmed, but provisions of R. 119 AFR will substantially apply.

7. The court may be closed to consider each objection.

8.1 The officer objected to must not be present in the closed court when the objection in his respect is being considered by the court, but all the other members present, i.e. those who have not retired upon objections to them being allowed and those not objected to, must vote on the disposal of the objection.

8.2 In doubtful cases an objection should always be allowed. It is very important that the court should not only be impartial, but be believed by the accused and his comrades to be so.

9.1 Clause (e) of the Proviso prescribes the manner of filling a vacancy created either by a successful objection or through non-attendance of an officer detailed. Where any waiting members are detailed, it is the duty of the presiding officer to appoint one of those members to fill a vacancy. He is not required to take the first on the list; ordinarily he should select one of corresponding rank to the retiring or absent officer. If the presiding officer is himself successfully objected to, the senior remaining member will take his place (S. 127 AFA) and will then proceed to fill the vacancy in the court in the manner indicated above.

9.2 If there is no officer in waiting available and the Court is reduced in number below the legal minimum, it must adjourn for the purpose of appointment of fresh members; but see also R. 44 AFR.

10. For definition of 'officer', see S. 4(xxiii) AFA.

11.1 In *Lt Col. Prithi Pal Singh and others v UOI* the SC held that requirement of asking the accused under R. 44 AR (Corresponds to R.52 AFR) whether he objects to any member sitting on the court-martial, was mandatory.

11.2 In **Capt Ram Kumar v COAS** it was held by Delhi HC that where an accused objects to two members of the court-martial, one of them can participate in the decision on the objection to the other.

11.3 In **DK Khanna v UOI** the HP High Court held that where a question of 'bias' is raised before a tribunal the test should be not whether infact a bias affected the judgement but the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. Actual proof of prejudice was not necessary.

12. Where the same court is ordered to try several accused persons separately - see R. 96 AFR for procedure on challenges.

13. As regards challenges at a SGCM, see R.133 AFR.

53. Swearing or affirming of members - As soon as the court is constituted with the proper number of officers who are not objected to, or the objections in respect of whom have been overruled, an oath or affirmation shall be administered to every member in one of the following forms or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience:—

Form of Oath

"I,.....do swear in the name of 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 Air Force Act, 1950, 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 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 Air Force Act, 1950. 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 affirm that I will not, on any account, at any time, whatsoever, disclose, or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial in due course of law".

NOTES

1. The provisions of this rule and R. 54 must be strictly complied with, otherwise the court-martial may be invalid.
2. Christians and Sikhs are generally sworn, the former on the New Testament or some book containing it and the latter on the Granth. Hindus and Muslims are generally affirmed. Jews are sworn on the Old Testament.
- 2.2 A person taking the oath will hold the holy book in his uplifted hand and will say or repeat the oath after the person administering it. The oath must be administered and taken with solemnity.
- 2.3 The text of the oath or affirmation is repeated by the person making affirmation after

the person administering it.

2.4 The presiding officer must be sworn separately but the members may be sworn collectively.

3. In addition to the prescribed form of oath or affirmation, the rule permits an oath or affirmation to be administered to the person to be sworn or affirmed in such other form to the same purpose as the court ascertains to be according to his religion or otherwise binding on his conscience.

4. The oath or affirmation taken by the members implies that, as a general rule, the opinions of the individual members ought not to be stated, and consequently the court ought not to disclose whether the decision was unanimous or by a majority. The decision is the decision of the Court as a whole, and the fact of its being unanimous or not is usually immaterial. The qualification at the end of the oath or affirmation, "unless required to give evidence thereof, etc.", only applies to such cases where members of the court are charged individually with partiality or bribery, and thus in a court of justice or a court-martial it would, or might, be necessary to make disclosures regarding individual votes to the court trying the members so charged.

5. As to the person to administer oath or affirmation, see R.55 AFR.

6. Oath includes affirmation. See S.51 IPC.

7. As to swearing of court to try several persons, see R.96 AFR.

8. For definition of 'officer', see S.4 (xxiii) AFA.

9. This rule and Rr. 54-55 AFR apply to SGCM. See R. 134 AFR.

10. This rule substituted vide SRO 83 of 1971.

54. Swearing or affirming of judge advocate and others- 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,.....do swear in the name of God that I will to the best of my ability carry out the duties of judge advocate in accordance with the Air Force Act, 1950, 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 affirm that I will to the best of my ability carry out the duties of judge advocate in accordance with the Air Force Act, 1950 and the rules made thereunder and without partiality, favour or affection, and I do further solemnly affirm that I will not, on any account at any time, whatsoever, disclose or discover the vote or opinion on any matter of any particular member of this court—martial, unless required to give evidence thereof by a court of justice or a court—martial in due course of law."

(B) Officer Attending for the Purpose of Instruction

Form of Oath

"I..... do swear in the name of 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 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 do swear in the name 'of 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

"Ido solemnly 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..... do swear in the name of 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 affirm that I will faith fully interpret and translate, as I shall be required to do, touching' the matter before this court—martial".

NOTES

1. Notes to R.53 AFR apply, mutatis mutandis, to this rule.
- 2.1 The shorthand writer and interpreter are normally sworn after the swearing of the court, but as they may be changed or brought in during the trial there is provision for them to be sworn at any time. See P. 97 AFR.
- 2.2 Only an experienced shorthand writer who is capable of taking down the proceedings

of a trial verbatim should be appointed.

3. The accused has a right of objection to the shorthand writer and interpreter. See R37 (3) AFR. He has no right to object to the JA or to the officers under instruction.

4. The form of oath and affirmation for a witness are set out in R. 118 AFR,

5. Rr. 53-55 AFR apply to SGCM. See R.134 AFR.

6. For definition of 'court-martial', see S.4 (xvi) AFA.

7. Rule 54 substituted vide SRO 83 of 1971.

55. Persons to administer oaths and affirmations - All oaths and affirmations shall be administered by a member of the court, the judge advocate, or some other person empowered by the court to administer such oath or affirmation.

NOTES

1. Oaths and affirmations may be administered by any of the persons mentioned in this rule.
2. It will generally be convenient for the JA to administer the oath or affirmation to the presiding officer and members, or if there is no JA, for the presiding officer to first administer the oath and affirmation to the members and then be himself sworn or affirmed by one of them. The oath or affirmation to the JA may be administered by the presiding officer.
3. While the court and other persons are being sworn at the beginning of the trial all persons should stand and (except for sikhs, women, escort or accused and court orderly) should remove their headdress.
4. Rr. 53-55 AFR apply to SGCM. See R. 134 AFR.

Prosecution, Defence and Summing-up

56. Arraignment of accused -

(1) After the members of the court and other persons are sworn or affirmed as above-mentioned, the accused shall be arraigned, on the charges against him.

(2) The charges upon which the accused is arraigned shall be read and, if necessary, translated to him, and he shall be required to plead separately to each charge.

NOTES

1. The arraignment is conducted by the judge advocate, or by the Presiding Officer, if no JA is appointed.

2.1 'Arraignment' consists of

(a) calling upon the accused by his number (if any), Rank, Name and description as given in the heading of charge-sheet and asking him "Is that your number, rank, name and unit (or description)", (if there is an error in his description it can be amended under R.58 AFR).

(b) reading each charge separately, and

(c) calling upon the accused to plead, i.e. to say whether he is guilty or not guilty to each charge separately as it is read out.

2.2 For question to be put to the accused, see para 3, Form F.2(b) in Sixth Schedule to AFR.

3. The charge-sheet, containing the charges as settled by the convening officer, will be in the possession of the presiding officer (R. 43(4) AFR) who will lay the charge-sheet before the court immediately before arraignment, and the charge-sheet will then be annexed to the proceedings.

4.1 The plea of the accused must be taken separately on all the charges in a charge-sheet. As regards alternative charges, please see R.60 (3) and R.60 (2) AFR.

4.2 Arraignment of the accused at one time through a single question on a number of charges is procedurally incorrect and is contrary to the rule.

5. Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and until after the finding tried upon the first charge-sheet, before

arraignment upon the second or subsequent charge-sheet; see R. 86 AFR.

6.1 An accused before pleading can

- (a) object to any charge under R. 57 AFR,
- (b) offer a plea to the jurisdiction of the court under R.59 AFR,
- (c) offer a plea in bar of trial under R. 61 AFR,
- (d) if being tried jointly, apply to be tried separately under R.41 (4) AFR, whether or not he has already applied under the same sub-rule when warned for trial.
- (e) apply to be tried separately in respect of any charge or charges as if they were on separate charge sheets under R. 86 (5) AFR.

6.2 Although objection to charge, plea to jurisdiction, etc. may be raised on behalf of the accused by his defending officer or counsel, the accused must answer personally whether he pleads guilty or not guilty.

6.3 As to withdrawal of second charge-sheet, see R.86 (4) AFR.

7. If the accused does not understand English, such charge should be translated to him in a language he understands.

8. As regards arraignment at SGCM, see R. 135 AFR.

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

NOTES

1.1 As to framing of charges, see Rr. 34 to 38 AFR.

1.2 As to joint charges, see R. 41 AFR and notes thereto.

2. The court after hearing the submission in support of the objection from or on behalf of the accused and submission in reply by the prosecutor, 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. If the court is in doubt, it may adjourn to consult the convening authority.

3. For procedure where it appears that the accused is, by reason of insanity, unfit to stand his trial, see S. 144 AFA and R. 123 AFR.

4, For definition of 'offence', see 5. 4 (xxii) AFA.

5. This rule applies to SGCM. See R. 142 AFR.

58. 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 they have begun to examine the witnesses, that in the interests of justice any addition to, omission from or alteration in the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge and order the trial to proceed with such amended charge after due notice to the accused.

NOTES

1. A mistake in name or description will only be amended, if it is clear to the court that the accused is the person intended to be charged in the charge-sheet, and that, he is not prejudiced in his defence by the mistake having been made.

2. The court may act under sub-rule (1) whether the objection to the charge is taken by the accused or by the JA, or by a member of the court, and either before or after the arraignment of the accused; see Rr. 50 and 57 AFR.

3. The witnesses referred to in sub-rule (2) are the ones on the substance of the charge and not those who are called as to objections to the members, or with respect to a special plea to the jurisdiction, under R.59 AFR, or in. plea of bar of trial under R.61 AFR.

4. If the addition, omission, or alteration can be met by means of a special finding under R. 71 (4) AFR (as, for instance, by omitting from the finding some of the articles alleged to have been stolen or lost by neglect, or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended; but if the date is material or if any addition requires to be made to the particulars of the charge, it will be safer for the court to adjourn and apply for the amendment. If the charge appears not to disclose an offence under the AFA, the court must adjourn; see Rr. 50 and 57 AFR.

5. Any amendment in the statement of the particulars of offence can be done only by the convening authority and not the court.

6. This rule does not apply to SGCM.

59. 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, they shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by the accused and reply by the prosecutor in reference thereto.

(2) If the courts overrule the special plea, they shall proceed with trial.

(3) If the court allows the special plea, it shall record its decision and the reasons for it, and report it to the convening authority and adjourn; such decision shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(4) If the court is in doubt as to the validity of the plea, it may refer the matter to the convening authority, and may adjourn for that purpose, or may record a special decision with respect to such plea and proceed with the trial.

NOTES

1. A plea to the general jurisdiction, that is to the right to the court generally to try the accused on any charge at all, is here kept distinct from any plea which relates only to the particular charges on which the accused is brought before the court. Under the former he may plead, for example,

(a) that court is improperly constituted in respect of the number of the members;

or

(b) that he is not amenable to the court either as not being subject to AFA or not subject to that description of the court, as for instance in the case of a JWO being brought for trial before a DCM;

or

(c) that he was not subject to air force law at the time when he is alleged to have committed the offence;

or

(d) that he is not under the command of the convening officer;

or

(e) that the charge against him has not been investigated by his CO in the prescribed manner-

2. A plea relating to the particular charge, and raising the defence of previous conviction or acquittal by a court-martial or criminal court, summary punishment by the CO, pardon of the offence or its condonation by the deliberate act of some superior authority or of the lapse of more than three years since the date of the offence (S. 121 AFA) will be raised by way of plea in bar of trial under R.61 AFR.

3. Evidence on special plea to jurisdiction must be taken on oath or affirmation.

4.1 The confirmation of the finding, after a plea to the jurisdiction has been over-ruled, will have the effect of confirming the decision of the court in over-ruling the plea.

4.2 If, however, the confirming officer is of opinion that the plea is valid and should have been allowed, he must refuse to confirm the finding of the court, and another court may legally be convened.

5. If the court allows the plea, the decision of the court cannot be over-ruled thereby requiring the same court to reassemble and proceed with the trial; but another court may legally be convened.

6. If a special plea to the jurisdiction is raised e.g., on the ground that the accused is not subject to AFA, and the court is in doubt as to the validity of the plea, it may record a special decision to that effect, and state that it has nevertheless decided to proceed with the trial. This procedure, in effect, transfers the final decision as to the validity of the plea to the confirming officer, who should initially act as if the plea has been over-ruled by the court, but should proceed as per Note 4.2 above, if he is of opinion that the plea is valid and should have been allowed.

7. This rule applies to SGCM. See R. 142 AFR. If a special plea to the general jurisdiction of a SGCM is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer. See R. 136 AFR.

8. In **Sqn Ldr SR Kohli V. UOI**, the Supreme Court held that where the special plea to jurisdiction was allowed by the Court Martial and matter reported to convening authority, though the convening authority did not convene new court martial forth with but released the petitioner, Rule 59 (3) does not bar convening of Court Martial subsequently.

60. General Plea of "guilty" or "not guilty".- (1) If no; special plea to the general jurisdiction of the court is offered or if such plea being offered, is overruled, or is dealt with by a special decision under sub—rule (4) of rule 59, the accused person's plea "guilty" or "not guilty" (for 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; but, before it is recorded, the officer conducting the proceedings on behalf of the court, shall ascertain that the accused understands the nature of the charge to which he 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".

(3) When an accused person pleads "guilty" to the first of two or more charges laid in the alternative, the prosecutor may, after the provisions of sub—rule (2) have been complied with by the court and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto and a record to that effect shall be made upon the proceedings of the court.

(4) A plea of "guilty" shall not be accepted in cases where the accused is liable, if convicted, to be sentenced to death and where such plea is offered, a plea of "not guilty" shall be recorded and the trial shall proceed accordingly.

NOTES

1. If the accused pleads in some language not understood by the court (even with aid of an interpreter), or inarticulately, he will not have pleaded intelligibly, and a plea of "Not Guilty" will be entered.

2.1 The provisions of sub-rule (2) must be complied with although the accused is defended by a defending officer or counsel. Where the charge is a simple one not much need be said, but the presiding officer or judge advocate must ensure that the accused understands what are the ingredients of the offence with which he is charged, and what it is that he is alleged to have done.

2.2 The object of sub-rule (2) is to prevent the accused from pleading guilty under a misapprehension; e.g., a man charged with wilfully injuring government property may, under a misapprehension, plead because the property has been actually injured, though not wilfully; or a man charged with receiving property, knowing it to have been stolen may,

under a misapprehension plead 'guilty' because the property was in fact stolen though when he received it, he did not know it to have been stolen. So again, on a charge for desertion, the plea 'guilty, but I intended to return' amounts to a plea of 'not guilty', as the intention not to return is generally an essential element in the offence of desertion. In such cases the presiding officer must explain to the accused that he must plead 'not guilty'.

2.3 When an accused, who has indicated, either in a statement made at the hearing under R. 24 AFR, or at the recording of the summary of evidence, that he is not guilty of the charge, pleads guilty to the charge at the trial, the court must satisfy itself that the accused no longer persists in the statement contained in the summary of evidence etc.

2.4 Sub-rule (2) is qualified by sub-rule (4). Sub-rule (4) is intended to ensure that a person charged with an offence for which death penalty can be awarded shall not be convicted without a full trial. For offences where maximum punishment extends to death, see Ss. 34, 37, 38 and 71 AFA.

2.5 If the accused pleads guilty, that the requirement of R.60 (2) AFR have been complied with, must be recorded in the proceedings.

2.6 Where an accused pleaded guilty to a charge, and there are other charges in the, same charge-sheet to which the accused had pleaded not guilty, it is obligatory for the court to comply with provisions of R. 60 (2) AFR before recording such plea of guilty; only thereafter should the court proceed to try the accused on the other charges to which he had pleaded not guilty.

2.7 It may be that even after the court have complied with this sub-rule, the accused or his defending officer or counsel will make some statement, in mitigation of punishment inconsistent with a plea of guilty; in that event action is to be taken in terms of R. 62 (3) (c) AFR.

3.1 A plea of guilty, if proper in all other respects can be-accepted as it makes good the deficiencies in the summary of evidence.

3.2 A plea of 'guilty' is to be taken to the extent to which it is pleaded. Thus if a NCO, arraigned upon a charge of losing by neglect a number of articles, pleads guilty in respect of some of those articles only, he must be taken to have offered a 'qualified' plea of guilty. The court may accept such a qualified plea of guilty, if it is satisfied of the justice of such course and if the concurrence of the convening officer is signified by the prosecutor, and come to a special finding under R.71 (4) & (5) AFR subject to the exceptions in relation to the articles to which he has not pleaded guilty. See R.71 (8) AFR.

3.3 It must be realised that there is nothing untrue in a person pleading not guilty even though he committed the offence, as the plea merely amounts to a claim, which he is entitled to make, that the charge against him shall be formally proved. Where the accused, while admitting the offence, wishes to show that it was committed under circumstances of great provocation and does not deserve severe punishment, he must plead not guilty if he wishes to prove the existence of such provocation out of the mouths of witnesses for the prosecution, who would not be called to give evidence if he pleaded guilty; (See however R. 62 (3) AFR as to the power of the court).

4. As to procedure where it appears at a later stage of the proceedings that the plea of guilty was offered under a misapprehension, see R. 62 (3) (c) AFR.

5.1 If the prosecutor adopts the procedure provided by sub-rule (3), the accused will not be entitled to a verdict on the alternative charges, as he will not have been arraigned upon them. The convening officer must take care that the most serious of two or more alternative charges are placed first in the charge-sheet. As to the procedure to be followed in other cases where there are alternative charges, see R. 62 (1) AFR.

5.2 An alternative charge withdrawn by the prosecutor under R.60 (3) AFR may be reinforced in the, circumstances mentioned in R. 62 (3) (d) AFR.

5.3 When two or more charges are laid in the alternative and if the accused pleads 'not guilty' to the more severe charge and 'guilty' to the less severe charge laid in the alternative, then the Court should ordinarily proceed with the trial, as if the accused had pleaded 'not guilty' to the less severe (alternative) charge also. The plea of 'guilty' to the less severe (alternative) charge may be accepted by the court only if the prosecutor signifies the concurrence of the convening officer. See R.62 (2) AFR and Notes thereto.

6. For definition of 'offence', see S.4 (xxii) AFA.

7. Sub-rule (2) amended vide SRO 24E of 1974.

8. This rule applies to SGCM. See R. 142 AFR.

61. 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 section 82 or section 86 for the offence or a charge in respect of the offence has been dismissed as provided in sub-rule (2) of rule 24 or

(b) the offence has been pardoned or condoned by competent air force authority; or

(c) the time which has elapsed between the commission of the offence and the commencement of the trial is more than three years, and the limit of time for trial is not extended under section 121.

(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 the accused and the prosecutor in reference to the plea.

(3) If the court finds that the plea in bar is proved, it shall record its finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge— sheet, which is not affected by the plea in bar, may proceed with the trial of the accused on that charge.

(4) If the finding that the plea in bar is proved is not confirmed, the court may be reassembled by the confirming authority, and proceed as if the plea had been found not proved.

(5) If the court finds that the plea in bar is not proved; it shall proceed with the trial, and the said finding shall be subject to confirmation like any other finding of the court.

NOTES

I. AFA provides that a man shall not be liable to trial for an offence of which he has been convicted or acquitted by a court-martial or by a criminal Court, or for which he has been dealt with summarily (S. 120 AFA), or which was committed more than three years before the date of his trial, unless the offence was mutiny, desertion or fraudulent enrolment, mutiny or desertion on active service, may be tried at any time. Desertion at other times or fraudulent enrolment is not to be tried, if the offender, has served for 3 years subsequently in an exemplary manner in any portion of regular Air Force (S. 121 AFA).

2. The accused may also offer a plea in bar on the ground that a charge in respect of the offence has been dismissed as provided in R.24 (2) AFR, i.e. that he has been acquitted, or the offence has been condoned, by his CO.

3.1 It has long been recognised as a custom of the service that an air force offence can be condoned. For the purpose of barring a trial, condonation means such conduct on the part of a competent authority (i.e., an authority having power to determine that the charge should not be proceeded with) as is inconsistent with subsequently trying the offender, and as would make it inequitable to do so; it must be a deliberate and intentional act, done with full knowledge of all material facts: If with full knowledge of the facts, competent authority administratively removes an officer, or allows him to resign, he should not afterwards be tried by court-martial for his offence. The fact that after trial, but before confirmation, the accused has been employed in active operations does not affect the legal validity of the sentence, nor will it constitute condonation.

3.2 Omission to order an investigation into the facts of a case may raise an inference of condonation of the offence involved only if the CO or competent authority knew all the facts of the case or knew that those facts disclosed an offence or they deliberately and intentionally did not order an investigation, with the intention express or implied of not proceeding with the offence so disclosed.

3.3 When an application for trial in respect of a person is pending with the competent authority under Rr.27 or 28 AFR, and he decides to initiate administrative action, the same would constitute condonation so far as disciplinary action is concerned.

3.4 Administrative action, taken with full knowledge of facts, may constitute condonation and bar further trial but the converse is not true. Administrative action for the same facts on which a person has been tried is not barred but will rarely be advisable.

3.5 While award of censure by the competent authority may bar the trial of that person by a court martial, such award would not bar the trial of the person under the common law of the land.

3.6 Issue of warning may not constitute condonation if the warning was merely to alert the person and require him to correct his future conduct.

4. The evidence on the plea is to be taken on oath or affirmation.

5. The finding of the court upon a plea in bar of trial whether in favour of or against the plea, is subject to confirmation. If the finding on the plea, where the court allows it, is confirmed, it amounts to an acquittal and is final.

6.1 Where a minor punishment is awarded by a CO or a subordinate commander in contravention of the provisions of S.83 AFA, such punishment will not bar subsequent trial of the accused for the same offence.

6.2 Where a proceeding, under S. 152 AFA, has not been confirmed the accused can legally be tried again and the earlier court martial held in his case will not become a ground for a plea under this rule.

6.3 Once administrative action is taken against a person, subsequent disciplinary action against him for the same misconduct or lapse, based on the same facts is barred by 'law. However, once administrative action is taken against a person further administrative action by way of enhancement is not barred under law and may be resorted to in exceptional and extremely deserving cases.

7.1 For definition of 'offence', see S.4 (xxii) AFA.

7.2 For definition of 'criminal court' and 'court-martial', see S.4 (xvii) and (xvi) AFA.

8. This rule applies to SGCM. See R. 142 AFR.

62. 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 those other charges, and after findings 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 so trying him, proceed under sub—rule (3) in respect of the charges to which he has pleaded guilty.

(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 the accused person as if he had pleaded "not guilty" to all the charges

Provided that this sub-rule shall not apply if the concurrence of the convening officer has been signified by the prosecutor.

(3) The procedure of the court in respect of a charge, on which a plea of "guilty" has been recorded, shall be as follows:

(a) The court shall receive any statement which the accused desires to make with 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 them to determine the sentence and, the confirming officer to know all the circumstances connected with the offence. This evidence will be taken in like manner as is directed by these rules in the case of a plea of "not guilty".

(b) After the 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. If the accused at any court-martial 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.

(c) 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 record its opinion and proceed with the trial as on a plea of "no guilty"; otherwise the court shall subject to rule 71, record a finding of "guilty" on the charge.

(d) When a court has recorded an opinion as is referred to in clause (c) and

proceeds with the trial as on a plea of "not guilty", they shall, if there was a charge laid in the alternative which the prosecutor withdrew under rule 60, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if such charge had never been withdrawn.

(4) If a plea of "guilty" is recorded on any charge, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under sub-rule (3) shall take place when the findings on the other charges in the same charge-sheet have been recorded.

NOTES

1. An accused person cannot be found guilty upon more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilty upon the alternative charge or charges. See. R. 71 (7) AFR.

2. A plea of guilty made by the accused conscientiously because he had committed the offence, should be distinguished from a plea of "guilty" based on a misunderstanding of law or facts or made with some other ulterior motive. e.g., to cover the real culprit, or to earn notoriety as a martyr etc. It is the statutory duty of the court not, to base a conviction on a plea of "guilty" where it is clear from the summary of evidence, or the statements of accused in mitigation or in relation to the charge, or otherwise that the accused does not understand the effect of plea of "guilty".

3.1 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 should try him as if he has pleaded 'not guilty' to all the charges. But the proviso to sub-rule (2) contemplates non-application of that sub-rule if the concurrence of the convening officer has been signified by the prosecutor.

3.2 It may be that even after the court have complied with sub-rule (2), the accused or his defending officer or counsel makes some statement in mitigation of punishment inconsistent with a plea of guilty; in that event action is to be taken under clause (c) of sub—rule (3).

3.3 In any case where the court is empowered to come to a special finding under the provisions of S.138 AFA or R.71(4) & (5) AFR, the court may accept a qualified plea of guilty in respect of such an offence see R. 71(8) AFR.

3.4 Both under proviso to R.62 (2) and under R. 71 (8) AFR, the court will seldom refuse to accept the plea of guilty, if the convening officer concurs, but the court must satisfy themselves that the interests of justice will be met if the accused is found guilty only of the less serious charge. The convening officer only concurs if the court think fit to accept the plea; he does not order them to accept it.

3.5 Having regard to R.60 (3) AFR, the most serious of two or more alternative charges

should always be placed first in a charge-sheet.

4.1 The accused should always be asked, in case of a plea of 'guilty' whether he desires to call witness to character.

4.2 Although under sub-rule (3) (b) the permission of the court is required to enable the accused to call witnesses in extenuation of the offence and consequent mitigation of punishment, such permission should ordinarily be given.

5. For procedure when statement made by the accused with reference to the charge is inconsistent with his plea; see Note 6 below.

6.1 The following are examples where a plea of "guilty" should ordinarily be altered to a plea of "not guilty" under sub-rule (3) :-

(a) LAC A, charged with desertion (not being desertion to avoid a particular service), states "I always meant to come back".

(b) LAC B, charged with using criminal force to his superior officer, states, "I only did it to defend myself after he had struck me".

(c) LAC C, is charged with sleeping upon his post when a sentry. He makes no statement with reference to the charge. On the reading of the summary of evidence, it is found that all the witnesses state that LAC C was beyond the confines of his post when found asleep.

(d) Cpl D is charged with disobeying a lawful command given by Cpl E, his superior officer, and makes no statement with reference to the charge. He calls a witness as to character, who states incidentally that Cpl E is junior to Cpl D. In this case the action of the court in altering the plea of the accused would be founded upon the words "or otherwise" in clause (c) of sub-rule (3).

6.2 The test to be applied in all such cases is not whether the court believes the statement, but whether, if the statement was true, it would be valid defence to the charge. In doubtful cases, the plea of 'guilty' should be altered to a plea of 'not guilty'.

6.3 The statement referred to in Cl. (c) of sub-rule (3) includes a statement made by the accused under Cl. (a) of that sub-rule in reference to the charge, as well as a statement made in mitigation under Cl. (b) of that sub-rule.

6.5 The form of record in the proceedings, when the court acts under sub-rule (3), would be as follows:

"The court being satisfied that the accused does not understand (the effect of his plea of guilty to) (the nature of) the charge, enter a plea of not guilty thereto".

6.6 If the court fails to act under the provisions of clause (c) of sub-rule (3), the confirming officer should refuse confirmation and can order a new trial. If he confirms, the finding will be set aside.

7. Under clause (d) of sub-rule (3), a charge withdrawn under R. 60 (3) AFR may be

reinstated. The form of record in the proceedings would be as follows:

"The court having entered a plea of not guilty to the () charge under Rule 62 (3) (d) AFR, reinstate the () charge and arraigns the accused thereon".

8. For procedure in case of joint trials where one accused pleads guilty and the other not guilty, see Note 4 to R. 41 AFR.

9.1 For definition of 'offence', see S..4 (xxii) AFA.

9.2 For definition of 'court-martial', see S. 4(xvi) AFA.

10. Rule substituted by SRO 24E of 19 74.

11. This rule applies to SGCM. See R. 142 AFR.

63. 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 will at once, subject to compliance with sub—rules (2) and (4) of rule 60, record a plea and finding of "guilty", and shall, so far as is necessary, proceed in the manner directed by rule 62.

NOTES

1.1 If the accused proposes to withdraw his plea of 'not guilty', the court must inform him of the general effect of such withdrawal, and of the difference in the procedure, in the same manner as if he has pleaded guilty initially.

1.2 This rule is subject to R. 60(4) AFR. Where a plea of 'guilty' cannot be accepted by the court, the power under this rule is not exercisable.

1.3 The form of record in the proceedings would be as follows:

"The accused with the permission of the court withdraws his plea of not guilty to the charge (or first charge, etc) and pleads guilty thereto. Rule 60 (2) to (4) AFR are duly complied with".

64. Plea of "not guilty" and case for prosecution - After the plea of not guilty" to any charge is recorded, the trial shall proceed as follows—

(a) the prosecutor may, if he desires, make an opening address;

(b) the evidence for the prosecution shall then be taken;

(c) 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, and he must be sworn and give his evidence in detail.

(d) he may be cross-examined by the accused and afterwards may make any statement which might be made by a witness on re-examination.

NOTES

1.1 After a plea of "not guilty" to any charge is entered, before proceeding under this rule, the court should 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. The court should record the answer of the accused. If he applies for an adjournment, the court should proceed to receive any evidence in support thereof and any reply by the prosecutor thereto, and if thereafter it appears to the court that the accused has been prejudiced by non-compliance with any of such rules relating to procedure, or that he has not had sufficient opportunity for preparing his defence, it may grant such adjournment as may appear to it in the circumstances to be proper.

1.2 When applying for adjournment, the accused must satisfy the court that he has been prejudiced by non-compliance. The fact that a rule has not been complied with will not necessarily invalidate a trial.

1.3 As to the rights of the accused to prepare his defence, see R. 39 AFR and Notes thereto. As to warning of accused for trial see R. 40 AFR and Notes thereto.

1.4 For adjournment, see R. 89 AFR.

2. For duties of the presiding officer, see R. 83 AFR.

3.1 As to the duties of the prosecutor, see R. 84 AFR.

3.2 The prosecutor should not normally be a person who is to give evidence other than on purely formal matters, or for the purpose of producing documents which are in his possession. In exceptional cases, (e.g., active service), no prosecutor may be available except an officer who is a material witness as to the facts for the prosecution. In such a case the prosecutor must give his evidence before any other witness for the prosecution, and must not after delivering an address, be allowed to answer generally as to the truth of the statements contained in such address.

3.3. When counsel appears on behalf of the prosecutor, clauses (c) and (d) of this rule do not apply.

4. In a case of complexity, the prosecutor should always make an opening address, so that the members of the court may be enabled to understand the general nature of the allegations. He must be careful to refrain from making any assertions which he does not propose to substantiate by evidence. He should leave any argument to his final address. The address of the prosecutor may be in writing, in such a case it should be read by him and handed to the court for attachment to the proceedings. If the address is made orally, see R. 99 (4) AFR.

5.1 For general provisions as to witnesses and evidence, see Rr. 112 to 121 AFR and Notes thereto. The evidence will be taken by question and answer, or the witness may be asked to tell his own story questions being subsequently asked to make good any omissions (see R.99 (2) AFR). It is the duty of the prosecutor to conduct the examination of the witnesses for the prosecution and to see that all facts essential to constitute the offence are proved; e.g. on a charge laid under S.56 (a) AFA for making a false accusation against Sergeant A, it must be proved:

- (a) that the accused made the accusation in question against Sergeant A
- (b) that it was false;
- (c) that the accused made it knowing it to be false.

5.2 The prosecutor must be careful in examining his witnesses. He must avoid putting leading or suggestive questions.

6. Documentary evidence will be read by the presiding officer or JA; it will then be marked with a distinguishing letter or figure and attached to the proceedings. As a rule, it will be sufficient to attach copies of documents which must, however, be compared with the original by the court and certified under the hand of the presiding officer or JA to be a true copy; see Note 4 to R. 99 AFR.

7. If the same person gives evidence in more than one case tried by the same court, he must be sworn (or affirmed) as a witness in each case, even if all such cases are tried on a single day.

8. As to questioning by the court, see Rr. 120 and 121 AFR.

9. As to form of oath or affirmation, see R. 118 AFR.

10. As regards SGCM, see R. 137 AFR.

11. **Maj GS Sodhi V. UOI**, the Supreme Court held that examination of defence witnesses as a prosecution witnesses is not unfair when the witnesses were examined only from the point of view of bringing the whole transaction before the Court-Martial.

65. Plea of no case - (1) At the close of the case for 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 for his defence as respects such charge or charges.

(2) The court shall hear the address by the accused in support of such plea, and the reply by the prosecutor thereto, and shall consider the plea in closed court; and if it is satisfied that the plea is well-founded in respect of any one or more charges to which it relates, it shall record a finding of "not guilty" in respect of such charge or charges, and the accused shall there after be called upon for his defence only in respect of the remaining charges, if any, in the charge—sheet.

NOTES

1.1 It is open to the accused, his counsel or defending officer, at the close of the case for the prosecution, to submit that the evidence led by the prosecution has not established a prima facie case against him and that he should not, therefore, be called upon for his defence. The submission may be made in respect of any one or more charges in a charge-sheet. The court will consider this submission in closed court.

1.2 As to meaning of prima facie case, see Note 1.1 to R. 43 AFR.

1.3 The court should also consider whether any special finding is open to them.

2. The following are illustrations of what is meant by this rule;

(a) if an airman is charged with striking his superior officer, and the prosecution fail to call any evidence as to the surrounding circumstances from which the court find that the accused either knew or ought to have known that the person he struck was his superior officer, then the prosecution will have failed to establish a prima facie case;

(b) if the only evidence by the prosecution to prove the offence is the evidence of accomplices, the court ought to disallow a submission of no case unless the witnesses were so obviously unreliable that no reasonable court could believe what they said. Although the law requires that the court should be warned that it is dangerous to convict on the uncorroborated evidence of an accomplice, they may convict if they are sure that the accomplice is speaking the truth, and the court ought not to make up their minds on this point until they have heard all the evidence.

3.1 If the court allow the submission under this rule, they shall record a finding of not guilty in respect of such charge(s), and such finding shall be announced in open court as subject to confirmation. If there are no other charges, the accused will be released; the record will be signed and dated and forwarded as per Rr. 72 and 101 AFR.

3.2 See Note 10 to R-71 as regards record in proceedings of announcement of finding.

4. This rule does not apply to SGCM. See R. 142 AFR.

66. Procedure for defence - (1) At the close of the evidence for the prosecution. if the plea of "no case" is not offered by the accused, or if offered is overruled, the accused may, if he so desires, make an opening address.

2. The accused shall be asked if he has anything to say in his defence and may make a statement in his defence.

3. Any statement allowed under this or any other of these rules to be made by the accused, may be made either orally or in writing; but the accused making the statement shall not be sworn.

4. The court or the judge advocate, if any, may question the accused 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, but the court may draw such inference from such refusal or answers as it thinks fit.

5. The accused shall then be asked if he intends to call any witness to the facts of the case. If the accused does not state that he intends to call witnesses to the facts of the case, the procedure shall be as specified in rule 67, and if he states that he intends to call witness to the facts of the case, the procedure shall be as specified in rule 68.

NOTES

1.1 Sub-rule (1) The opening address should not be a detailed argument on the law; as a rule it should be confined to a chronological statement of the facts which it is intended to prove. It must not contain any fact which it is not intended to prove. The address may be made orally or in writing; if made orally, see R. 99(4) AFR.

1.2 An opening address may not be necessary if the accused does not intend to call witness to the facts of the case.

2.1 Sub-rule (2) - The accused himself must answer this question.

2.2 The accused has the privilege of making statements which are unsupported by evidence. Any statement of facts, though not on oath, upon which the accused relies for his defence, must be taken into consideration by the court, who may draw its inferences from it; see Note 2.1 of R. 70 AFR.

3.1 The statement cannot be made on oath or affirmation. If made orally, it should be taken down verbatim, so far as it states facts which are within the personal knowledge of the accused and upon which he relies for his defence. If made in writing, it shall be read

and attached to the proceedings.

3.2 During a joint trial of two or more accused persons, a joint statement on behalf of all should generally be not accepted. However, if the accused persons insist on making a joint statement, it must be ensured that the joint statement is clear about the respective actions and omissions of the accused persons making such joint statement.

4.1 Sub-rule (4) - The presiding officer or the JA may question the accused for the purpose of enabling him (accused) to explain any circumstance appearing in his statement or in the evidence against him. Such questions may be put even though the accused has made no statement. The questions and the accused's answers thereto should, as far as possible, be recorded verbatim.

4.2 The questions should not be put in the way of cross-examination or for testing his defence or for supplementing the prosecution case. The accused does not render himself liable to punishment for refusing to answer such questions or giving answers to them which he knows not to be true. The court may draw such inference from the refusal of the accused or the answers given by him as it thinks just.

4.3 Although the words used in this sub-rule are 'may question the accused' it is in fact the duty of the court to question the accused for the purpose of enabling him to explain any circumstances or the evidence against him. See **S Harnam Singh v State** (Delhi Admin), where the Supreme Court held that S. 342 Cr PC 1898 (present S. 313 Cr PC 1973) casts a duty on the court to put questions to the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him.

5. Sub-rule (5) - The question as to calling of witnesses will be put by the JA, or if there is none, by the presiding officer.

6. In **RS Bhagat v UOI** the Delhi HC held that R. 58 (2)(a) AR which corresponds to R. 66 (2) AFR is merely a paraphrase of Art. 20 (3) of the Constitution and the bar of administering oath to an accused is imposed by law. It was held that where an accused voluntarily wants to examine himself, he will be included in the expression 'any witness' appearing in R. 58 (1) AR (corresponds to R. 66 (5) AFR), and hence should be allowed to depose on oath or affirmation.

7. As regards SGCM, see R. 138 AFR.

66-A. Accused Competent Witness for Defence.- A person accused of an offence before a court-martial shall be a competent witness for the defence and may give evidence on oath or affirmation in disproof of the charges made against him or any person charged together with him at the same trial provided that :

(a) He shall not be called as witness except on his own request in writing; or

(b) His failure to give evidence shall not be made the subject of any comment by any of the parties, or the court or give rise to any presumption against himself or any person charged together with him at the same trial.

67. Procedure where accused does not call witnesses to the facts of the Case -

(1) The accused may call witnesses as to character

(2) The prosecutor may in reply to the witnesses as to character, produce proof of former conviction either by a court-martial or by a criminal court and entries in the service conduct sheets.

(3) The prosecutor may address the court for the purpose of summing up the evidence for the prosecution.

(4) The accused may then address the court in his defence. The time at which such address is allowed is in these rules referred to as the time for the second address of the accused.

NOTES

1. The fact that the accused has stated that he does not intend to call any witness to the facts of the case does not prevent him from doing so before the evidence for the defence is completed if, for example unexpected witnesses become available.

2. If the accused calls witnesses to the facts of the case, the accused (or the defending officer, or the defence counsel) is required to make his closing address first and the prosecutor has a right to reply. In all other cases, the prosecutor's closing address will precede that of the defence. This rule must be read with R. 68 AFR.

3.1 As to calling, and recalling witnesses in reply, see R. 121 AFR.

3.2 See also S. 143 AFA and Notes thereto, as regards sub-rule (2).

4. The closing addresses must not state as a matter of fact any matter which has not been given in evidence nor may they contain references to matters not relevant to the charge(s).

5.1 The prosecutor's address may be in writing, and in such a case it should be read by the prosecutor and handed to the court for attachment to the proceedings. If the address is made orally, see R. 99 (4) AFR.

5.2 In his closing address the prosecutor must confine his remarks to the evidence given by the witnesses for the prosecution and defence; he must not state any new fact which has not been given in evidence. Any deviation in these respects on the part of the prosecutor, or any want of moderation, may lead to the setting aside of the proceedings, if it appears that injustice has been done thereby to the accused. It is the duty of the court, as far as possible, to prevent the prosecutor from transgressing in any of these respects.

6.1 The closing address of the defence will normally be made by the accused's defending officer or defence counsel.

6.2 'second address of the accused' see also R. 121 AFR.

7. For procedure when two or more persons are tried together, see R.85 AFR.

8. For definition of 'criminal court', and 'court-martial', see S. 4(xvi) and (xvii) AFA

9. This rule does not apply to SGCM. See R. 142 AFR.

68. Procedure where accused calls witnesses to the facts of' the case -

- (1) The accused may call witnesses, including witnesses as to character.
- (2) The prosecutor may with the permission of the court, call witnesses in reply.
- (3) The accused may again address the court. The time at which such second address is allowed is in these rules referred to as the time for the second address of the accused.
- (4) The prosecutor shall be entitled to address the court in reply.

NOTES

1. See also R. 67 AFR and Notes thereto.
2. Counsel (R. 107 AFR) and defending officer (R. 102 (3) AFR) are not permitted, in an opening address, to state as facts matters which they do not intend to prove in evidence. See Note 4 to R. 67 AFR.
3. Sub-rule (2) - The following are examples:
 - (a) Evidence as to character if the accused has put his character in issue; as to when the prosecutor can call evidence regarding the accused's character, see S. 54 IEA.
 - (b) To rebut evidence that the accused was insane at the time he committed the offence.
4. 'second address of the accused' - see also R.121 AFR.
5. As to order of addresses in joint trial, see R. 85 AFR.
6. This rule does not apply to SGCM. See R. 142 AFR.
7. In **UOI V. Ex Flt Lt GS Bajwa**, the Supreme Court held that there is nothing wrong in the Court calling upon the delinquent officer to disclose the relevancy of each witness and the point on which the officer wishes to examine him as a large number of witnesses were sought to be examined by the accused and he had also sought a long adjournment of 14 days for this purpose.

69. Summing up by judge advocate - (1) The judge advocate, if any, shall unless both he and the court think summing up unnecessary, sum up in open court the whole case.

(2) After the summing up of the judge advocate, no other address shall be allowed.

NOTES

1. Summing-up by JA is not mandatory in all cases. If the JA and the court think it to be unnecessary due to the simple nature of the case or other valid reason, a summing up may be dispensed with. In such cases the record of the proceeding will be as follows :-

"The judge Advocate and the court think a summing up unnecessary because (reasons may be added)".

2.2 The JA should sum up in open court.

2.3 In his summing up the JA should explain the charges and the law relating to them, the issues raised by the charges and briefly recapitulate the evidence on such issues. He must be careful not to indicate to the court any opinion he may have formed regarding the facts of the case.

3. After the summing up no address is allowed.

4. For powers and duties of JA see R. 111 AFR and Notes thereto.

5. This rule does not apply to SGCM. See R. 142 AFR.

FINDING AND SENTENCE

70. Consideration of finding. - (1) The court shall deliberate on its finding in closed court.

(2) The opinion of each member of the court shall be taken separately on each charge.

NOTES

1.1 As regards sitting in closed court, see R. 87 AFR and Note 1 thereto.

1.2 It is undesirable for the court to adjourn for a meal where they are considering their finding though there is no objection to refreshments being sent in to them.

2.1 The members of courts-martial must remember that

(a) It is a fundamental maxim of law that an accused person is presumed to be innocent until he has been proved to be guilty, and

(b) that their finding must be based upon the evidence given before them. See R. 53 AFR for form of oath/affirmation for members. It should be remembered that the accused cannot give evidence on oath and therefore the unsworn statement, if made by him must be carefully considered. It will often be of value, particularly if it is in any respect corroborated by evidence from other sources.

2.2 The court should also remember the contents and implication of the oath/affirmation taken by them under R. 53 AFR.

3.1 The presiding officer should initiate the deliberations of the court by a statement of the questions to be considered and the order in which they should be considered.

3.2 For example, if the charge is laid under S. 41 (2) AFA, he will ask the members to discuss the bearing of the evidence upon the following questions

(a) was a command given ?

(b) was it a lawful command ? -

(c) was it given by a superior officer of the accused ?

(d) did the accused know that the person giving the command was his superior officer ?

(e) was the command disobeyed by the accused ?

3.3 Similarly, where the charge laid is under S. 65 AFA, the questions to be considered should be

(a) have the facts alleged in the particulars of the charge been proved in evidence ?
if so,

(b) do such facts amount to an act (or omission) prejudicial to good order and air force discipline ?

4.1 if the court is doubtful whether the actual offence charged is proved or whether the particulars of the charge have been satisfactorily established in evidence, they must consider their power of making a reference to the confirming authority under R. 71 (3) AFR.

4.2 Neither the general reputation of an accused nor any undue zeal for discipline can justify conviction on a charge, where the evidence produced at the trial is insufficient or unreliable to support such conviction. Neither the confirming officer nor a court-martial can take into consideration their personal knowledge of the general reports of the accused for basing a finding of guilty thereon, unless such knowledge has been tendered as evidence during the trial. Also, the discipline which Air Force Law contemplates to be maintained is one which is founded upon a rule of law, and not upon arbitrary opinions.

4.3 As regards power of court to arrive at a special finding, see S.138 AFA and R.71 (4) AFR.

5. At any time before the finding has been arrived at, the court may be reopened to enable a witness to be called or recalled and examined by it through the presiding officer or JA; see R.121 (4) AFR.

6. The opinions of members must be given orally. As to taking opinions, see R. 94 AFR and Notes thereto.

7. As to form and record of finding, see R.71 AFR.

8. Officers attending the court-martial for purposes of instructions are not entitled to vote when the court is deliberating on its finding or sentence. However there is no objection if an officer under instruction writes down his opinion and these can be discussed after the court has come to a decision.

9. This rule applies to SGCM. See R. 142 AFR. But see also R. 140 AFR.

71. Form, record and announcement of finding -

- (1) The finding on every charge shall be recorded, and except, as mentioned in these rules, shall be recorded simply as a finding of "guilty" or of "not guilty".
- (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 be found guilty on the charge as laid, the court shall acquit the accused of that charge.
- (3) If the court doubts as regards any charge whether the facts proved show the accused to be guilty or not of the offence charged, or of any offence of which he might under the Act 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 the 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, but 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, then 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 in such one or another of the alternative charges and may, if necessary, adjourn for the purpose.
- (7) The court shall not find the accused guilty on more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilt upon the alternative charge or charges.
- (8) In any case where the court is empowered by section 138 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 offence as having been committed, in

circumstances involving such less degree of punishment, or of the offence charged subject to such exceptions or variations.

(9) The finding on each charge shall be announced forthwith in open court as subject to confirmation.

NOTES

1.1 Sub-rule (1) is applicable to all charges including alternative charges; however in those cases which fall within R.60 (3) AFR no finding need be recorded.

1.2 Where several accused persons are tried jointly the finding with respect to each accused person will be recorded in a separate page.

2. In the case of an acquittal on every charge, the presiding officer must date and sign the proceedings. The JA if appointed, must also sign; see R. 72 AFR.

3. Where a person is charged with dishonestly receiving property knowing it to be stolen, and the facts show that, although the property was in fact stolen, the accused was unaware that it was stolen property, the court must acquit as provided by sub-rule (2), as the accused would not have committed the offence charged or any offence of which he might under AFA legally be found guilty on the charge so laid.

4. For special findings in respect of the statement of offence, see S. 138 AFA.

5. Sub-rule (3) - Before referring to the confirming authority under this sub-rule, the court must have arrived at a decision as to the facts which it finds to be proved and the opinion of the confirming authority will be sought as to whether, upon the facts so found to be proved, the accused can legally be found guilty. The court cannot refer to the confirming authority for any opinion as to the facts, as to which it is the sole judge. The reason for the reference should be recorded. The opinion of the confirming officer should be read upon re-assembly of the court and attached to the proceedings.

6.1 Sub-rules (4) and (5) - The special finding referred to in sub-rule (4) relates only to the particulars of the charge, and not to the statement of the offence, as to which see S. 38 AFA and Notes thereto. Before recording a special finding under this sub-rule, the court must be satisfied that the facts which it finds to be proved subject to certain exceptions and variations, amount to the substance of the charge; otherwise they must acquit.

6.2 Illustrations of exceptions and variations

(a) On a charge against a LAC for losing by neglect a number- of articles, the court may properly find the accused guilty of the charge excluding some of the articles, but it cannot legally find him guilty of the charge stating that he made away with and did not lose the articles in question.

(b) An immaterial variation of date may be made by special finding, where the court find that the date charged is not in fact the date of the offence and no point turns on

the date. But in cases of desertion or absence without leave, the substitution of a date which would have the effect of lengthening the period of absence alleged in the charge, would not be permissible.

(c) On a charge of using criminal force to his superior officer (Sergeant A) by striking him with his fist on the face, the court could properly except the words on the face', but it cannot make a special finding substituting Sergeant B for Sergeant A.

(d) On a charge of dishonestly misappropriating Rs.100, a special finding that the sum misappropriated was Rs.50 (i.e., a lesser amount) would be permissible but a special finding 'omitting from the particulars the word 'dishonestly' would tantamount to an acquittal.

7. Sub-rule (6) - As regards reference to confirming authority, see Note **5** above.

8.1 Sub-rule (7) - Even when finding of guilty on a charge necessarily implied a finding of guilty on the alternative charge, the court can record a finding of guilty on one of those charges only and not on both.

8.2 In **SN Mukherjee V. UOI**, the Supreme Court held that in a GCM where two charges were framed against the accused and the second charge was by way of alternative to the first charge, conviction of accused for first charge and acquittal under the second charge was not illegal.

9. Sub-rule (8) provides that where the court is empowered to come to a special finding under the provisions of S.138 AFA, or R.71 **(4)** and **(5)** AFR, it may accept a qualified plea of guilty, if it is satisfied of the justice of such course and the concurrence of the convening officer is signified by the prosecutor, and record special finding. For example, if an accused charged with losing by neglect a number of articles pleads guilty in respect of some of those articles only, the court may accept such qualified plea and record a special finding accordingly.

10. Sub-rule (9) - The record in the proceedings of announcement of the finding should be as follows:-

"The court is opened and the finding on each charge is announced to the accused as subject to confirmation."

11. For definition of 'offence', see S.4 (xxii) AFA.

12. This rule applies to SGCM. See R. 142 AFR.

72. Procedure on acquittal - If the findings on all the charges is "not guilty", the presiding officer shall date and sign the findings 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, to the person specified in rule 101.

NOTES

1. Even the finding of 'not guilty' by a GCM, DCM or SGCM requires confirmation and is not valid until so confirmed; see S.152 AFA.
2. See Note 2 to R. 71 AFR.
3. The proceedings shall be transmitted to such person as may be directed by the order convening the court, and in the absence of such direction, to the confirming officer (R. 101 AFR).
4. See also para 757 Regs.
5. When there are separate charge-sheets, the court shall proceed under this rule only when the court has tried the accused upon all the charge-sheets and finding on all the charge is 'not guilty'.
6. Transmission of proceedings - see R. 101 AFR.

73. 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 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 82 or 86, the length of time he has been in arrest or in confinement on any previous sentence, and any military or air force decoration, or military or air force 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 service records 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 the accused so requests, the service records or a duly certified copy of the material entries therein, shall be produced; and if the accused alleges that the summary is in any respect not in accordance with the service records or such certified copy, as the case may be, the court shall compare the summary with those records or copy, and if it finds it is not in accordance therewith, shall cause the summary to be corrected accordingly.

(4) When all the evidence on the above matters has been given the accused may address the court thereon.

NOTES

1.1 The object of sub-rule (1) is to ensure, so far as is possible that the court have sufficient evidence of the previous convictions, general character etc., of the accused to enable them to pass a proper sentence.

1.2 The court will always take evidence as to character, unless the circumstances render it impracticable to do so, in which case it will record upon the proceeding the reasons for such impracticability.

1.3 Previous conviction of the accused will be proved by the production of a true extract from the sheet roll (IAFF (P) 17) duly completed by the officer-in-charge of the records. (See Note 7.2 to S.141 AFA). The term 'service records' includes departmental books of the same nature as those maintained by units, e.g., sheet roll or court-martial book, but does not include departmental business books. When the accused challenges the correctness of the service records, see sub-rule (3). If there is any reason to doubt the correctness of the entry in the service records of a civil conviction, such conviction may be

proved by an extract certified by the person having the custody of the records of the court in which the accused was convicted.

1.4 The court will also consider the length of time during which the accused has been in confinement awaiting trial upon the present charge or charges.

1.5 The copy of the material entries in the sheet roll or other service record must be certified by the officer having custody of the original document (S.141 (3) or (4) AFA). Custody includes temporary custody of the documents for the purpose of the trial.

1.6 Evidence on matters stated in sub-rule (1) is produced by a witness through statement contained in IAFF(PS) 1655 (Revised) (in the case of airmen) or in IAF Form 731 (in case of officers).

1.7 The accused must either be identified as the person named in the statement or have admitted that he was that person.

2. The court cannot take oral evidence that the accused is of bad character; this should be proved in the manner shown in sub-rule (2); but oral evidence of good character is always permissible. If the accused calls witnesses as to his good character, they may be cross-examined by the prosecutor with a view to testing their veracity and thereby indirectly bringing out evidence of bad character. Witnesses as to character can also be called during the hearing of the case for the defence and before the finding.

3. Evidence upon the matters referred to in sub-rule (1) should be given by a witness; not by member of the court. The evidence should normally be given by the adjutant or other officer holding the officer's or airman's record. There is no objection to the prosecutor giving such evidence (see Note 3.2 to R. 64 AFR). He must be sworn as any other witness and may be cross-examined by the accused and questioned by the court.

4. If by reason of the nature of the service of the accused, the finding of the court renders him liable to any exceptional punishment in addition to that to be awarded by the sentence of the court, the prosecutor should call the attention of the court to such fact, and the court should enquire into the nature and amount of such additional punishment.

5.1 Sub-rule (4) - The address in mitigation will normally be made by the accused's defending officer or counsel, but at the close of it, the accused himself should desirably be asked if he wishes to say anything.

5.2 The address may be oral or in writing. See R. 99 (4) AFR.

6. For definition of 'air force reward', 'court-martial' and 'criminal court', see S.4 (vii), (xvi) and (xvii) AFA.

7. See S. 143 AFA and Notes thereto.

8. This rule applies to SGCM. See R. 142 AFR. See also R.140 AFR.

74. Sentence - The court shall award one sentence in respect of all the offences of which the accused is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be given.

NOTES

1. This rule applies whether the charges on which the offender has been tried are contained in one or several charge-sheets.
2. As to postponement of consideration of sentence to be awarded, where several persons are tried separately by the same court-martial, upon charges arising out of the same transaction, see R.96 (4) AFR. In such a case the form of record in the proceedings would be as follows:

"The court postpone deliberation of sentence in respect of the accused until after the trial of No..... etc. has been completed up to finding".

"On..20., the court deliberates on the sentence with respect to No.....,etc."

3. The sentence must be a sentence authorised by the AFA, See Ss.73 to 79 AFA and Notes thereto. For example, a court-martial cannot award a sentence of confinement to camp, or sentence an offender to restore stolen property; but a court-martial may under S.150 (1) AFA make a separate order for the disposal of property. Such an order may be recorded separately or should be recorded below the signature of the presiding officer.

4.1 For procedure in voting upon the sentence, see S. 131 AFA, R. 94 AFR and Notes thereto.

4.2 The presiding officer has no casting vote as respects voting on sentence.

4.3 As regards sentence of death, see S.131 (2) and (3) AFA,

4.4 See Note 8 to R. 70 AFR as regards voting by officers under instruction.

5. Consideration of sentence by court-martial - See para 754 Regs. for important guidelines which the court should bear in mind.

6. The object of the latter portion of this rule is to prevent legal objection to the validity of the sentence. If, for example, an offender has been found guilty by a GCM on a charge of desertion on active service, and upon a charge under S. 54 (a) AFA for making away with arms and equipment, a sentence of death in respect of the first charge will be valid, although a sentence of 10 years imprisonment is the maximum sentence which could have been awarded upon the second charge.

7. The court should deliberate on its sentence in the court room after it has been cleared. Even though not expressly stated so in this rule, the court should deliberate on its sentence in closed court. As regards sitting in closed court, see R. 87 AFR and Note 1 thereto.

8. Even if the accused is considered unfit to undergo rigorous imprisonment by the medical officer who examines him before trial, the court can sentence him to it as it is the duty of the medical officer of the prison or place of custody, to decide what severity of labour he can undergo. Sentence of simple imprisonment being inconvenient of execution, is generally not awarded.

9. When awarding sentence of imprisonment or detention, the court will observe the following rules :-

(a) Terms of imprisonment or detention, not amounting to one month, will be awarded in days. A month means a calendar month.

(b) Terms of imprisonment or detention, of one year or more years, will be awarded in years.

(c) Other terms of imprisonment or detention will be awarded in months, or, if required in months and days.

9.2 As regards award of stoppages etc, see para 756 Regs.

10. For arriving at the right quantum of punishment, perusal of service documents before awarding the sentence is an essential requirement.

11. Inoperative/ineffective punishments should not be awarded by court-martial.

12. In the event of a joint trial a separate page should be used for recording the sentence in respect of each of the accused persons.

13. This rule applies to SGCM. See. R. 142 AFR. See also R.140 AFR.

75. Recommendation to mercy- (1) If the court makes a recommendation to mercy it shall give its reasons for its recommendation.

(2) The number of opinions by which a recommendation to mercy mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

NOTES

1. A recommendation to mercy will be appended to the sentence; it forms part of the proceedings of the court.

2. In view of the discretion of the court in the matter of awarding sentence and the very wide range of punishments which can be awarded, a recommendation to mercy will be exceptional. It will usually be made only when the court, though unwilling to pass a lenient sentence lest the offence should be considered as venial one, thinks that, owing to the offender's character or other exceptional circumstances, he should not suffer the full penalty which the offence would ordinarily demand. As a rule the court will be able to adjust the sentence according to what, in its judgement, the offenders should suffer having regard to the attendant circumstances. It is indisputable that offences are more effectually prevented by certainty of punishment than by severity.

3. A recommendation to mercy forms part of the proceedings, hence the court must take care in working its reasons to say nothing which is inconsistent with its finding of guilty. Accordingly, where in a recommendation to mercy a court expresses an opinion inconsistent with the guilt of the person under sentence, e.g., where the charge is for striking a superior, and the court states its opinion that the accused "did not intend to strike", it must be treated as an acquittal, the intent being an element of the offence.

4. Recommendation to mercy is a matter which the court has to decide by following the procedure stated in R. 94 AFR.

5. This rule applies to SGCM. See R. 142 AFR.

76. 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 shall be announced in open court as subject to confirmation.

(2) 'Upon the court awarding the sentence, the presiding officer shall date and sign the sentence and such signature shall authenticate the whole of the proceedings and the proceedings upon being signed by the judge advocate, if any, shall at once be transmitted for confirmation.

NOTES

1. The dating of the record is essential, as under S.164 AFA, the term of imprisonment or detention awarded is reckoned to commence on the day on which the original proceedings were signed by the presiding officer. When, however, the presiding officer after recording the finding and sentence, omits to either sign or date the proceedings, he can, even after confirmation, sign them and date his signature as of the true date of the decision. The proceedings must not be signed by the members of the court other than the presiding officer.

2. The signature authenticates the whole of the proceedings including the documentary evidence produced at the trial.

3. The record in the proceedings of the announcement of the sentence should be as follows

"The court is opened and the sentence (together with any recommendation to mercy and the reasons for such recommendation) is announced to the accused as subject to confirmation".

4. Transmission of proceedings - See R. 101 AFR.

5. For confirmation of proceedings, see S. 152 AFA and Notes thereto.

6. This rule applies to SGCM. See R. 142 AFR.

77. Revision — (1) Where the finding or sentence is sent back for revision under section 159, the court shall re-assemble in open court, the revision order shall be read and if the Court is directed to take fresh evidence, such evidence shall also be taken in open Court. The Court shall then deliberate on its finding in closed Court.

(2) 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 a new finding, and if such new finding involves a sentence, pass sentence afresh.

(3) Where the sentence alone is sent back for revision, the court shall not revise the findings.

(3A)** The accused shall, if he so desires, be allowed to address the Court before the Court closes for deliberating on its finding or the sentence.

(4) After 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 be at once transmitted, for confirmation.

NOTES

1.1 This rule must be read in conjunction with S.159 AFA and Notes thereto.

1.2 The revision order containing the directions of the confirming officer should be attached as an exhibit.

2.1 Under the air force law in force, a finding of acquittal can be revised and the accused found guilty and sentenced; a sentence can be increased on revision; and fresh evidence can (if so ordered) be taken on revision.

2.2 A court cannot be re-assembled more than once for revision, whether of finding or of sentence.

2.3 In **UOI V. Capt AP Bajpai**, the Supreme Court held that the revisional jurisdiction of the confirming authority under Sec 160 of the Army Act (Corresponds to Sec 159 AFA) and Rule 68 of the Army Rules (Corresponds to Rule 77 AFR) is not confined to giving of directions for recording additional evidence but extends to analyzing the evidence on record for indicating where the Court-Martial could have erred in appreciation of evidence. Hence where without an intention to interfere with the discretion of the Court-Martial, the confirming authority directed the GCM: (i) to reconsider the entire evidence relating to the charge, of which the GCM had exonerated the accused, (ii) to give a further opportunity to the accused to address the court, and (iii) to pass a suitable fresh sentence in place of the earlier one, in case the GCM revoked its earlier finding, the SC held that the confirming authority did not exceed its jurisdiction. Further, contentions of the accused that the mind of GCM was influenced by the observations of the confirming authority, and that the confirming authority ought not to have interfered with the

proceedings of the GCM which had taken a decision after considering the evidence was rejected on facts

3.1 The object of revision will generally be to cure defects in the finding or sentence, or both. The confirming officer, however, by partial confirmation or by exercising his powers under R.79 (1) or 80 AFR can often correct mistakes made by the Court, and thus obviate the inconvenience of reassembling the court for revision.

3.2 Where the finding of the court is 'not guilty' and a special finding could have been recorded under S. 138 AFA or R.71 (4) AFR, the finding should be sent back for revision. A confirming officer cannot substitute a special finding on any charge for the court's finding; but see S. 160 AFA for substitution of a finding after confirmation.

3.3 If a court returns a finding of 'not guilty' against the weight of evidence, the court may be re-assembled and the confirming officer may give his views on the evidence, directing the attention of the court to any special points which it appears to have failed to appreciate.

3.4 A confirming officer cannot send back part of a finding or sentence; if he thinks that a part only requires revision, he must return the whole, pointing out the part which, in his opinion, requires revision.

3.5 A finding of insanity may also be sent back for revision.

4. The court should be re-assembled as soon as practicable. If the composition of court, upon re-assembly, is reduced below the legal minimum (see S.159 (2) and (3) AFA and Rr. 92-93 AFR), it cannot proceed with the revision, and the proceedings must be returned to the confirming authority. In such a case, as no revision has taken place, the original finding and sentence will stand and will be dealt with by the confirming authority.

5. Where the finding is sent back for revision and the court adheres to the finding, it can nevertheless revise the sentence; but if the sentence alone is sent back for revision, the court shall not revise the finding.

6.1 If an illegal sentence is inadvertently passed by the court and the sentence contains no further legal award, it is nullity and the court can be re-assembled to pass a valid sentence. In such cases the confirming officer cannot pass a valid sentence; but see S.160 AFA for alteration of sentence after confirmation.

6.2 If the sentence passed by the court is partly illegal, confirmation of the illegal part may be withheld if the court is reassembled to revise its sentence. See para 764 Regs.

7. If the revised finding is an acquittal or a finding of insanity, no sentence is involved. If a court, on revision, revokes its original finding on any charge, the original sentence if any, automatically falls to the ground, and, if the revised finding entails a sentence, the court must pass sentence afresh; if the court omits to do so, the accused is not legally under any sentence and the confirming officer may return the proceedings with directions to the court to complete the revision and pass sentence. This will not be a second revision, which is prohibited by S.159 (1) AFA.

8. If the original finding was acquittal and the revised finding is 'guilty', the court will (whether ordered to take fresh evidence or not) proceed as directed by R.73 AFR. The evidence referred to in Sub rule(l) is evidence of the facts relating to the charge, and such evidence must not be taken on revision unless specially ordered under S. 159 (1) AFA.
9. The address allowed under sub-rule (3A) is in addition to any address that the accused might have made earlier and it will be available to him even if the court had not been directed to take fresh evidence.
10. Under S. 164 AFA, the term of imprisonment or detention' is reckoned to commence on the day on which the original proceedings were signed by the presiding officer. The position is the same whether the sentence has been revised or not. Thus even where the sentence of imprisonment or detention is awarded only on revision, it will still run from the day the original proceedings were signed by the presiding officer. In such cases, the attention of the court should be drawn to this legal provision by the trial JA so that the court may accordingly decide the period of imprisonment or detention to be awarded.
11. The provisions of Rr. 70-76 AFR apply, mutatis mutandis, at all revision proceedings.
12. See also Note 2 to S. 157 AFA.
13. This Rule applies to SGCM. See R. 142 AFR.
14. Sub-rule (3A) inserted vide SRO 24E of 1974.

78. Promulgation: - The charge, finding, sentence and any recommendations 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.

NOTES

1.1 Promulgation is the process of formal communication to the accused of the details of the trial after its conclusion. Matters to be promulgated are primarily the charges, finding and sentence (including on revision, if any) recommendation to mercy and confirmation or non-confirmation. Except when the confirming authority directs the promulgation to take place in a particular manner, it shall be done by the CO reading out the matter to be promulgated to the accused, in the presence of the Adjutant or other staff officer. See also para 766 Regs.

1.2 The promulgation minute will be recorded in the proceedings below the confirmation minute; see para 768 Regs.

1.3 After promulgation the proceedings will be received by the Command Headquarters and despatched to Air Headquarters (Directorate of Personal Services). See para 757 (b) Regs.

2. At the conclusion of the Promulgation, the CO or other staff officer should inform the accused of the rights available under S.161 AFA.

3.1 For the date from which a sentence of cashiering or dismissal takes effect, see R. 146 AFR.

3.2 As to committal to a civil prison or to air force custody of persons sentenced to imprisonment, see S. 166 AFA; as to action in exceptional cases, see S.168 AFA.

3.3 For forms of committal warrants, see Seventh Schedule to AFR.

4. As to the suspension of sentences of imprisonment or detention, see Ss. 180 to 188 AFA.

5. This rule applies to SGCM. See R. 142 AFR.

79. 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 seems just, having regard to the offences in the charges the findings on which are confirmed.

(2) Where a sentence has been confirmed and any one of such charges or the finding thereon is found to be invalid, the authority having power to mitigate, remit or commute the punishment awarded by the sentence shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit or commute the punishment awarded according as seems just, having regard to the offences in the charges which with the findings there on are not invalid, and the punishment as so modified shall be as if it had been originally awarded only in respect of those Offences.

NOTES

1. This rule enables the confirming authority or the authority acting under S. 177 AFA to do justice to Certain special cases. Thus where a LAC has been convicted of

(a) desertion on active service under S. 38 (1) and

(b) of theft of Government property under 5.52 (a) AFA, and has been sentenced to RI for 14 years; and the confirming officer confirms the finding on the second charge but not that on the first charge, which alone justified the sentence of 14 years rigorous imprisonment, he is bound under this rule to remit at least 4 years RI leaving behind 10 years RI, which is the maximum sentence awardable under S,52 (a) AFA. If however, the confirming officer confirms the finding on the first charge and not that on the second, he may remit, mitigate, or commute it to some lower punishment, if he considers that a sentence of RI for 14 years on the first charge alone is, in the circumstances, too severe.

2. Sub-rule (2) gives to the authorities specified in S.177 AFA similar powers to do after confirmation that which under sub-rule (1), the confirming officer may do before confirmation. Such authorities are required to act under sub-rule (2) only where any one of the charges, or the finding thereon, is found to be invalid and has been set aside.

3. As to the meaning of the terms mitigation, remission and commutation, see Notes to S. 157 AFA.

4. As to substitution of a valid sentence, see S. 160 AFA.

5'. For definition of 'court-martial' and 'offence' see 3.4 (xvi) and (xxii) AFA.

6. This rule applies to SGCM. See R. 142 AFR.

80. Confirmation notwithstanding informality in or excess of punishment -If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed and if the punishment awarded by the sentence is in excess of the punishment authorised by law, the confirming authority may vary the sentence so that the punishment 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.

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NOTES

1. The object of this rule is to prevent the proceedings of court-martial from being rendered invalid when they cannot be sent back for revision without great inconvenience to the public service. It will not exonerate from blame the presiding officer and members of courts-martial who awarded a sentence which is informally expressed, or in excess of their powers or what is authorised by law.

2.1 The confirming authority cannot under this rule vary a sentence which is illegal in its character and therefore a nullity e.g. a sentence of reduction to the ranks awarded to a LAC. In such cases the court must be reassembled for the purpose of passing a valid sentence.

2.2 The power under this rule may be exercised in the following cases

(a) Where a DCM awards three years detention to a AC.

(b) When the sentence of forfeiture of seniority of rank is expressed as "to lose seniority "

3. For punishments awardable by court-martial, see S.73 AFA.

4. For definition of 'court-martial', see S.4 (xvi) AFA.

5. This rule is applicable to SGCM. See R. 142 AFR.

81. Member or prosecutor not to confirm proceedings — A member of a court-martial or an officer who has acted as prosecutor at a court-martial shall not confirm the finding or sentence of that court-martial, and where such member or prosecutor becomes the confirming officer, he shall refer the finding and sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of court-martial.

NOTES

1. The authority referring under this rule, the finding and sentence of the court-martial to a superior authority, for confirmation, should not express any opinion as to correctness or validity.
2. If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm them.
3. For definition of 'court-martial' and 'officer' see S.4 (xvi) and (xxiii) AFA.
4. This rule applies to SGCM. See R. 142 AFR.

General Provisions as to Proceedings of General and District Court-Martial

82. Seating of members - The members of a court-martial shall take their seats according to their rank.

NOTES

1.1 Amongst officers of same rank, they will take their seats according to their inter-se seniority.

1.2 The judge advocate sits to the right of the presiding officer.

1.3 The waiting member should sit separately.

1.4 Officers under instruction are not members of the court; they should be seated separately.

2. For definition of 'court-martial', see S.4 (xvi) AFA.

3. This rule does not apply to SGCM. See R. 142 AFR.

83. Responsibility of Presiding Officer — (1) The presiding officer is responsible that the trial is conducted in proper order, and in accordance with the Act and these rules, and will take care that everything is conducted in a manner befitting a court of justice.

(2) It is the duty of the presiding officer to see that justice is administered, that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial or of his ignorance, or of his incapacity to examine or cross-examine witnesses or otherwise.

NOTES

1. The presiding officer should be careful to safeguard the dignity of the court and the solemnity of its proceedings.
2. The court should have at its disposal the AFA, AFR, Regs and any other official books etc. which are necessary for the purpose of its proceedings. The trial JA should satisfy himself before the start of the trial that the court-martial box contains all the publications and other documents, as laid down from time to time by administrative authorities.
3. If the accused is not represented by counsel or defending officer, the presiding officer should assist him in putting forward his defence, and take care that he is not prejudiced by his inability to put proper questions to the witnesses or bring out clearly the points upon which he relies. If there is a JA, he has a similar duty (R.111 (g) AFR), but the presence of a JA does not relieve the presiding officer of his responsibility under this rule. If a witness gives evidence different from that given by him at the recording of the summary of evidence, he should be questioned as to the difference.
4. If any person, other than the accused, interrupts the proceedings, he should ordinarily be excluded from the court. The court has, however, further powers under R. 129 AFR for dealing with persons who interrupt its proceedings. (See also S. 151 AFA and Notes thereto). The trial of an accused person cannot proceed in his absence, even though he interrupts the proceedings.
5. The presiding officer should put to a witness, questions which appear to him necessary or desirable for the purpose of eliciting the truth, see R. 121 AFR and Notes thereto.
6. This rule applies to SGCM. See R. 142 AFR.

84. Power of court over address of prosecutor and accused - (1) It shall be the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court and not to take any unfair advantage of or suppress any evidence in 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 to 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 be for the purpose of his defence impeach the evidence and the motives of witnesses and prosecutor, and charge other persons with blame and even criminality, subject if he does so, to any liability to further proceedings to which he would otherwise be subject. The court may caution the accused as to the irrelevance of his defence, but shall not, unless in special cases, stop his defence solely on ground of such irrelevance.

NOTES

1. The term 'prosecutor' in this rule includes a counsel for prosecution.

2.1 When a counsel appears, whether for prosecution or for defence, the record of the proceedings should indicate his position as such.

2.2 Counsels should wear robes when appearing before court-martial.

3. The prosecutor is an officer whose duty it is to see that justice is done. He is not a partisan intent on securing a conviction independently of the justice of the case. He should, therefore, put before the court facts which show the true character of the offence, and must be careful to prove affirmatively any facts tending to show the innocence of the accused or extenuate his offence, e.g. he should himself produce any available evidence of provocation which might mitigate punishment.

4. It may happen that an AC charged with desertion was to the knowledge of the prosecutor, arrested or rendered an involuntary absentee at a date earlier than the termination of his absence as alleged in the particulars of the charge. In such circumstances it is the duty of the prosecutor, although he has no direct evidence to prove the earlier termination of the absence, to tell the court the information which he possesses, and to invite them to act upon such information by recording a special finding under R. 71(4) AFR.

5. The prosecutor must not introduce matters of aggravation into the evidence against the accused unless they are relevant to the charge against him. Generally speaking, anything which tends to show that the accused committed the offence charged, or to show the true character of the offence, is relevant.

6. As to the latitude to be given to the accused in making his defence, see Notes to R. 66 AFR. If the accused charges other persons with blame or criminality, the court should caution him that he may be incurring a liability to be charged subsequently with knowingly making a false accusation. (S. 56 (a) AFA).

7. Under sub-rule (3) the court will be justified in stopping the accused in his defence, or in excluding any evidence offered by him on the ground of irrelevancy, if the court is of the opinion that the accused's intention is vexatious or to unnecessarily delay the proceedings.

8. Sub-rule (3) substituted vide SRO 24E of 1974.

9. This rule applies to SGCM. See R. 142 AFR.

85. 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 all 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.

NOTES

1. At a joint trial the court should not preferably receive a joint statement. Under R.66 (2) AFR, every accused is entitled to make a statement in his defence. Each accused person should be individually asked in the order in which their names appear in the charge sheet whether he would wish to make a statement. If the accused persons insist on making a joint statement, it must be ensured that the joint statement is clear about the respective actions and omissions of the accused persons making such joint statement.

2. This rule applies to SGCM. See R. 142 AFR.

86. Separate charge sheets — (1) When the convening officer directs any charges against an accused person to be inserted in different charge-sheets, the accused shall be arraigned and until after the finding tried, upon each charge—sheet, separately, and accordingly the procedure in rules 56 to 71 (both inclusive) shall until after the finding be followed in respect of each charge-sheet, as if it contained the whole of the charges against, the accused.

(2) The trials upon the several charge-sheets shall be in such order as the convening officer directs.

(3) When the court has tried the accused upon all the charge—sheets it shall, in the case of the finding being "not guilty" on all the charges proceed as directed by rule 72 and in case of the finding, on any one or more of the charges being "guilty" proceed as directed by rules 62 and 73 to 76 (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 before directed by 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 it thinks 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 the accused pleads "guilty" to a charge in a charge-sheet, and the trial does not proceed as mentioned in sub-rule (1) of rule 62 with respect to the other charges in that charge-sheet shall, subject to the directions of the convening officer, proceed to try the accused on the charges in the next charge-sheet before it proceeds as directed by sub-rules (3) and (4) of rule 62.

NOTES

1. Cases which come before courts-martial are generally simple in their facts, and so an accused person is not likely to be embarrassed by being tried upon several charges at the same time. But if the charges are complicated, or if the alleged offences were committed

at distantly separated times, or if different sets of witnesses are required to prove the different charges, the accused may be embarrassed in his defence, and in such cases the convening officer should cause the charges to be inserted in separate charge-sheets, numbered consecutively in the order in which he directs them to be tried.

2. It is difficult to lay down for the guidance of convening officers any definite rules as to the placing of the charges in different charge-sheets; much will depend upon the circumstances of each particular case. But the following general principles may be laid down:

(a) Alternative charges must not be placed in different charge-sheets.

(b) A series of offences forming part of one escapade should normally be placed in a single charge-sheet, e.g., escape from custody followed by resistance to escort upon re-arrest and gross insubordination to the guard commander after recommittal to confinement. Multiplicity of charges arising out of the same transaction should, however, be avoided, though in some cases it is necessary to allege a series of offences, e.g., to prove some particular intent, or to guide the court in determining the proper punishment to be awarded.

(c) Repeated instances of offences of the same or similar character should be included in a single charge-sheet; e.g., a series of barrack-room thefts from comrades during a short space of time.

(d) Offences of different description should be entered in separate charge-sheets except where they form part of or are relevant to one transaction, or where the facts of each case are simple, e.g., where an airman is charged with desertion and with using criminal force to his superior officer long after he had been handed over to the escort, the charges may be inserted in separate charge-sheets, unless the facts are simple. But if immediately before the alleged desertion, the accused made away with his service clothing, a charge in respect of the latter offence is relevant to the intent of the accused in leaving his unit and should be inserted in the same charge-sheet as the charge of desertion.

3. Where any evidence given upon the trial of an accused on one charge-sheet is required to be given on the trial of the same accused person on a subsequent charge-sheet, it must be given afresh, but the witness giving such evidence need not be sworn/affirmed again, but he should be reminded of his previous oath/affirmation.

4. Where the accused is arraigned on separate charge-sheets, the court must arrive at its finding upon one charge-sheet before the next charge sheet is proceeded with. Also see sub-rule (2).

5.1 Generally speaking, the convening officer will regulate the order for the trial of different charge-sheets according to the date of the respective offences. But where the gravity of the various offences differs, it may be desirable to insert the charge involving the gravest offence in the first charge-sheet, as, if the accused is convicted, he will be sufficiently punished without trying him in respect of the minor offences; see sub-rule (4). Occasionally it will be desirable to direct that a charge which necessitates the calling of a

large number of witnesses should be inserted in the first charge-sheet, so that the attendance of such witnesses can be dispensed with after the trial on that charge-sheet has been completed.

5.2 The powers given to the convening officer under sub-rule (4) cannot be exercised by the prosecutor on his own initiative or by the court.

6.1 Even if the convening officer has directed all charges to be inserted in a single charge-sheet, the accused under sub-rule (5) has the right to apply for separate trial.

6.2 The court should, unless it thinks the claim to be unreasonable, accede to a demand to be tried separately in respect of any particular charge.

7. After the finding of the court upon all the charge-sheets has been arrived at, the procedure will be the same as if all the charges had been inserted in one charge-sheet. Unless, therefore, the convening officer directs that the accused need not be tried upon any subsequent charge-sheet, the court will not proceed to sentence until it has arrived at a finding on all the charge-sheets, and will then award one sentence in respect of all of them.

8. It will often be unnecessary, if the accused is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the other charge-sheets. On the other hand, it may be desirable to try the accused upon the other charge-sheets in order that a more severe sentence may be awarded, if justified.

9. Under-sub-rule (6), where an accused has pleaded guilty to a charge entered in one of several charge-sheets, the summary of evidence relating thereto and any statement which he may make in reference to the charge or in mitigation of punishment will not be read or recorded until after the finding of the court on all the charge-sheets has been arrived at. But for this provision, the fair trial of the accused upon the other charge sheets might be prejudiced, especially if he stated, in mitigation of punishment, anything which might point to his guilt on any charge in a charge sheet which has not yet been tried.

87. Sitting in closed court — (1) When a court-martial sits in closed court or any deliberation amongst the members or otherwise, no person shall be present except the members of the court, the judge advocate, any officers under instruction, and if interpreter has been appointed and the court considers his presence necessary, the interpreter; and the court may either retire, or may cause the place where they sit to be cleared of all other persons not entitled to be present.

(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.

NOTES

1.1 Sub-rule (1) - All the members of the court, and the JA, where one is appointed, must be present in closed court. The officers under instruction should also be present. If for any reason an officer under instruction is not present to attend the deliberations in closed court, his absence will not affect the validity of such deliberations.

1.2 While in closed court, the court may deliberate in the courtroom after it has been cleared or may adjourn to a convenient retiring room.

2.1 Sub-rule (2) - All the members of the court, the JA, where one is appointed, and the accused must be present at the 'view'. The prosecutor, and the defence counsel or defending officer should also be present.

2.2 this sub-rule does not affect the power of the court to exclude any person, other than the accused, who interferes with the proceedings- a power which every court possesses for the proper conduct of its proceedings. A court-martial has inherent power to sit 'in-camera' when necessary for the proper administration of justice. A court-martial should normally sit 'in-camera' if evidence of a secret or top-secret nature is led at the trial.

2.3 A record should be made as follows:-

At.....hours on20... the court adjourns to view..... Athours the court re-assembles at..... present the presiding officer and members, the judge advocate, the prosecutor, accused, and defending officer/ counsel. At the view the witness xxxxx points out facts which he has dealt with in his evidence and on his former oath says:-

XxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxAt.....hours the court re-assembles in the court room; present the same persons as before.

3. For definition of 'court-martial', see S.4(xvi) AFA.

4. This rule applies to SGCM. See R.142 AFR.

87-A Court-martial to be public- Subject to Rule 87, 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 remain in the place in which the court is held.

88. 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 air force authority, or, in the absence of any such direction, as the court-martial may, from time to time, determine

Provided that no court-martial shall subject to the provisions of sub-rule (2) and (3), sit for more than six hours in any one day.

(2) Where the court-martial 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, the court-martial shall record in the proceedings the reasons for so doing.

(3) In cases requiring an immediate disposal or when the convening officer certifies under his hand that it is expedient in public interest, trials may be held at any hour.

(4) Where the court-martial or the convening officer or the senior officer on the spot is of the opinion that service exigencies or the interests of discipline require the court-martial to sit on Sunday or any other day declared as a holiday, the court-martial may sit accordingly, but in no other case the court-martial shall sit on any of these days.

NOTES

1. Reasons for longer sitting of the court or for sittings outside the hours specified in sub-rule (1) should be recorded in the proceedings.

2. When the court sits on a Sunday or a gazetted holiday, the reasons for so doing should also be recorded in the proceedings.

3.1 'Senior officer on the spot' within the meaning of sub-rule (4) and R.89 (4) AFR is such officer who is concerned with the administration of the unit where the court martial is in progress. It could also be a superior officer in command of such officer, who is present on the station where the court martial is in progress.

3.2 The form of record in the proceedings will be as follows:-

The court is of the opinion that service exigencies (or, the interests of discipline) require the court-martial to sit on----- being a Sunday (or, declared holiday).

or

The court is directed by the convening officer (or ----- CO of---- ----- being the senior officer on the spot) to sit on-----being a Sunday (or, declared holiday).

4.1 For definition of 'court-martial' and 'officer' see S.4 (xvi) and (xxiii) AFA.

4.2 For definition of 'proper air force authority' see R.2 (d) AFR.

5. As regards SGCM, see R. 142 AFR.

89. Continuity of trial and adjournment of court —(1) When a court is once assembled and the accused has been arraigned the court shall, subject to the provisions of rule 88, continue the trial from day to day 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) A court-martial, in the absence of a judge advocate (if such has been appointed for that court-martial), shall not proceed, and, if necessary shall adjourn.

(4) The senior officer on the spot, may also, for exigencies of the service, adjourn or prolong the adjournment of the court.

(5) If the time to which any adjournment is made is not specified, the adjournment shall be until further orders from the proper air force 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 air force authority.

NOTES

1.1 It is very important that a trial, once begun should proceed without interruption to its conclusion. This rule, therefore, requires the court to sit from day to day unless an adjournment is necessary for the ends of justice.

1.2 Apart from specific provisions under the AFR, an adjournment should be allowed for obtaining the opinion of confirming authority or of the CJA/CDJA of the Command on any point of law or procedure for enabling the accused to prepare his defence, the prosecutor to prepare his reply or the JA to prepare his summing-up.

1.3 The court should not, as a rule, permit an adjournment to enable the prosecutor to call new witnesses, unless the necessity for their presence at the trial could not reasonably have been foreseen. The court should adjourn if it considers that the accused has not had sufficient opportunity for procuring the attendance of any witness whom he desires to call, or where it would be unjust to the accused not so to adjourn.

1.4 The reasons for adjournment beyond two days must ordinarily be entered in the proceedings, and either announced in court in presence of the accused, or communicated to the prosecutor and accused.

1.5 Prolonged sittings unduly strain the attention of members of the court and may operate unfairly upon the accused who should never be required to make his defence at the close of a prolonged sitting. See R.88 AFR.

1.6 Where civilian witnesses are present, the court should, if reasonably possible, complete their evidence before adjourning.

1.7 As to arraignment of accused, see R.56 AFR and Notes thereto.

1.8 In **UOI V. Ex Flt Lt GS Bajwa** the Supreme Court held that the normal rule, is that the trial must continue from day to day and this is with a view to expeditious disposal of the matter before the Court Martial. Unfortunately the practice of seeking unnecessary adjournments has become rampant with the resultant delay in disposal of matters before adjudicatory authorities and the Courts.

1.9 In **UOI V. Maj A Hussain**, the Supreme Court held that proceedings of a Court Martial are not to be compared with the proceedings in a Criminal Court under the Code of Criminal Procedure where adjournments have become a matter of routine though that is also against the provisions of law.

2.1 Sub-rule (2) meets the case where viewing any place e.g. scene of accident, is necessary, or where an adjournment to a hospital for the purpose of taking the evidence of a sick witness is necessary.

2.2 As to 'view', see R.87 AFR and Notes thereto.

3. Sub-rule (3) - Where the absence of the JA is due to temporary causes, the court should adjourn until he is able to attend.

4. 'Senior Officer on the spot', see Note 3.1 to R.88 AFR.

5.1 For definition of 'court-martial' and 'officer' see 5.4 (xvi) and (xxiii) AFA.

5.2 For definition of 'proper air force authority' see R.2 (d) AFR.

6. As regards SGCM, see R. 141 AFR.

90. 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 shall 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 proceedings of the court-martial shall be null, and the accused may be tried by another court-martial.

NOTES

1. As regards dissolution of court-martial, see S. 117 AFA and Notes thereto.
2. When a court is dissolved under sub-rule (2), every member thereof will be disqualified to sit as a member of the fresh court, if convened for the trial of the accused; see R. 45 (2) (c) AFR.
3. See also R. 93 AFR.
4. For definition of 'court-martial', see S.4 (xvi) AFA.
5. This rule applies to SGCM. See R. 142 AFR.

91. Proceedings on death or illness of the accused - In case of the death of the accused, or of such illness of the accused as render it impossible to continue the trial, the court shall ascertain the fact of the death or illness by evidence, and record the same, and adjourn, and transmit the proceedings to the convening authority.

NOTES

1.1 This rule should be read with S. 117 (2) AFA.

1.2 'Impossible to continue' means impossible to continue within a reasonable time having regard to all the circumstances.

2.1 Oral evidence of the fact of the death or illness of the accused will be taken on oath or affirmation.

2.2 A medical certificate should, where possible, be obtained, stating that the illness of the accused renders his presence in court impracticable, or dangerous to himself or others, and also the time when, in the opinion of the medical officer, the accused will be able to be present.

3. This rule applies to SGCM. See R. 142 AFR.

92. Death, retirement or absence of Presiding Officer - In the case of the death, retirement or challenge or unavoidable absence of the presiding officer, the next senior officer shall take the place of the presiding officer and the trial shall proceed if the court is still composed of not less than the minimum number of officers of which it is required by law to consist.

NOTES

1.1 This rule should be read with S. 117 (1) AFA.

1.2 For minimum number of officers at court-martial, see Ss. 114 and 115 AFA.

1.3 When the next senior officer takes the place of the presiding officer, the court must satisfy itself as to compliance of Rr. 46-48 AFR as the case may be, before proceeding with the trial.

1.4 As regards challenge, see S. 129 AFA and R. 52 AFR.

2. For definition of 'officer', see S.4 (xxiii) AFA.

3. This rule applies to SGCM. See R. 142 AFR.

93. Presence of members during trial - (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 proceedings of the court shall not be invalid unless reduced below the required minimum.

(2) An officer shall not be added to a court-martial, after the accused has been arraigned.

NOTES

1.1 Sub-rule (1) The absence of the member should be during any sitting of the court when evidence is taken, for this sub-rule to be attracted. If a member is indisposed or otherwise unable to attend and the court assembles without that member merely to adjourn, this sub-rule will not apply.

1.2 For minimum number of officers at a court-martial, see Ss. 114 and 115 AFA.

1.3 See also S. 117 AFA and Notes thereto.

2.1 Sub-rule (2) - The prohibition under this sub-rule applies only to members. Officers under instruction are not members. Similarly the prosecutor and defending officer (or, counsel) are not officers composing the court. Hence the prosecutor, defending officer (or counsel) may be allowed to withdraw and a fresh prosecutor or defending officer (or counsel) may be permitted to take the place vacated.

2.2 As to arraignment, see R. 56 AFR.

3. For definition of 'officer' and 'court-martial' see S.4 (xxiii) and (xvi) AFA.

4. This rule applies to SGCM. See R. 142 AFR.

94. Taking of opinions of members of court — (1) Every member of a court must give his opinion 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 opinions of the members of the court, shall be taken in succession, beginning with the member lowest in rank.

NOTES

1.1 Opinions may be given either orally or in writing. The oath or affirmation taken by members of the court operates, save as therein provided, to prevent the opinions of individual members from being disclosed, see R. 53 AFR.

1.2 If opinion is taken in writing from each member, it ensures greater secrecy, in such a case care must be taken by the Presiding Officer and JA to ensure that the votes or opinions are correctly reckoned. The slips of paper on which the vote or opinion is recorded, should thereafter be destroyed.

1.3 Except in case of a recommendation to mercy, the number of opinions in favour or against is not to be entered in the proceedings.

2. S. 131(1) AFA requires all decisions to be passed by an absolute majority, except in the case of a sentence of death passed by a GCM which requires a two-thirds majority (S. 131(2)AFA) and a sentence of death passed by SGCM which requires the concurrence of all the members (S. 131 (3) AFA). The presiding officer has no second or casting vote in the case of a sentence of death; not where there is an equality of votes on a challenge, finding or sentence.

3.1 In order to obtain an absolute majority in respect of the sentence, every member must vote, even if he had voted for an acquittal on the finding. It is desirable that the nature of the punishment to be awarded should first be considered.

3.2 The procedure to be adopted will best be illustrated by the following example:-

At a GCM trying an NCO, consisting of seven members, three are in favour of a sentence of dismissal, two in favour of reduction to the ranks, and two in favour of severe reprimand. The most lenient punishment will be first put to vote. Assuming that it is rejected by 5 votes to 2, the next most lenient punishment will then be put to the vote viz, reduction to the ranks. All seven members must vote again and the two members who had previously voted in favour of severe reprimand will presumably give their votes for reduction to the ranks rather than for dismissal. The result will be an absolute majority of 4 votes to 3 in favour of reduction to the ranks.

4. It is improper to strike an average between the various sentences suggested by the members of the court, but it may often happen that, in the course of further discussion,

members who had originally made different proposals will arrive at a unanimous decision as to the proper sentence to be awarded.

5. Sub-rule (2) 'lowest in rank' means lowest in the rank in which members take their seats; see R.82 AFR.

6. This rule does not apply to SGCM. See R. 142 AFR.

95. Procedure on incidental question - If any question arises incidentally during the trial, the person, whether prosecutor or accused, requesting the opinion of the court, is to speak first; the other person is then to answer, and the first person is to be allowed to reply.

NOTES

1. This rule will apply to such questions as the admissibility of evidence, the propriety of any question, or the recalling of a witness. It will also apply to a submission, which may always be made by or on behalf of the accused at the close of the case for the prosecution, that no case has been made out justifying the court in putting the accused upon his defence; see Notes to R.65 AFR.

2. This rule has not been made applicable to SGCM by R. 142 AFR. However, the principle contained in this rule, should, as far as possible be followed in SGCM.

96. 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 together or separately and each accused person shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

(2) In the case of several 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—martial upon the charges arising out of the same transaction, the court may, if it considers it desirable in the interests of justice, postpone consideration of sentence to be awarded to any one or more of such accused persons until the trials of all such accused persons have been completed.

NOTES

1. Notwithstanding that, under this rule, the members of the court, are sworn only once to try the persons before them they will constitute a separate court for the trial of each case, and the swearing of the court will be mentioned in the proceedings of each case.

2.1 When, in consequence of an objection raised by one or several persons jointly charged, a new officer serves, the other accused persons, whether or not he had previously raised objection to the members of the court, will have the right to object to the new officer.

2.2 Where two or more accused persons are tried separately by the same court and the objection of one accused to a member is allowed, that member must still sit as a member of the court for the trial of the accused who did not object to be tried by him.

3. The findings and sentence (except where the court decides to act under sub-rule (4)) must be arrived at before the next case is tried.

4.1 It is very desirable that the court should, where several persons are separately tried and convicted in respect of the same transaction, be in a position to apportion the proper sentences to be awarded to all the accused persons.

4.2 In as much as a sentence of imprisonment will under S.164 AFA commence upon the

day upon which it is eventually signed, the court, in awarding a sentence, should take into consideration in favour of an accused person any postponement of sentence which has been occasioned through the operation of sub-rule (4).

5. This rule does not apply to SGCM. But see R. 132 AFR.

97. 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 request it on any reasonable ground, be sworn or affirmed to act as interpreter.

(2) An impartial person may, at any time of the trial, if the court thinks it desirable, be sworn or affirmed to act as a shorthand writer.

(3) Before a person is sworn or affirmed as 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 cause; and the court, if it thinks that the objection is reasonable, shall not swear or affirm that person as interpreter or shorthand writer.

NOTES

1.1 The interpreter and shorthand writer are normally sworn after the swearing of the court, but as they may be changed or brought in during the trial there is provision for them to be sworn at any time.

1.2 Only an experienced shorthand writer who is capable of taking down the proceedings of a trial verbatim should be appointed.

2.1 For the occasions when an interpreter must be employed, see R. 98 AFR.

.2.2 An interpreter may either be appointed by the convening authority (R. 43 (3) AFR) or by the court under this rule. If a member of the court is appointed interpreter, he must take the interpreter's oath or affirmation, in addition to the oath, affirmation prescribed for a member of the court in R.53 AFR. A member or JA should not normally act as an interpreter where the trial is likely to be prolonged.

3. For form of oath and affirmation, see R.54 AFR.

4.1 The accused has a right to object to the shorthand writer or the interpreter. When such an objection is raised, the same procedure will be followed as in the case of an objection to a member of the court.

4.2 Swearing an interpreter or shorthand writer without ascertaining from the accused as to whether he had any objection to the said person acting as interpreter or shorthand writer is contrary to the provision of sub-rule (3), and may vitiate the trial.

5. This rule does not apply to SGCM. But as regards swearing of interpreter or shorthand writer, see R.134 AFR.

98. 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 understands. If an interpreter in such languages 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 97. When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

NOTES

1. As the charge-sheet and documentary evidence as to character will be in English, an interpreter in the language of the accused person should be appointed in every case in which the accused does not know enough English to understand these documents. Whoever interprets any evidence must be sworn or affirmed as an interpreter. See R. 97 AFR and Notes thereto.
2. For form of oath or affirmation, see R. 54 AFR.
3. For definition of 'officer', see S.4 (xxiii) AFA.
4. This rule has not been made applicable to SGCM by R.142 AFR. However, R.54 AFR applied to SGCM, and an interpreter must be sworn whenever necessary.

99. Record in proceedings of transactions of courts-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 English or Hindi language, all transactions of that court, and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings) and if the judge-advocate is called as a witness by the accused, the presiding officer shall be responsible for the accuracy of the record in the proceedings of the evidence of the judge advocate.

(2) The evidence shall be taken down in a narrative form in as nearly as possible the words used; but in any case where the prosecutor, the accused person, judge advocate or the court consider it material, the question and answer shall be taken down verbatim.

(3) Any question which has been objected to, and the tender of any evidence which has been objected to, shall, if the prosecutor or accused so requests, or the court thinks fit be entered 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 persons, 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 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 accused person, which the prosecutor or accused person, as the case may be, requires.

(5) The court shall not enter in the proceedings any comment or anything not before the court, or any report of any fact not forming part of the trial; but if any such comment or report seems to the court necessary, the court may forward it to the proper air force authority in a separate document, signed by the presiding officer.

NOTES

1.1 When there is a judge advocate the record should be made by him.

1.2 the record, where no shorthand-writer is employed, must be taken in a clear and legible form and should be typed. Interlineations and corrections must be avoided as much as possible; if made they should be initialed by the presiding officer or JA, if any. If the proceedings are typed, it must be checked with the original manuscript by the officer responsible for the accuracy of the proceedings. Sufficient space must be left below the signature of the presiding officer for the decision of the confirming authority. The place and date of the signing of the sentence by the presiding officer must be inserted.

1.3 The proceedings should be tied together by string, tape or with a fastener so that they cannot fall apart. They should be in page order, exhibits being marked with an alphabet letter, starting with 'C', which is usually the convening order.

1.4 In all cases at least three copies of proceedings will be prepared, including the original. The original and duplicate will be despatched to Air HQ as per para 757 Regs. The triplicate copy will be retained at the concerned Command HQ for supplying it to the accused if he applies for a copy of the proceedings. For the same reason, one additional copy of the proceedings will be prepared for every additional accused person.

1.5 In **UOI V. Ex Flt Lt GS Bajwa**, the Supreme Court held that obviously when the Judge Advocate records proceedings in long hand, the same has to be given a final shape before it becomes a part of the record. That cannot be said to be tampering with the record.

2. No corrections or additions may be made to the proceedings of a court-martial after promulgation. When an obvious oversight has been made in the record, such as the omission of the words "the presiding officer and members are duly sworn/affirmed", a certificate, signed by the presiding officer, to the effect that they were duly sworn/affirmed should be attached. But see Note I to R.76 AFR as to signing and dating the sentence after promulgation.

3. While recording evidence in the narrative form the material effect of the question and answer will be written down; e.g. where the question is "what did the accused do next"? and the answer is "He left the room"; the evidence as recorded, would read, "The accused then left the room".

4.1 Documentary evidence will be read by the presiding officer or JA, if any; it will then be marked with a distinguishing letter or figure and attached to the proceedings. In many cases it will be sufficient to attach copies of documents which must, however, be compared with the original by the court and certified under the hand of the presiding officer or JA to be a true copy. See Note 6 to R. 64 AFR.

4.2 The certificate of medical examination of the accused as to fitness for every day of trial, should not be made an exhibit.

5. If a shorthand-writer is employed the evidence is usually taken down verbatim by him. If the evidence of a witness is not given in English, the material effect of question and answer interpreted in English will be recorded.

6. Sub-rule (2) applies to questions and answers given in cross-examination and re-examination as well as in examination—in-chief.

7.1 The court can make in a separate document any remark it thinks proper on the conduct of any person who appeared before it, or on the manner in which a particular witness has given his evidence, or on the manner in which the prosecution has been conducted; also, if it thinks the evidence shows that the accused has committed some offence not charged; e.g. if the accused is charged under S.52(a) AFA for committing theft of property belonging to the Government, and the evidence shows that the property

belonged to a civilian individual, then it must acquit him, but it may report separately as regards the offence committed by the accused.

7.2 The court should be guarded in expressing censure on individuals not before it for trial; indeed, cases justifying such expression will be rare and exceptional.

7.3 It will usually be desirable to make a separate note at the time of any matter upon which the court intends to make any such comments or report; although it will not be correct to enter such matter in the proceedings.

8.1 For definition of 'court-martial', see S.4 (xvi) AFA.

8.2 For definition of 'proper air force authority', see R.2 (d) AFR. -

9. As regards SGCM, see R. 139 AFR.

100. 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 times.

NOTES

1. See also para 757 Regs.
2. This rule has been amended by SRO 83 of 1971.
3. This rule applies to SGCM. See R. 142 AFR.
4. In **UOI V. Ex Flt Lt GS Bajwa**, the Supreme Court held that the accused has no right to claim copies of day to day proceedings – Rule 100 gives right to the accused to go through the proceedings and for this purpose inspect the proceedings at all reasonable times, this meets the requirement of principles of natural justice.

101. Transmission of proceedings - The proceedings shall, as required under rule 72 or rule 76 be at once sent by the person having the custody thereof to such person as may be directed by the order convening the court, or, in default of any such direction to the confirming officer.

NOTES

1. The proceedings of court-martial, when despatched by post, should invariably be sent under registered post/SDS etc. It will be advisable to despatch the copies in two or more separate packets so that even if one packet is lost in transit, one or more copies would still be available.
2. For procedure where a member of the court has become the confirming authority, see R.81 AFR.
3. As to custody of the proceedings, see R.100 AFR.
4. This rule was amended by SRO 83 of 1971.

Defending Officer Counsel and Friend of Accused

102. Defending officer and friend of accused - (1) At any court-martial an accused person may be represented by any officer subject to air force law 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 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 service 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 or the court-martial, and such notice shall be attached to the proceedings.

(3) The defending officer shall have the same rights and duties as appertain to counsel under these rules and shall be under the like obligations.

(4) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he shall not examine or cross-examine the witnesses or address the court.

NOTES

1.1 The defending officer should be any officer subject to air force law.

1.2 Under R. 39 AFR the accused, after he has been ordered to be tried by court-martial is to be allowed free communication with his 'friend', defending officer, or defence counsel, as the case may be.

2.1 Effort should be made to secure the services of a competent officer as a defending officer, and he should be allowed time and opportunity for properly preparing the defence of the accused.

2.2 The written notice contemplated under sub-rule (2) will be necessary only when no suitable officer, whether he is the same person sought by the accused or another person, is available to be detailed as defending officer.

2.3 See also R. 42 AFR.

2.4 In **Maj GS Sodhi V. UOI**, the Supreme Court held that it is for the convening officer to allow appearance of counsel and to select defending officer. Once the convening officer selects a defending officer and there is no illegality, irregularity or prejudice, the Supreme Court would not make a roving inquiry into the matter under Art. 32.

2.5 In **UOI V. Maj A Hussain**, the Supreme Court held that the policy of not providing, despite the absence of a legal bar, the services of an officer of the JAG Branch to represent the accused in a court-martial is a sound policy in view of the nature of functions and duties of such an officer when appointed to a Court-martial.

3. The defending officer must conduct the case as representing the accused, see Rr. 104 (3), 106 and 107 AFR.

4. For definition of 'court-martial' and 'officer', see 5.4 (xvi) and (xxiii) AFA.

5. This rule applies to SGCM. See R. 142 AFR.

103. Counsel allowed in certain general and district courts- martial -

(1) Subject to these rules counsel shall be allowed to appear on behalf of the prosecutor and accused at general and district courts—martial if the Chief of the Air Staff, or the convening officer declares that it is expedient to allow the appearance of counsel there at, and such declaration may be made as regards all general and district court-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 seems expedient.

(2) Save as provided in rule 102, the rules with respect to counsel shall apply only to the courts-martial at which counsels are under this rule allowed to appear.

NOTES

1. For qualifications of counsel, see R. 108 (2) AFR.

2.1 There is no restriction as to the number of counsels that may be engaged in a case. Counsel for the defence, though not bound to such strict impartiality as the prosecutor, must nevertheless recollect that he is assisting in the administration of justice and must not be guilty of any unfairness or want of candour in his conduct of the case. In his address he will have the same liberty as the accused (see R.84 AFR), but he should exercise proper restraint in commenting on the acts of persons not before the court.

2.2 If two counsels appear, the right of address may be exercised by either but not both of them Similarly any witness may be examined or cross-examined, as the case may be, by either but not both of them.

3.1 For definition of 'active service' and 'court-martial', see S.4 (1) and (xvi) AFA.

3.2 For definition of 'Chief of the Air Staff', see S.4 (xiv) AFA.

4. In **UOI V. Ex Flt Lt GS Bajwa**, the Supreme Court held that the Act and the Rules framed thereunder do not oblige the State/Union of India to engage at the cost of the state a counsel for the officer who faces trial before the Court-Martial. It would be wrong to read such an obligation by holding that the officer on trial has a fundamental right under Article 21 of the Constitution of India to obtain free legal service at the cost of the State if he was unable to engage the services of a lawyer on account of poverty or indigence. The Apex Court further held that the officer facing enquiry does not even have a right to claim an advance from the State for engaging a counsel at his own expense.

104. Requirement for appearance of counsel (1) Where an accused person gives notice of his intention to have counsel to assist him during the trial, either on the day on which he is informed of the charge or at any time not being less than seven days before the trial, or such shorter time before the trial as in the opinion of the court would have enabled the prosecutor to obtain, if he had thought fit, counsel to assist him during the trial or where such notice is given to the accused on the part of the prosecution, counsel may appear at the court-martial to assist the accused.

(2) If the convening officer so directs, counsel may appear on behalf of the prosecutor but in that -case, unless the notice under 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 witness, 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 above matters except as regards the statement allowed by sub-rule (3) of rule 62 or sub-rule (2) of rule 66 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 clauses (c) and (d) of rule 64 shall not apply.

NOTES

1. When the convening officer intends to appoint or apply for the services of an officer of the Department of JAG (Air), or an officer holding legal qualifications to act as prosecutor, similar notice should be given to the accused to enable him, if he so desires, to obtain counsel to represent him at the trial.

2. For definition of 'court-martial', see S.4 (xvi) AFA.

105. Counsel for prosecution - The counsel appearing on behalf of the prosecution shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by sub-rule (2) of rule 84.

NOTES

1. Counsel appearing on behalf of the prosecutor should always make an opening address, and should state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary details.
2. The prosecutor must act with restraint and avoid using violent language, see R.84 (2) AFR.
3. See also Note 2 to R. 103 AFR.

106. Counsel for accused — The counsel appearing on behalf of the accused has the like rights and is under the like obligations as are specified in sub-rule (3) of rule 84 in the case of accused.

NOTES

1. If the court asks counsel for the accused a question as to any witness or matter, he may decline to answer; but he must not give to the court any answer or information which is misleading.
2. As regards the defence of accused, see also R.84 (3) AFR.
3. See also Note 2 to R.103 AFR.

107. General rules as to counsel - A Counsel, whether for the prosecution or for the accused, shall conform strictly to these rules and to the rules of criminal courts in India relating to the examination, cross-examination of witnesses, and relating to the duties of counsel.

NOTES

1. Counsel should not state as a fact any matter which is not proved, or which he does not intend to prove in evidence; nor should he state what is his own opinion as to any matter of fact before the court, In a question to a witness he should not assume that facts have been given in evidence which have not been so given, or that particular answers have been given contrary to the fact.
2. Counsel should treat the court and JA with due respect and should bear in mind the requirements of service discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.
3. Counsel whether for prosecution or defence, should wear robes when appearing before court- martial.
4. See also Note 2 to R. 103 AFR.
5. For definition of 'criminal court', see S.4 (xvii) AFA.

108. Qualifications of counsel — (1) Neither the prosecutor nor the accused has any right to object to any counsel if properly qualified.

(2) A counsel shall be deemed to be properly qualified if he is a legal practitioner authorised to practice with right of audience in a Court of Sessions in India, or if he is recognised by the convening officer in any other country where the trial is held as having in that country rights and duties similar to those of such a legal practitioner in India and as being subject to punishment or disability for a breach of professional rules.

NOTES

1. Whenever a civilian lawyer appears as counsel, it must be ascertained from him that he has a right to appear in a Court of Sessions in India; and this fact should be recorded in the proceedings.

109. Statement by accused when defended by counsel or officer - Notwithstanding the fact that he is represented at the trial by a counsel or an officer subject to military or air force law, an accused may, if he thinks fit, make a statement as provided in sub-rule (3) of rule 62 and sub-rule (2) of rule 66 giving his own account of the subject of the charges against him.

NOTES

1. The purpose of this rule is to clarify that the right to make an unsworn statement, available to an accused under R.62 (3) or R.66 (2) AFR, is unaffected even if he is defended by a counsel or an officer.
2. As to counsel or a defending officer, see Rr. 102 to 108 AFR.
3. For definition of 'officer', see S.4 (xxiii) AFA.
4. This rule has been amended by SRO 24E of 19 74.

110. Disqualification of judge-advocate — An officer who is disqualified for sitting on a court-martial, shall be disqualified for acting as judge-advocate at that court-martial.

NOTES

1. As to the appointment of a JA, at a GCM, DCM or SGCM **see** S.128 AFA. Omission to appoint a JA at a GCM will invalidate the proceedings.

2. As to disqualification of a JA. see R. 45 AFR.

3.1 A JA should be free of all suspicion or bias or prejudice. He should have had experience of the practice and procedure of court-martial as also adequate knowledge of the general principles of law and of the rules of evidence.

3.2 If it comes to the notice of a court-martial that there is a likelihood of the JA being a disqualified person, they must go into the question and decide whether the JA can continue to sit on the court. There is no provision in air force law for JA to be absent at any sitting of the court, hence even when the court is deciding upon the objection to the JA, the latter is to continue to occupy his place.

3.3 In *Sansar Chand v UOI* it was held by HP High court that the presence of a JA at the trial who does not seem to be impartial, will vitiate the proceedings.

4. Under air force law, the accused has no right to object to the trial judge advocate. But if an accused objects to the trial JA, the procedure adopted by the court-martial to decide on the objection ought not to be such as might lead to injustice or an appearance of injustice.

5. For definition of 'officer' and 'court-martial'; see S.4 (xxiii) and (xvi) AFA.

6. This rule applies to SGCM, see R.142 AFR.

7. In *UOI V. Charanjeet Singh Gill*, the Supreme Court held that a Judge Advocate appointed with the Court Martial should not be an officer of a rank lower than the officer facing the trial unless the officer of such rank is not (having due regard to the exigencies of public service) available and the opinion regarding non-availability is specifically recorded in the convening order.

111. Powers and duties of judge-advocate - The powers and duties of a judge advocate are as follows :-

- (a) The prosecutor or the accused, is 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 of trial, whether he is in or out of court, subject, when he is in court, to the permission of the court.
- (b) At a court-martial he represents the Chief Legal Adviser.
- (c) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he shall inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and shall give his advice on any matter before the court.
- (d) 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.
- (e) At the conclusion of the case he shall, unless both he and the court consider it unnecessary, sum up the evidence and give his opinion upon the legal bearing of the case before the court proceeds to deliberate upon its findings.
- (f) 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.
- (g) 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.
- (h) In fulfilling his duties, the judge-advocate must be careful to maintain an entirely impartial position.

NOTES

1. A copy of the charge sheet and of the summary of evidence, where one has been recorded, should desirably be forwarded before the trial assembles, to the judge advocate, where one is appointed by the convening officer.

2.1 Upon any point of law or procedure which arises at the trial, the court should be guided by the opinion of the JA, and not disregard it, except for very weighty reasons. The court is responsible for the legality of its decision, but it must consider the grave consequences which may result from its disregard to the advice of the JA on any legal

point. If a court-martial, acting without jurisdiction or in excess of jurisdiction, convicts a person subject to AFA, the members of the court may be held liable in damages by a civil court and such liability or at least the amount of the damages may depend upon the question whether they exercised a bona fide judgement; and the fact that they accepted the advice of the JA even if such advice was held to be wrong, might practically exonerate the members from liability.

2.2 Permission to call and question witnesses should never be refused unless the court considers that the JA is acting improperly or in such a manner as to obstruct the proceedings. The court should record its reasons for refusing permission.

3.1 As to summing up, see R. 69 AFR and notes thereto.

3.2 The JA attending a court-martial should, notwithstanding the provisions contained in R.69 (I) AFR, sum up the evidence and give his opinion upon the legal bearing of the case before the court proceeds to deliberate upon their finding. Exceptions should be rare.

4. For duties of presiding officer, see R.83 AFR.

5. For definition of 'court-martial' and 'Chief Legal Adviser', see S.4 (xvi) and (xi) AFA.

6. The words "Chief Legal Adviser" substituted for words "Judge Advocate General" vide SRO 83 of 1970.

7. This rule applies to SGCM. See R. 142 AFR.

8. In **UOI V. Ex Flt Lt GS Bajwa**, the Supreme Court held that the Judge Advocate though a participant in the proceeding, is not partisan. He holds brief neither for the prosecutor nor for the defence. He must guide the Court Martial when questions of law arise and render his honest opinion regardless of the consideration whether it helps the prosecution or the defence. He is neither a friend of the prosecutor nor an adversary of the defence. He has to maintain an entirely impartial position charged with the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such. The Judge Advocate performs a solemn obligation to advise honestly and to guide dispassionately the Court Martial with the objective to ensure a fair trial and justice according to law.

Witnesses and Evidence

112. Calling of all prosecutor's witnesses - The prosecutor is not bound to call all the witnesses for the prosecution whose evidence is in the summary of evidence or whom the accused has been informed it is intended to call, but should ordinarily call such of them as the accused desires in order that he may cross-examine them and shall for this reason, so far as practicable, secure the attendance of all such witnesses.

NOTES

1. Normally, the prosecutor will call all witnesses for the prosecution whose evidence appears on the summary of evidence or in respect of whom notice has been given under R. 113 AFR. Where, however, two or more witnesses prove the same fact, and that fact is not challenged by the defence by cross-examination of the first witness, it may not be necessary to call any further witnesses as to that fact; alternatively the prosecutor may not think that evidence which appears in the summary etc., is sufficiently important to make it worthwhile calling the witness. In such case he should tender the witness for cross-examination, and, if the defence requires him, he should call the witness, obtain formal particulars as to his name, etc., but not ask any other questions.

2.1 It will be noted that the prosecutor is not required to call any witness at the trial who was called by the accused at the taking of summary of evidence.

2.2 If, however, evidence given by a prosecution witness at the taking of a summary assists only the case for the defence, the prosecution is not bound either to call or to tender the witness, but must give notice to the defence in accordance with this rule, and, if the witness is called by the defence, may cross-examine him.

3. it is not necessary for the prosecutor to examine at length a witness for the prosecution called at the request of the accused and tendered for cross-examination under this rule.

4. This rule also applies to a prosecution witness whose written statement alone is included in the summary of evidence under R 24 (8) AFR.

5. As to giving to the accused a copy of the summary of evidence, see R.40 (2) AFR.

6. This rule does not apply to SGCM. See R. 142 AFR.

113. Calling of witnesses whose evidence is not contained in summary If the prosecutor intends to call a witness whose evidence is not contained in any summary given to the accused, notice of the intention shall be given to the accused, a reasonable time before the witness, is called: 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.

NOTES

1. It will be noted that this rule applies only in the case of witnesses called for the prosecution and not in the case of witnesses called by the accused or by the court under R. 12 (4) AFR.
2. This rule does not apply when the officer who recorded the statement of the accused at the summary of evidence is intended to be called by the prosecutor to produce such statement.
3. this rule does not apply to SGCM. See R. 142 AFR.

114. List of witnesses for 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 40.

NOTES

1. A member of the court, JA and prosecutor are competent witnesses for the defence, and may be sworn/affirmed at any stage of the proceedings; but an officer should not be detailed to serve as a member of, or act as prosecutor or JA at, a court-martial if his evidence is likely to be required. A witness for the prosecution is disqualified to serve as a member of the court or to act as JA at the trial. See Rr. 45 (2) (b) and 110 AFR.
2. See also R. 40 AFR and Notes thereto.
3. As regards procuring attendance of witnesses, see S. 134 AFA and R.115 AFR and Notes thereto.
4. This rule does not apply to SGCM. See R.142 AFR.

115. Procuring attendance of witness — 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.

NOTES

1. This rule should be read with R. 116 AFR.

2.1 For form of summons, see Form C.2 in Third Schedule to AFR.

2.2 If a civilian witness had in his possession or under his control any books, accounts, letters, returns, papers, or other documents which are considered necessary for the trial, care must be taken while summoning him to require him to bring them with him; the witness would be justified in declining to acknowledge a mere oral request.

3. Witnesses who are subject to AFA should be ordered by the proper authority to attend without the issue of a formal summons. The appropriate army or naval authorities should be approached for the attendance of witnesses subject to army or naval law. See Para 741 Regs.

4. When an application for trial by court-martial has been made, no service witnesses will be allowed to leave the station without the sanction of the authority to whom application for trial has been made. After trial witnesses will not leave station without the previous sanction of the convening authority. See para 742 Regs.

5.1 An accused person can have no technical ground of complaint if the attendance of a witness from distant parts cannot be procured, but it is the duty of the CO or convening officer, or after the assembly of the court, the presiding officer, to take all reasonable steps to secure the attendance of any witness whom there is any ground to suppose to be material to the defence, and R. 116 AFR makes provision for the adjournment of the court if the attendance, of such witness is essential.

5.2 the power to require the person calling a witness to undertake to defray the cost of his attendance is given in order to prevent an unreasonable demand by a prosecutor or accused person for the attendance of witnesses, in the case of the prosecutor the cost will usually be defrayed as part of the expenses of the prosecution. In the case of the accused, this provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness might afterwards be held to invalidate the proceedings of a court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, in as much as it is impossible to tell what effect the evidence of such a witness might have had upon the court.

5.3 The court may refuse a request on the ground that it is made for the purpose of

vexation or delay or for defeating the ends of justice. In such a case the court should record the reasons in the proceedings.

6. As to expenses of witnesses, see Travel Regulations.

7. For action where a civilian witness, who has been duly summoned and whose expenses have been tendered, makes default in attending, see R. 129 (c) AFR and Notes thereto. As to privilege from arrest under civil or revenue process of a witness summoned to attend before a court martial, see S.30 AFA.

8. For definition of 'commanding officer', see S.4 (xv) AFA.

9. This rule does not apply to SGCM, See R. 142 AFR.

116. 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 reasonably be 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) adjourn and, report the circumstances to the convening officer.

NOTES

1. This rule should be read with R. 115 AFR.
2. See Ss. 136 AFA as regards issue of a commission for the examination of a witness.
3. This rule does not apply to SGCM. See R. 142 AFR.

117. Withdrawal of witnesses from court - During the trial a witness, other than the prosecutor, shall not, except by special leave of the court, be permitted to be present in court while not under examination and if, while he is under examination, a discussion arises as to the allowance of a question, or the sufficiency of his answers or otherwise as to his evidence, he may be directed to withdraw.

NOTES

1. It is customary to have all witnesses present in court while the members of the court are being sworn/affirmed, but they should withdraw before arraignment. This does not, of course, apply to the prosecutor if he is a witness. The prosecutor however should not normally be a person who is to give evidence other than on purely formal matters.
2. Permission to remain in court while not under examination may reasonably be given, e.g. to report or professional witnesses, provided that no objection is made by or on behalf of the opposite party. The court may permit expert witnesses to be present in court to hear the evidence so that they can better express their opinion on the facts.
3. While under examination, if any discussion as contemplated under this rule arises the court should generally order the witness to withdraw, as his answer might otherwise be influenced by the discussion.
4. After a witness has given his evidence every endeavour should be made to keep him separate from the witnesses who have not given evidence.
5. This rule does not apply to SGCM. See R. 142 AFR

118. 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 a member of the court, the judge-advocate, 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.....do swear in the name of God that what I shall state shall be the truth, the whole truth, and nothing but the truth".

Form of Affirmation

"I.....do solemnly affirm that what I shall state shall be the truth, the whole truth, and nothing but the truth".

NOTES

1.1 The following translations into Hindi of the oath and affirmation prescribed under this rule, may be used.

(FORM OF OATH)

main.....parameshwar ki shapath leta hun, kih main jo kuchh kahunga vah satya, purna satya, aur kewal satya hoga.

(FORM OF AFFIRMATION)

main.....satya nishtha, shudh hridaya tatha sachhai se ghoshana karta hun aur partigya karta hun ki main jo kuchh kahunga vah satya, purna satya, aur kewal satya hoga.

1.2 When a witness is sworn or affirmed during the course of the trial, only the person administering the oath/affirmation and the person taking it should be standing.

2. Oath includes affirmation. See S.51 IPC.

3. In successive trials heard by the same court, in which the same witnesses give evidence such witnesses must be separately sworn at each trial.

4. As to power of dealing with recalcitrant witnesses, see S. 59 AFA (in the case of persons subject to AFA) and S. 151 AFA (in other cases). See also R. 129 AFR and Notes thereto.

5. This rule applies to SGCM. See R. 137 (2) AFR.

119. Mode of questioning witness - (1) Every question shall be put to a witness orally by the presiding officer, the judge-advocate, the prosecutor or the accused person 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 after he has given all his evidence and before he leaves the court, and shall, if necessary, be corrected.

(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.

NOTES

1. The court and JA must carefully listen to the actual questions put by the prosecutor and by or on behalf of the accused, as well as to the form in which such questions are put, and they must intervene before the witness replies if in their opinion, any question is improper or a leading question. If either the prosecutor or the accused, or the officer counsel representing him, considers that a particular question about to be put by him may be objected to, he should submit the propriety of the question to the decision of the court, having first informed the witness that he must not make his reply until the decision of the court has been given. If considered necessary, the witness may be permitted or directed by the court to withdraw while the matter is being discussed.

2. A witness is first examined by the person calling him, then cross-examined by the opposite party, after which he may be re-examined by the party calling him on matters raised in the cross examination. The court should, if requested by either party, allow the cross examination of a witness by that party to be postponed, especially if his evidence comes as a surprise; see also R. 113 AFR where a witness is called whose evidence is not contained in the summary of evidence. A request for postponement should not be acceded to, if, in the opinion of the court, it is made for purposes of obstruction.

3.1 Sub-rule (2) - The requirement under this sub-rule is to be complied with even when a shorthand—writer is employed.

3.2 The right of a witness under this sub-rule should be explained to him at the opening of his deposition.

3.3 When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end of the

record of his evidence, and not by way of interlineation or erasure.

3.4 If the witness makes any explanation or correction, the prosecutor, and accused or counsel or defending officer, may examine him respecting the same.

3.5 The record of the proceeding should contain a note, at the end of the evidence of every witness, that this sub-rule has been complied with. Similar record should be made when sub-rule (4) applies.

4. After a witness has given his evidence every effort should be made to keep him separate from other witnesses who have not given their evidence before the court.

5. The court should normally permit a witness to give his evidence seated.

6. This rule applies to prosecution and defence witnesses.

7. This rule does not apply to SGCM. See R. 142 AFR.

120. Question to witness by court or Judge-Advocate - At any time before the time for the second address of the accused the presiding officer, the judge advocate and with the permission of the court, any member of the court may address any question to a witness.

(2) Upon any such question being answered, the officer conducting the proceeding shall also put to the witness any question relative to that answer which he may be requested to put by the prosecutor or the accused, and which the court deems reasonable.

NOTES

1.1 It is desirable that any question should be put after the conclusion of the examination, cross-examination and re-examination (if any) of the witness. The court should forebear from asking questions during the examination of witnesses except to clear up an ambiguity, as such a course is distracting to the person conducting the examination.

1.2 The court is not barred from putting leading questions to a witness but should be careful to maintain an impartial attitude.

1.3 A witness can object to answer questions put by the court on the same grounds as he may object to answer questions put by the prosecution or defence.

2.1 It is to be noted that members of the court other than the presiding officer are not empowered except in the circumstances mentioned in sub-rule (1) to put questions.

2.2 Before putting a question a member should desirably discuss it with the presiding officer or JA, as the answer may be inadmissible or irrelevant.

3. Sub-rule (2) - The presiding officer, JA or officer holding the trial should always, under the provisions of this rule, put any question which they are requested by the prosecutor, or by or on behalf of the accused, to put and which does not seem unreasonable. Under this sub-rule such questions must be limited to those arising from the answer, but the court may also give permission for other questions to be asked.

4. For definition of 'officer', see S.4 (xxiii) AFA.

5. This rule does not apply to SGCM See R 142 AFR But under the inherent powers of the court, they may put questions to a witness to do justice in the case. See also S. 165, IEA read with S. 132 AFA.

121. Recalling of witnesses and calling of witnesses in reply - (1) At the request of the prosecutor or accused person, a witness may, by leave of the court, be recalled at any time before the second address of the accused, for the purpose of having any question put to him through the officer conducting the proceedings.

(2) A witness may, in special cases, be allowed by the court to be called or recalled by the prosecutor before the time for the second address of the accused, for the purpose of rebutting any material statement made by a witness for the defence upon his examination by the accused 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 time for the second address of the accused, may call or recall witnesses for the purpose of proving a previous conviction or entries in the service records against the accused.

(4) The court may call or recall any witness at any time before the finding if it considers that it is necessary for the ends of justice.

NOTES

1. The presiding officer or the JA should also put to a witness recalled under the provisions of sub-rule (1), any further questions which they consider necessary in view of the answer given.

2. If a witness is recalled, he need not be sworn or affirmed again, but the court should remind him that he is on his former oath or affirmation. The fact that he was so reminded should be recorded in the proceedings.

3. under sub-rule (2) above, the evidence could be led by the prosecutor only for rebutting any material statement, made by a witness for the defence and not by the accused in his statement before the court, on any new matter which could not have been reasonably foreseen by the prosecutor.

4.1 The power given under sub-rule (4) of calling or recalling witness should be exercised only in exceptional circumstances. If for example, it appears for the first time from the evidence given at the trial that a person, who has not been called either by the prosecutor or on behalf of the defence, was present at, and probably witnessed the occurrence which forms the subject of the charge it would be in the interests of justice to call him.

4.2 Witnesses should not be called or recalled under this provision in order to supplement any negligent conduct on the part of the prosecution. Where a witness is called after the defence has been closed the court must ensure that no injustice or prejudice could be caused to the accused. In general therefore the power should be exercised only where

some matter arises extempore.

4.3 If witnesses are called or recalled under this provision, the prosecutor and the accused should be invited to put or suggest any relevant questions which in their opinion should be put by the court. If new evidence is given after the closing address by or on behalf of the accused, the court should permit the accused or his representative to make a further address upon the new matter which has been elicited (if any).

5. As regards previous conviction or entries in the service records against the accused, see S. 143 AFA and Notes thereto.

6. For definition of 'officer', see S.4 (xxiii) AFA.

7. This rule does not apply to SGCM. See R. 142 AFR. But see S. 165 IEA read with S. 132 AFA.

Address

122. Addresses may be in writing — Addresses by the prosecutor and the accused and the summing up of the judge-advocate may either be given orally or be in writing, and, if in writing, shall, be read in open court.

NOTES

1. The summing up of the JA should invariably be in writing. See Note 2.1 to R. 69 AFR.
2. When the address is given orally - See R. 99(4) AFR.
3. This rule has not been made applicable to SGCM by R. 142 AFR. But it is advisable for SGCM to observe the contents of this rule and R.99 (4) AFR.

Insanity

123. Provisions as to finding of insanity - Where the court finds either that the accused is of unsound mind and consequently incapable of making his defence or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the presiding officer shall date and sign the finding and the proceedings, upon being signed by the judge-advocate if any, shall be at once transmitted to the confirming officer.

NOTES

- 1.1 This rule must be read in conjunction with Ss. 144 and 145 AFA.
- 1.2 See also Para 727 Regs.
2. The court will deliberate on this finding as on any other finding.
3. For form of recording a finding under this rule, see form F.2(b), Section II, Sixth Schedule to AFR.
4. This rule applies to SGCM, See R. 142 AFR.

Preservation of Proceedings

124. Preservation of Proceedings. - The proceedings of a court-martial shall after promulgation be forwarded, as circumstances require, to the office of the Chief Legal Adviser 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.

NOTES

- 1.1 This rule only lays down the minimum period for which the proceedings should be preserved.
- 1.2 The period stated in the rule should desirably be reckoned from the date of promulgation.
2. For definition of 'court-martial' and 'Chief Legal Adviser', see S.4 (xvi) and (xi) AFA.
3. The words 'chief Legal Adviser' substituted for words 'Judge Advocate General' vide SRO 83 of 1971.
4. This rule applies to SGCM. See R. 142 AFR.

125. Right of person tried to copy of proceedings — Every person tried by a court-martial shall, after the proceedings have been signed by the presiding officer and where applicable, by the judge-advocate, and before they are destroyed, on a request made by such person in writing for the supply of a copy of such proceedings, be furnished within a reasonable time and free of cost a copy thereof including the proceedings upon revision, if any.

NOTES

- 1.1 This rule is subject to R. 126 AFR and both the rules should be read together.
- 1.2 Under this rule an accused is entitled to a copy of the proceedings of his trial free of charge. In case of joint trial by GCM, DCM or SGCM the convening officer, should ensure that sufficient copies of the proceedings are prepared to facilitate delivery of the same to the accused on demand. The application for a copy of the proceedings should be made by the accused.
2. For custody of proceedings after confirmation, see R. 124 AFR.
3. For definition of court-martial', see S.4 (xvi) AFA.
4. Rule substituted vide SRO 24E of 1974.
5. This rule applies to SGCM. See R. 142 AFR.

126. Copy of proceedings not to be given in certain cases: Notwithstanding anything contained in rule 125, if the Central Government certifies that it is against the interest of the security of the state or friendly relations with foreign State 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 a finding or sentence, it shall permit inspection of the proceedings by 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 contained in such proceedings shall not be used by him, for any purpose whatsoever other than for the purpose of submitting a petition in accordance with the Act or instituting any 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 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.

NOTES

1. The accused or any one coming to see the proceedings through the accused will be liable to be prosecuted for contravening Ss. 3,4 or 5 of the Official Secrets Act, 1923, if they communicate any information obtained during the inspection of the proceedings to unauthorised persons or make unauthorised use of such information.

2. This rule amended by SRO 83 of 1971.

3. This rule applies to SGCM. See R. 142 AFR.

127. Loss of proceedings - (1) If before confirmation the original proceedings of a court-martial, or any part thereof, are lost, a copy thereof, if any, certified by the presiding officer or the judge-advocate at the court-martial may be accepted in lieu of the original.

(2) If there is no such copy, and sufficient evidence of the charge, finding, sentence, and transactions of the court can be procured, that evidence may, with the consent of the accused, be accepted in lieu of the original proceedings, or part thereof lost.

(3) In any case mentioned above 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 proceedings, or part thereof, were lost before confirmation, and there is no such copy or evidence, or the accused refuses such consent as mentioned above, the accused may be tried again, and on the issue of an order convening the court for the trial, the finding and sentence of the previous court, of which the proceedings were so lost, shall be null.

(5) If, after confirmation, the original proceedings of a court-martial or any part thereof are lost and there is sufficient evidence of the charge, finding, sentence, and transactions of the court, and of the confirmation of the finding and sentence, that evidence shall be valid and sufficient record. of the trial for all purposes.

NOTES

1. Confirmation is not complete until the finding and sentence have been promulgated, see R.78 AFR.

2. As soon as it is known that the proceedings have been lost; steps should be taken to obtain and preserve the best evidence available.

3.1 Sub-rule (2) - The consent of the accused must be obtained before the reconstituted record is used; if he withholds his consent there is no alternative but to withhold confirmation and if desirable to try the accused again.

3.2 The evidence may be obtained by the presiding officer or some member of the court writing out from memory the substance of the charge, finding, sentence and transactions of the court, which should be authenticated by the signatures of the members. A copy of the charge, however, should always be procured if possible.

5. For definition of 'court-martial', see S.4 (xvi) AFA.

6. This rule applies to SGCM. See R. 142 AFR.

Irregular Procedure When no Injustice is Done

128. Validity of irregular procedure in certain cases — Whenever it appears that a court-martial had jurisdiction to try any person and make a finding and that there is legal evidence or a plea of guilty to justify such finding, such finding and any sentence which the court-martial had jurisdiction to pass thereon may be confirmed, and shall, if so confirmed, 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 otherwise unless it appears that any injustice has been done to the offender, and where any finding and sentence are otherwise valid they shall not be invalid by reason only of a failure to administer an oath or affirmation to the interpreter or shorthand writer; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.

NOTES

1. This rule is intended to prevent a miscarriage of justice in consequence of defects, usually of a technical nature, in matters of procedure which do not affect the real merits of the case; but before acting upon this rule the confirming officer must be satisfied that the accused has not suffered any injustice through any deviation from the AFR or through any defect or objection. Whether or not a deviation or defect is of a substantial nature will often depend upon the circumstances. The court should not allow any technicality to interfere with the accused in the making of his defence.
2. The confirming officer should always direct the attention of all officers concerned to the deviations and defects which have been observed and for which they are responsible.
3. If, after confirmation, the charges or findings thereon are declared to be invalid, the trial must be treated as null, the conviction set aside, the person convicted relieved of all consequences of his trial and the record of conviction raised.
4. As to the substitution of valid finding and sentence for invalid finding and sentence, see S. 160 AFA.
- 5.1 For definition of 'court-martial', see S. 4(xvi) AFA.
- 5.2 For definition of 'commanding officer' and 'officer', see S.4 (xv) and (xxiii) AFA.
6. This rule applies to SGCM. 'See R. 142 AFR.

Offences of Witnesses and Others

129. Offences of witness and others - When any court-martial is of opinion that there is ground for inquiring into any offence specified in sections 59 and 60 of the Act 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 :-

(a) 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 air force authority and may also order him to be placed in air force custody with a view to his punishment by an officer exercising authority under section 82 or section 86 or to his trial by court-martial;

(b) if the person who appears to have done the act is subject to the Army Act, 1950 or the Navy Act, 1957, the court may bring his conduct to the notice of the proper military or naval authority;

(c) 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), clause (b), clause (c) clause (d) of section 59 the officer who summoned the witness to appear or the presiding officer of the court-martial, 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 under 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 476 of the Code of Criminal Procedure, 1898 (8 of 1898).

NOTES

1. A trial by court-martial is deemed to be a judicial proceeding within the meaning of Ss. 193 and 228 of IPC. A court-martial is deemed to be a court within the meaning of Ss. 345 and 346 of CrPC 1973. (Ss. 480 and 483 Cr PC 1898 correspond to Ss. 345 and 346 CrPC 1973). See also S.151 AFA and Notes thereto.

2. An act includes an illegal omission, see S.4 (xxx) AFA and S.32 of IPC

3. When a person subject to AFA commits an offence under any of the clauses of S.59AFA, or when a corresponding offence is committed by a person subject to military or naval law or by a civilian, a court martial will often act wisely in accepting an apology sufficient to vindicate their dignity instead of resorting to the more severe measures here indicated. As already pointed out (Note 4 to R. 83 AFR) the best course to adopt when a person, other than the accused, interrupts the proceedings will ordinarily be to order his exclusion from the court.

4. Courts-martial should exercise the greatest discretion in instituting proceedings or in taking measures which may result in the institution of proceedings, against a person subject to AFA for the offence specified in S. 60 AFA, or against a person subject to military or naval law, or a civilian for corresponding offence. It is not enough that the court-martial has by its verdict shown that it did not believe the witness, for it may have thought him to be mistaken or, on the balance of probabilities it may have accepted another version of what took place. Before instituting proceedings as indicated in this rule against a witness, the court should be satisfied that there are good grounds for believing that the witness has wilfully given false evidence on some point which is material to the issue.

5. When it is likely that a witness will be prosecuted for giving false evidence, the exact words used, in the language, in which the evidence was given, should be recorded; see R. 99 (2) AFR.

6.1 In the case of a person subject to AFA, the court-martial may, 'in its discretion, either merely report his conduct to the proper air force authority or may in addition order him into air force custody pending disposal of his case.

6.2 If a person is so ordered into custody this fact should be mentioned in the report; and it then becomes the duty of the officer receiving the report to see that the case is promptly investigated in accordance with S. 103 (1) AFA. The report should be in sufficient detail to place the officer in full possession of the facts and enable him to exercise his discretion whether to order trial by court-martial if he is competent to do so, or to direct summary disposal.

7. As to 'proper air force authority', see R.2 (d) AFR. This will depend on the status of the offender, and the authority under whose orders the court has been convened.

8. A GCM, DCM or SGCM would report to the convening officer observing in each case the usual channel of correspondence.

9. As explained in Note 3 to S.59 AFA the members of a court-martial reporting an officer under this rule are individually disqualified (R.45 (2) (c) AFR) from trying him on charges arising out of their report. If the officer, to whom the case is finally referred, decides on trial, he must convene a new court for the purpose.

10. A court-martial convened or assembled under AFA has, as such, no authority over a person subject to military or naval law and cannot as court order him into air force custody. Clause (b) of this rule enables the court merely to report offences of contempt or of giving false evidence committed by such persons to proper military or naval authority for disposal under the appropriate Act. See however S. 151 AFA.

11. When a person subject to AFA commits contempt or gives false evidence before a court-martial other than the one convened under AFA, the charge can only be framed under S. 65 AFA, as a court-martial convened under an Act other than AFA is not court-martial for the purpose of charges under S. 59 or 60 AFA.

12. Clause (e) deals with civilian offenders; Ss. 195 and 340/341 CrPC 1973 provide for the institution of proceedings for certain offences against the IPC, on the written complaint of the public servant concerned or of the court before which the offence complained of was committed. A court-martial is a "criminal court" for the purpose of the above sections and is also a "court of justice" for the purpose of the IPC. See S.6 CrPC 1973 and S.20 of IPC. The effect of this is that all the acts and omissions which are punishable under S.59 (a), (b), (c) or (d) AFA, when committed by persons subjected to AFA, are, when committed by civilians, offences under Ss. 174, 175, 178 and 179 of IPC, for which the officer who summoned the witness to appear or the officer conducting the proceedings of the court-martial, as the case may be, can institute proceedings under S. 195(1) CrPC 1973; and that all acts and omissions which are punishable under Ss. 59 (3) and 60 AFA when committed by civilians, offences under Ss. 193, 194 and 228 of IPC for which the aggrieved court-martial can institute proceedings under S. 340 CrPC 1973 (corresponds to S.476 CrPC [898]). Before instituting such proceedings, the officer (in the case of offences corresponding to those in S.59, (a), (b), (c) or (d) AFA) and a court-martial (in the case of offences corresponding to those in S.59 (e) or 60 AFA) must prima facie be satisfied that a definite offence has been committed by some definite person or persons against whom proceedings in a criminal court are to be taken. It is not sufficient that the circumstances may raise some sort of a suspicion against someone. In such a case the officer or the court-martial, as the case may be, should either allow the matter to drop, or should make or hold a preliminary inquiry to see who is to be prosecuted and for what. A court's decision to institute proceedings must be a judicial one, i.e., either based on what the court has itself heard or seen and considered, or on evidence taken before it and considered. Similarly an officer's decision to institute proceedings must be a reasonable one, based on sufficient grounds.

13. The report to the magistrate may be in letter form, and should be sufficiently detailed to place him in full possession of all the material facts on which the decision to prosecute was based. It should set forth the name and identity of the person accused and of the witnesses who can substantiate the accusation. A narration of the events complained of, should be included in the report and a record of the evidence taken in preliminary inquiry (if any) attached.

14. In the case of a person subject to military or naval law the proper course is to report the offence to the proper military or naval authority, though proceedings could be taken under clause (c).

15. This rule applies to SGCM. See R. 142 AFR.

SECTION 3 Summary General Courts-Martial

130. Convening the court and record of proceedings. - (1) The court may be convened and the proceedings of the court recorded in accordance with Form F.3 in the Sixth Schedule, with such variations as the circumstances of each case may require.

(2) The officer convening the court shall appoint or detail the officer to form the court, and may also appoint or detail such officers as waiting members as he thinks expedient. Such officers should have held commissions for not less than one year, but if any officers, who have held commission for not less than three years, are available they shall be selected in preference to officers of less service.

(3) A provost-marshal, assistant provost-marshal or officer who is a prosecutor or witness for prosecution shall not be appointed a member of the court.

NOTES

1.1 For authorities empowered to convene a SGCM, see S.113 AFA and Notes thereto.

1.2 The specimen/ copy of the convening order for a SGCM has been circulated by Air HQ. AOsC-in-C of WAC, CAC, MC, EAC; SWAC & SAC have been empowered to convene SGCM in respect of offences committed by personnel under their command.

2. The convening order for a SGCM is to be signed personally by the officer convening the Court. Another officer cannot sign it on his behalf.

3. In the convening order, members and waiting members (if any) may be appointed by name, or only their ranks and units may be mentioned. In the latter event, the ranks, names, etc; of the members of the court as constituted, will be recorded in the proceedings.

4. An officer with less than one year's commissioned service can legally sit as a member, in view of S. 116 AFA. However there would hardly be an occasion to detail an officer as member who has less than three years commissioned service.

5.1 For definition of 'provost-marshal; see S.4 (xxv) AFA. See also S. 108 AFA.

5.2 For definition of 'officer', see 3.4 (xxiii) AFA.

131. Charge — The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Act.

NOTES

1. A formal charge-sheet is not a legal necessity at a trial by SGCM.
2. See Appendix to form F.3, Section III Sixth Schedule to AFR for specimen method of recording statement of offence.

132. 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 41 the trial of each accused person shall be separate.

NOTES

1. For joint trial of several accused persons, see R. 41 AFR and Notes thereto.
2. For swearing or affirming of the court, see R. 134 AFR. See also R. 96 AFR.

133. 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 129 and rule 52, the vacancies being filled from among the waiting members, if any, or by fresh members being appointed by the convening officer.

NOTES

1. See S. 129 AFA and Notes thereto.
2. For definition of 'officer', see S.4 (xxiii) AFA.

134. Swearing or affirming the court, judge-advocate, etc. — The provisions of rules 53, 54 and 55 relating to administering and taking of oaths and making of affirmations shall apply to every summary general court-martial.

NOTE

1. See Rr. 53 to 55 AFR and Notes thereto.

135. Arraignment — When the court is sworn or affirmed, the judge-advocate, if any, or the presiding officer shall inform the accused then to be tried, the offence with which he is charged, if necessary, with an explanation giving him full information of the act or commission with which he is charged, and shall ask of the accused whether he is guilty or not of the offence.

NOTES

1.1 The arraignment is conducted by the judge advocate, or by the presiding officer, if no JA is appointed.

1.2 As to responsibility of presiding officer, see generally R.83 AFR.

2. 'Arraignment' consists of:

(a) Calling upon the accused by his number (if any), Rank, name and description as given in the charge-sheet and asking him "Is that your number, Rank, Name and Unit (or description)".

(b) reading each charge separately, and

(c) calling upon the accused to plead, i.e. to say whether he is guilty or not guilty to each charge separately as it is read out.

3. When two or more persons are jointly tried, each one is to be arraigned separately. Except in cases falling under R. 60 (3) AFR plea of one accused person must be taken on all the charges, including alternative charges, before another accused person is arraigned.

4. As to objection by accused to charge, see R.57 AFR which by R.142 AFR is applied so far as practicable, to a SGCM.

5. As to general plea of 'Guilty' or 'Not Guilty', see R.60 AFR and Notes thereto, and as to procedure after plea of 'Guilty', see R.62 AFR and Notes thereto. Both these rules are, applicable to SGCM.

6. A plea of 'Guilty' will not be accepted by the court if the charge or charges upon which an accused is arraigned render him liable, on conviction, to be sentenced to death. If such plea is offered, the court will enter a plea of 'Not Guilty' and proceed with the trial accordingly. See R.60(4) AFR.

136. Plea to 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.

NOTES

1. Before pleading to a charge, an accused person may offer a special plea to the general jurisdiction of the court and/or plea in bar of trial, which may be in respect of one or more charges or all the charges. If any such plea is offered, it is to be dealt with in accordance with Rr. and 61 AFR respectively.

137. 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 118 shall be administered to every witness, if so required by the Act, before he gives his evidence, by one of the person specified in that rule.

NOTES

1.1 The provisions of the Indian Evidence Act, 1872 shall, subject the provisions of AFA, apply to all the proceedings before a court-martial. See S.132 AFA and Notes thereto. Thus, all the general rules of evidence, to the extent not made inapplicable, apply to the proceedings of a SGCM also.

1.2 Although by R. 142 AFR only a limited number of the foregoing rules are applies to SGCM, so far as practicable, the procedure to be adopted at a SGCM should be the same as at a GCM or DCM.

2. For form of oath or affirmation, see R. 118 AFR.

3. As to power of dealing with recalcitrant witnesses, see S. 59 AFA (in the case of persons subject to AFA) and R. 129 AFR (in other cases).

138. 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, whether a legal adviser or any other person.

(2) The court, or the judge-advocate, if any, may question the accused 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, but the court may draw such inference from such refusal or answers as it thinks fit.

NOTES

1. See Note 1.2 to R. 137 AFR.
2. As to rights of the accused to prepare his defence, see R. 39 AFR which by R. 142 AFR is applied, so far as practicable, to a SGCM.
3. R. 103 AFR does not apply to SGCM. Hence there is no provision to permit appearance of civilian defence counsel at SGCM. The legal adviser or other person allowed under sub-rule (1) to assist the accused, will not have the right of appearance. However, the accused is permitted to have a defending officer. R. 102 AFR is applicable to SGCM.
4. As to questioning of accused by the court or JA, the principles stated in R. 66 (4) AFR may be borne in mind.
5. As far as possible the addresses should be made in writing.

139. 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,

Provided that if it appears to the convening officer that exigencies of the service or other circumstances prevent compliance with this provision, he may direct that the trial may be carried on without any such brief record being taken down.

(2) 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.

NOTES

1. It would hardly ever be necessary for the convening officer to give such a direction as is mentioned in proviso to sub-rule (1). If he does so, he must record it in his order convening the court and state shortly the exigencies or other circumstances which appear to him to prevent compliance with this rule.

2. The record of evidence required under this rule will be made separately, signed by the presiding officer and JA if any, and shall be attached to the Appendix to form F.3, Section III, Sixth Schedule to AFR.

140. Finding and sentence — The court shall then be closed to consider its finding, if the finding on any charge is "guilty" the court may receive any evidence as to previous convictions and character which is available. The court shall then deliberate in closed court as to its sentence.

NOTES

- 1.1 As to voting by members, see S. 131 (1) and (4) AFA.
- 1.2 For passing a sentence of death concurrence of all members is necessary. See S. 131 (3) AFA.
2. With respect to evidence as to previous convictions and general character of accused, see S. 143 AFA and Notes thereto.
3. Rr. 70, 71, 72 and 73 to 76 AFR apply to SGCM. See R. 142 AFR.
4. The finding and sentence of a SGCM are subject to confirmation; see S. 152 AFA.
5. The proceedings of a SGCM may be revised as in the case of GCM and DCM. See S. 159 AFA and R. 77 AFR.

141. Adjournment — (1) A summary general court-martial may adjourn from time to time and from place to place and may when necessary inspect 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.

NOTES

1. The restrictions contained in R. 88 AFR are not applicable to SGCM. Even then the court should not deny to the accused reasonable rest or adequate time to prepare his defence, as the circumstances permit.

142. Application of rules - The rules specified in the Table below shall, so far as practicable, apply to Summary General Courts-Martial as if Summary General Courts-Martial were District Courts-Martial.

Table

Rule 24 Disposal of the charge or adjournment for taking down the summary of evidence

Rule 25 Remand of accused

Rule 26 Application of rules 24 and 25 to officers exercising powers of a commanding officer

Rule 39 Opportunity for accused to prepare defence.

Rule 40 Warning of accused for trial

Rule 42 Suspension of rules on the grounds of the exigencies of the service or the necessities of discipline.

Rule 44 Adjournment for insufficient number of officers.

Rule 57 Objection by accused to the charge.

Rule 59 Special plea to the jurisdiction

Rule 60 General plea of "guilty" or "not guilty".

Rule 61 Plea in bar

Rule 62 Procedure after plea of "guilty"

Rule 63 Withdrawal of plea of "not guilty".

Rule 70 Consideration of finding

Rule 71 Form, record and announcement of finding

Rule 72 Procedure on acquittal

Rule 73 Procedure on-conviction

Rule 74 Sentence

Rule 75 Recommendation to mercy.

Rule 76 Announcement of sentence and signing and transmission of proceedings.

Rule 77 Revision

Rule 78 Promulgation

Rule 79 Mitigation of sentence on partial confirmation

Rule 80 Confirmation notwithstanding informality in or excess of punishment.

Rule 81 Member or prosecutor not to confirm proceedings.

Rule 83 Responsibility of presiding officer.

Rule 84 Power of court over address of prosecutor and accused.

Rule 85 Procedure on trial of accused persons together.

Rule 87 Sitting in closed court.

Rule 87(A) Court Martial to be public.

Rule 90 Suspension of trial

Rule 91 Proceedings on death or illness of the accused.

Rule 92 Death, retirement or absence of Presiding Officer.

Rule 93 Presence of members during trial.

Rule 100 Custody and inspection of proceedings.

Rule 101 Transmission of proceedings after finding.

Rule 102 Defending officer and friend of accused.

Rule 110 Disqualification of judge advocate

Rule 111 Powers and duties of judge advocate

Rule 123 Provisions as to finding of insanity

Rule 124 Preservation of proceedings

Rule 125 Right of person tried to copies of proceedings.

Rule 126 Copy of proceedings not to be given in certain cases.

Rule 127 Loss of proceedings

Rule 128 Validity of irregular procedure in certain cases.

Rule 129 Offences of witnesses and others.

NOTES

1. See also Rr. 132, 133 (2), 134 and 137 (2) AFR.

143. 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.

NOTES

1. See S.4 IEA for the meaning of the term 'conclusive evidence'.

SECTION 4 Execution of sentences

144. Committal warrant - A warrant for the committal of a person to a civil prison, or to a military or an Air Force prison or to detention barracks under the provisions of section 165, section 166 or section 170 shall be in the relevant Form given in the Seventh Schedule. Such warrant shall be signed and forwarded by the commanding officer of the prisoner or an officer superior in command to such commanding officer or by any staff officer of such superior officer.

NOTES

1. See R: 4 AFR. For presumption as to signature on warrants, see S. 139 AFA.
2. For forms of warrant, see Seventh Schedule to AFR.
- 3.1 For definition of 'civil prison', see S.4 (xii) AFA.
- 3.2 For definition of 'commanding officer' and 'officer', see S.4 (xv) and (xxiii) AFA.

145. Warrants under section 171 - (1) Every warrant issued under section 171 shall be in the relevant Form given in the Seventh Schedule, and shall be signed by the officer making the order in pursuance of which such warrant is issued, or by his staff officer

(2) The prescribed officer for the purposes of forwarding the warrant under section 171 shall be the officer commanding the unit or detachment to which the person belongs to is attached.

NOTES

1. See Note 1 to R 144 AFR.

2.1 For definition of 'officer' and 'commanding officer', see S.4 (xxiii) and (xv) AFA.

2.2 For definition of 'unit', see S.4 (xxviii) AFA.

146. Sentence of cashiering or dismissal - (1) A sentence of cashiering awarded by a court-martial shall take effect from the date on which the sentence is promulgated to the person under sentence

Provided that when cashiering is not combined with imprisonment or death and the confirming officer has specified a date for cashiering to take effect, the cashiering shall take effect from the date of promulgation or from the date so specified, whichever is later.

(2) A sentence of dismissal awarded by a court-martial shall take effect from the date on which the sentence is promulgated to the person under the sentence, or from such subsequent date as may be specified by the commanding officer at the time of such promulgation:

Provided that where dismissal is combined with imprisonment or detention which is carried out in a military or air force prison, or in military or air force detention barracks, detention cells or other military or air force custody, or with field punishment, the dismissal shall not take effect until the date on which the prisoner is duly released from such military or air force prison or military, or air force detention barracks, detention cells or other military or air force custody, or until the completion of the field punishment, unless such field punishment is remitted by competent authority:

Provided further that, when dismissal is combined with imprisonment which is carried out in a civil prison, the dismissal shall not take effect until the date on which the prisoner is received in the civil prison.

NOTES

1. Under S. 23 AFA, a discharge certificate must be furnished to every WO or enrolled person who is dismissed from the service. See also R. 11 AFR. An officer is not furnished with a discharge certificate.

2., A sentence of cashiering awarded by a court-martial to an officer takes effect from the date of promulgation, but see proviso to sub-rule (1). If cashiering has been combined with imprisonment, then it takes effect from the date on which the prisoner is received into a civil prison.

3. A sentence of dismissal awarded by a court-martial takes effect from the date of promulgation, or from such subsequent date as may be specified by the commanding officer at the time of promulgation. If dismissal is- combined with imprisonment which is to be -carried out in civil prison, the dismissal shall not take effect until the date on which the prisoner is received into a civil prison. However if the sentence of dismissal is combined

with imprisonment or detention to be carried out in military or air force prison, or detention barracks or cells, or military or air force custody, or with field punishment, then the dismissal shall not take effect until the date on which the prisoner is released from such military or air force prison or detention barracks or cells, or military or air force custody or until the completion of such field punishment.

4. The sentence of cashiering or dismissal is notified in the Gazette of India.

5. The effect of proviso to sub-rule (2) is that the sentence of dismissal takes effect only on the day the offender is received into a civil prison. The CO should enter on the discharge certificate the date of admission into a civil prison as the date from which the dismissal takes effect, or in the case of an officer, report the date of admission to the proper air force authority.

6. When a person subject to AFA is sentenced by a court-martial to imprisonment, the Act will apply to him during the term of his sentence though he is cashiered or dismissed from the Air Force, or has otherwise ceased to be subject to AFA, and he may be kept, removed, imprisoned and punished as if he continued to be subject to AFA. See S. 122 (5) AFA.

7. For definition of 'air force custody' and 'civil prison', see S.4 (v) and (xiii) AFA.

7.2 For definition of 'commanding officer' and 'court-martial; see 3.4 (xv) and (xvi) AFA.

147. Custody of person under sentence of death — (1) Notwithstanding anything contained in rule 22, when a person is sentenced by court-martial to suffer death, the commanding officer for the time being of such person may, if he thinks fit, by a warrant in the relevant form in the Seventh Schedule, commit the said person for safe custody in an air force, military or civil prison or in air force or military detention barracks pending confirmation or the carrying out of the sentence.

(2) Where a person under sentence of death is in air force custody, or air force prison or detention barracks, the rules, regulations and orders (other than those relating to work and training) governing such custody, prison or detention barracks shall, subject to the following provisions, apply to him, namely

(a) he shall be deprived of every article which it might be dangerous or inexpedient to leave in his possession.

(b) he shall be confined in a separate cell and kept apart from all other persons under sentence of death, imprisonment or detention, or in custody.

(c) he shall be kept by day and by night in the constant charge of two officers, warrant officers or non-commissioned officers;

(d) he shall not be required to perform any duties other than to keep clean his person and cell;

(e) he shall be allowed daily physical exercise;

(f) he shall be granted facilities to correspond with his relatives, friends and legal advisers;

(g) he shall be permitted to smoke ;

(h) he shall be visited once daily by the commanding officer or the commandant of the unit, prison or detention barracks as well as by the medical officer;

(i) he shall not be visited by any person other than a member of the staff on duty unless prior permission in writing has been given by the confirming authority or an authority specified by the confirming authority in this behalf;

(j) Where the confirming authority or the officer specified by it in this behalf has given a written permission to any person other than a member of the staff on duty to visit the person sentenced to death, the visit shall take place in the sight of a member of the staff, and unless the confirming authority or the

specified officer orders otherwise, in the hearing of a member of the staff.

Explanation In this rule reference to "member of the staff" means a member of the staff of the air force unit, prison or detention barracks in which the person under sentence has been held in custody.

NOTES

1.1 Sub-rule (l) is an exception to the general provision contained in R. 22 (1) AFR that pending confirmation an offender will be retained in air force custody.

1.2 The exception under sub-rule (l) applies only when a person is sentenced by court-martial to death. The form of warrant to be used is Form G.5.

2. An offender sentenced by a court-martial to suffer death will continue to be subject to AFA until the sentence is carried out. See 5. 122 (6) AFA.

3.1 For definition of 'court-martial', see S.4 (xvi) AFA.

3.2 For definition of 'officer' and 'commanding officer', see S.4 (xxiii) and (xv) AFA.

3.3 For definition of 'civil prison' and 'air force custody', see S.4 (xiii) and (v) AFA.

3.4 For definition of 'warrant officer' and 'non-commissioned officer', see 5.4 (xxix) and (xx) AFA.

3.5 For definition of 'unit', see S.4 (xxviii) AFA.\

148. Opportunity for petition against sentence of death - (1) While confirming a 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 161 and of the period specified by the confirming authority that is the Chief of the Air Staff or the Central Government, through the Air Officer in charge Administration at the Air Headquarters and in any other case, through the confirming officer, within which he may, if he so wishes to do, submit a petition against the finding or sentence against him 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 Air Staff or the Central Government, through the Air Officer in charge Administration at the Air Headquarters and in any other case, through the confirming officer.

(4) A sentence of death shall not be carried into effect until the expiry of the period specified by the confirming authority under sub—rule (1) or if, within the period so specified, the person under sentence submits a petition against the finding or sentence of the court—martial, until the authority legally competent to dispose of such petition finally, after considering the petition, orders that the sentence of death may be carried into effect.

NOTES

1. For definition of 'court-martial' and 'Chief of the Air Staff', see S.4 (xvi) and (xiv) AFA.
2. Sub-rule (3) amended vide SRO 186 of 1982 and SRO 68 of 1986.

149. Death warrant - (1) The officer commanding the air force station to which the person sentenced belongs or is attached or, where there is no such air force station, the air or other officer commanding the command or the group to which such person belongs or is attached shall nominate a provost-marshal or other officer not below the rank of Squadron Leader 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 the Seventh Schedule.

(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 the rule 148, 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).

NOTES

1. For manner of execution of sentence of death, see R. 150 AFR.

2.1 Form G.7 in Seventh Schedule to AFR gives specimen death warrant.

2.2 The death warrant should not be issued except after compliance of R. 148 (4) AFR.

3. The term 'air force station' has not been defined in AFA or AFR. It may be understood as reference to Wing, Station, or Unit other than a lodger unit.

4.1 For definition of 'officer' and 'commanding officer', see S.4 (xxiii) and (xv) AFA.

4.2 For definition of provost marshal, see Ss. 4 (xxv) and 108 AFA.

150. 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 149 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 an air force, military or civil prison or to air force or military detention barracks, obtain the custody of his person by issuing a warrant in the relevant form contained in the Seventh Schedule.

(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 Air 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 forces 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 to the execution;

(e) if the execution is carried into effect in an air force unit or station, the officer for the time being in command of such station or 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 149 shall complete or cause to be completed part 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 to him.

NOTES

1. Warrant to obtain person sentenced to death from air force, military or civil prison, or air force or military detention barracks to carry out such sentence - See form G.6 Seventh Schedule to AFR.
2. Sub-section (3) - See form G.7 Seventh Schedule to AFR, for death warrant.
- 3.1 For definition of 'provost marshal', see Ss.4 (xxv) and 108 AFA.
- 3.2 For definition of 'officer' and 'non-commissioned officer', see S.4 (xxiii) and (xx) AFA.
- 3.3 For definition of 'Chief of the Air Staff', see S.4 (xiv) AFA.
- 3.4 For definition of 'civil prison', see S.4 (xiii) AFA.

151. Procedure on pardon, or where proceedings are set aside or where sentence of death is commuted or remitted - Where a person sentenced to death is pardoned; or where the proceedings against him are set aside under the Act or where the sentence of death is not confirmed or is commuted or remitted under the Act, then-

(a) if he is in custody in an air force, military or civil prison, or in an air force or military detention barracks under a warrant issued under rule 147 a further warrant in the relevant form given in the Seventh Schedule shall be issued by the commanding officer of such person; or

(b) if he has been detained in air force custody he shall be released or as the case may be, any warrant which may be necessary to give effect to the sentence as so commuted or remitted shall be issued by such commanding officer

NOTES

1. For forms of warrant, see Form G.II and G.12 Seventh Schedule to AFR.
- 2.1 For definition of 'air force custody' and 'civil prison', see S.4 (v) and (xiii) AFA.
- 2.2 For definition of 'commanding officer', see S.4 (xv) AFA.

152. Field Punishment - (1) A court-martial or an officer exercising authority under section 82 may, for the purpose of awarding field punishment under the Act, sentence an offender for a period not exceeding, in the case of a court-martial, three months, and in the case of such an officer, twenty-eight days, to one of the following punishments, namely: —

(a) field punishment No.1

(b) field punishment No.2

(2) where an offender is sentenced to field punishment No.1, he may, during the continuance of his sentence unless the court-martial or the officer, as the case may be, otherwise directs, be punished as follows:—

(a) he may be kept in irons, that is to say, in fetters or hand-cuffs or both fetters and hand-cuffs, and may be secured so as to prevent his escape;

(b) when in irons, he may be attached for a period or periods not exceeding two hours in any one day to a fixed object, but he must not be so

attached during more than three out of any four consecutive days, nor during more than twenty-one days in all.

Explanation (1) - The offender must be attached so as to be standing firmly on his feet which, if tied, must not be more than twelve inches apart and it must be possible for him to move each foot at least three inches. If he is tied round the body there must be no restriction of his breathing. If his arms or wrists are tied, there must be six inches of play between them and the fixed object. His arms must hang either by the side of his body or behind his back.

Explanation (2) - For the purpose of this punishment, irons should be used when available, but straps or ropes may be used in lieu of them when necessary. Any straps or ropes used for the purpose must be of sufficient width to inflict no bodily harm, and leave no permanent mark on the offender.

(c) He may be subjected to the like labour, employment and restraint and dealt with in like manner as if he were undergoing a sentence of rigorous imprisonment.

(3) Where an offender is sentenced to field punishment No.2 the provisions of sub-rule (2) with respect to field punishment No.1 shall apply in his case except that he shall not be liable to be attached to a fixed object as provided in clause (b) of that sub-rule.

(4) Every portion of a field punishment shall be inflicted in such a manner as is

calculated not to cause injury or leave any permanent mark on the offender; and a portion of a field punishment must be discontinued upon a report by a responsible Medical Officer that the continuance of that portion would be prejudicial to the offender's health.

(5) Field punishment shall be carried out within the unit to which the offender belongs or is attached so long as that unit is actually on the move, but when the unit is halted at any place where there is a provost-marshal or any other officer appointed by the commander of the forces or the air forces in the field to execute such punishment, the punishment shall be carried out under the orders of such officer.

(6) When the unit to which the offender belongs or is attached is actually on the move, an offender awarded field punishment No.1 shall be exempted from the operation of clause (b) of sub-rule (2) but all offenders awarded field punishment shall march with their unit, carry their arms and equipment, perform all their air force duties as well as extra fatigue duties, and be treated as defaulters.

NOTES

1. See also S. 77 AFA and Notes thereto.

2. As to position of field punishment in the scale of punishments, see S. 78 AFA and first Provision to R.33 (3) AFR.

3.1 For definition of 'court-martial' and officer see S.4 (xvi) and (xxiii) AFA.

3.2 For definition of 'Unit, see S.4 (xxviii) AFA.

3.3 For definition of 'provost marshal', see Ss. 4 (xxv) and 108 A FA.

153. Nature of punishment of detention — A sentence of detention awarded by a court-martial or by an officer exercising authority under section 82 may be carried out

- (a) in a military or air force detention barrack;
- (b) in a barrack detention room under the control of a military or air force unit;
- (c). on active service when the unit is halted at any place where there is a provost-marshal, under the orders of such officer.

NOTES

1. For definition of 'court-martial' and 'officer', see S.4 (xvi) and (xxiii) AFA.
- 1.2 For definition of 'unit', see S.4 (xxviii) AFA.
- 1.3 For definition of 'provost marshal', see Ss. 4 (xxv) and 108 AFA.
2. 'On active service' - See Ss. 4 (i) and 9 AFA and Notes thereto.

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CHAPTER VI



COURTS OF INQUIRY

CHAPTER VI

Courts of Inquiry

154. General. - (1) A court of inquiry is an assembly of officers or of officers and warrant officers directed to collect evidence, and if so required, to report with regard to any matter which may be referred to them.

(2) A court of inquiry may be assembled by the officer in command of any unit or portion of the Air Force.

(3) The court may consist of any number of officers of any rank or of one, or more officers together with one or more warrant officers. The members of the court may belong to any branch or department of the service, according to the nature of the investigation.

(4) Previous notice shall 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).

(5) It is the duty of a court of inquiry to 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.

(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.

(7) The court may be reassembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witnesses, or recording further information.

NOTES

1. For detailed instructions on conduct and procedures of court of inquiry, see generally Chap. XV Regs. See also para 1418 Regs.

2.1 Except in cases where the assembly of a court of inquiry has been made mandatory by law, regulations or orders, it is discretionary with the competent authority to decide whether a court of inquiry should be assembled to investigate into and report upon a matter, or a formal/informal investigation by a single officer would be sufficient.

2.2 The main points of difference between a court of inquiry and a formal/informal investigation are :-

(a) A court of inquiry is composed of two or more members, while a formal/informal investigation is carried out by single officer or warrant officer.

(b) A court of inquiry may administer oath/affirmation to witnesses in the circumstances stated in Rr. 155 (4) and 156 (3) AFR. An officer or warrant officer carrying out formal / informal investigation cannot administer oath/affirmation to witnesses in any circumstances.

(c) Proceedings of a court of inquiry or a formal investigation are recorded on IAFF(P) 28 or IAFF(AO) 1243 as the case may be. Proceedings of an informal investigation are recorded on plain sheets of paper.

2.3 A court of inquiry should consist of at least two members but desirably three.

2.4 Army or Navy Officers may be detailed as members in attendance of Air Force courts of inquiry, but not as members.

3.1 The primary task of a 'court of inquiry' is to collect evidence with regard to any matter which may be referred to them.

3.2 For occasions when evidence is to be recorded on oath/affirmation, see Rr. 155 (4) and 156 (3) AFR.

3.3 A court of inquiry is not to content itself by recording the statement given by a witness. They should put questions to witnesses, as necessary, to elicit the truth and also to ascertain the veracity of the statements. See sub-rule (5).

3.4 A court of inquiry cannot compel the attendance of civilian witnesses.

4. When a court of inquiry is assembled to investigate any given occurrence, a separate Court need not be held to investigate any other matter arising out of that occurrence. Where, however, the assembling authority considers that the two subjects cannot be conveniently dealt with by the same court of inquiry, he will convene two courts.

5. The evidence given at a court of inquiry will be treated as confidential. But, higher security grading is permissible, if necessary.

6. A Court of inquiry, or any member thereof, must not make any admission of liability in respect of any matter being investigated by it, or give any undertaking to satisfy any claim, or to initiate or defend any legal proceedings, or negotiate or accept any settlement of any claim made by or on behalf of, or against, the air forces or any unit or member thereof. See para 795 Regs.

7.1 For definition of 'officer' and 'warrant officer', see S. 4 (xxiii) and (xxix) AFA.

7.2 For definition of 'unit', see S.4 (xxviii) AFA.

7.3 'any portion of the Air Force - includes a Group, Command and Air Headquarters.

155. Courts of inquiry under Section 107 for the purpose of determining the illegal absence of persons subject to the Act. — (1) A Court of Inquiry under section 107 shall when assembled, require the attendance of such witnesses as it thinks sufficient to prove the absence and other facts specified as matter of inquiry in that section.

(2) The court of inquiry shall take down the evidence given by them in writing and at the end of 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 court of inquiry shall examine all witnesses who may be desirous of coming forward on behalf of the absentee, and shall put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given, and otherwise for eliciting the truth, and the court in making its declaration shall give weight to the evidence of all such witnesses,

(4) The court of inquiry shall administer the same oath or affirmation to the witnesses as if the court were a court-martial, but the members of such court shall not themselves be sworn or affirmed.

(5) The commanding officer of the unit to which the absent person belongs shall enter in the court-martial book of the unit a record of the declaration of the court, and the original proceedings will be destroyed.

(6) Any person, the subject of the inquiry, shall be entitled to a copy of the declaration of the court, to be supplied by the person having custody of the court-martial book, on payment at the rate laid down in sub-rule (9) of rule 156.

NOTES

1.1 See S. 107 AFA and Notes thereto.

1.2 See Note 1 to R. 154 AFR.

2. 1 This rule prescribes the practice and procedure of a court of inquiry into illegal absence ordered under S. 107 (1) AFA.

2.2 The order of assembly of a court of inquiry under S. 107 AFA should be issued after completion of 30 clear days of absence.

3. For form of oath/affirmation, see R. 118 AFR.

4. 1 Sub-rule (5) The commanding officer of the unit to which the person belongs (i.e. of the parent unit) is required under S. 107 AFA to enter in the Court-Martial book of that unit

a record of the declaration of the court of inquiry. The court of inquiry proceedings are thereafter to be destroyed. Precaution, however, must be taken that original exhibits of the court of inquiry proceedings are not destroyed, but are preserved for future use as may be necessary for official purposes.

4.2 In cases where a court of inquiry into illegal absence, as required under S. 107 AFA, has been ordered at a unit which is not the parent unit of the absentee, the proceedings of the court of inquiry are invariably to be forwarded to the parent unit, to enable the, officer commanding of such unit to enter the record of declaration in the court-martial book of that unit.

4.3 For form of declaration, see para 385 Regs

5. The fact that a declaration in respect of an absentee has been entered in the court-martial book does not necessarily imply that such absentee must ipso facto be tried by a court-martial on his surrender or apprehension. As in the case of other offences, the discretion whether or not application should be made for a court-martial will lie in such cases also with the commanding officer -of the absentee, who will decide on the subject after action under sub-rule (1), (2) and (3) of AF Rule 24. It will, of course be seldom that, in practice, a person who has been absent for a long period without reasonable cause or due authority will deserve something less than a trial by court-martial.

6.1 Before a court of inquiry is entitled to find deficiencies, it will require evidence

- (a) that the absentee has been at some time previously in possession of complete kit, or at any rate, of the articles alleged to be deficient;
- (b) that an inventory of his kit has been taken, and at the taking of the inventory certain specified articles were deficient;
- (c) that none of the articles have since been recovered (any articles recovered will, of course, be omitted).

6.2 In framing a charge of 'losing by neglect' under S. 54 (b) AFA, the date of taking the inventory should be averred in the particulars.

7. When the declaration is to be produced in evidence at a court-martial, a copy will be made on IAFF(P) 29 which is admissible under S. 141 (4), AFA, and will be produced instead of the court-martial book. IAFF(P) 29 must be a correct extract from the court-martial book and free from alteration or erasure.

8. For definition of 'commanding officer' and 'unit', see S. 4 (xv) and (xxviii) AFA.

156. Courts of inquiry other than those held under section 107. — (1) The court shall be guided by the written instructions of the authority which 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) Save in the case of a prisoner of war who is still absent, whenever any inquiry affects the character or service 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 statements 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 service reputation, and producing any witnesses in defence of his character or service reputation.

(3) When a court of inquiry is held on prisoners of war, and in any other case in which the officer who assembled the court has so directed, the evidence shall be taken on oath or affirmation, in which case the court shall administer the same oath or affirmation to witnesses as if the court were a court-martial.

(4) 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 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. In other cases, the court shall give no opinion on the conduct of any person unless so directed by the officer who assembled the court.

(5) The members of the court shall not themselves 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, A B 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 rules and regulations made under the Air Force Act, 1950, and I do further declare, upon my honour, that I will not on any account or at any time, disclose or discover my own vote or opinion, or that of any particular member of the court, unless required to do so by competent authority."

(6) The proceedings of a court of inquiry, or any confession or 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 Air Force Law, 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.

(7) Any person subject to the Act whose character or service reputation is, in the opinion of the Chief of the Air Staff, affected by anything in the evidence before or in the report of a court of inquiry shall be entitled to a copy of the proceedings of such court unless the Chief of the Air Staff sees reason to order otherwise.

(8) Any person subject to the Act who is tried by a court-martial in respect of any matter or thing which has been reported on by a court of inquiry shall be entitled to a copy of the proceedings of such court, including any report made by the court;

Provided that if the Chief of the Air Staff considers that it is against the interests or the security of the state or friendly relations with a foreign State, to supply a copy of the proceedings or any part thereof, such person shall not be furnished with such copy but in such cases he shall, subject to suitable precautions as to security, be permitted inspection of such portions the proceedings of the court of inquiry on the basis of which the charges, on which he is arraigned before the court-martial, have been framed.

(9) A copy of the proceedings of the court of inquiry shall be furnished under sub-rules (7) and (8) on payment for the same of a sum calculated at the rate of fifty paise for every two hundred words or part thereof.

(10) A person subject to the Act before he is, under sub-rule (7) or sub-rule (8), furnished with a copy of the proceedings shall be required to render a certificate that he is aware that he may render himself liable to prosecution under the Official Secrets Act, 1923 (19 of 1923) for any breach of the provisions of the said Act, in relation to such proceedings or portion thereof.

NOTES

I. See Note 1 to R. 154 AFR.

2.1 Sub-rule (2) - Whenever it appears possible that the character or service reputation of a person subject to AFA may be affected as the result of the court of inquiry, the authority who assembles the court of inquiry will take all necessary steps to secure that the provisions of this sub-rule are observed. The ultimate responsibility of ensuring that they are observed in every case will, however, rest upon the presiding officer of the court of

inquiry, and should it transpire during the sitting of the court that the character or service reputation of any person subject to AFA is affected by the evidence put forward, the presiding officer, will immediately arrange for such person to be afforded the full facilities of the sub-rule, adjourning the court if necessary for the purpose of securing his attendance.

2.2 See para 790 Regs for detailed procedure.

2.3 While dealing with R. 180 AR (which corresponds to R. 156 (2) AFR), the Supreme Court held in **Lt Col Prithi Pal Singh Bedi v UOI** that setting up of a Court of inquiry is not sine qua non in all cases where the character or military (service) reputation of a person is likely to be affected. R. 180 AR merely makes it obligatory that whenever a court of inquiry, the character or military reputation of a person is likely to be affected, then such a person must be given full opportunity to participate in the proceedings of such court of inquiry.

2.4 Provision of this sub-rule and of para 790 Regs are applicable only to officers and airmen. However it may be advantageous to observe the same principles even in case of civilian Government employees of the IAF.

3. For form of oath/affirmation, see R. 118 AFR.

4.1 Sub-rule (6) - The protection under this sub-rule extends only to trials under air force law. It does not apply when a person is being tried by a criminal court.

4.2 Use by prosecutor, of any statement made in a court of inquiry, to contradict a witness (whether prosecution, defence or court witness) will amount to such statement being produced as evidence against the accused person and hence will attract the ban under this sub-rule.

4.3 The term 'evidence' in this sub-rule implied that the ban related to trials and other disciplinary proceedings under air force law but not to administrative proceedings under Ss. 19 or 20 AFA.

5.1 For definition of 'officer' and 'Chief of the Air staff', see S.4 (xxiii) and (xiv) AFR.

5.2 For definition of 'commanding officer', see S. 4(xv) AFA.

157. Imposition of collective fines under sub-section (1) of section 90. - A collective fine imposed under sub-section (1) of section 90 shall not exceed the current official price of the weapon or part of the weapon, the loss or theft of which was reported upon by the court of inquiry, or where more than one such weapon or parts of weapons were so reported upon the aggregate of the current official prices of such weapons or parts of weapons.

NOTE

I. See S. 90 AFA and Notes thereto.

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CHAPTER VII



PRESCRIBED AUTHORITIES, OFFICERS AND OTHER MATTERS

CHAPTER VII

Prescribed Authorities, Officers and other Matters

158. Conditions prescribed under section 4(xxiii) (b). - For the purposes of the Act and these rules, the expression "officer", in relation to a person subject to the Act, includes a person gazetted, commissioned or in pay as an officer of the regular Army or the Navy, as the case may be, when the person subject to the Act is serving under any of the following conditions, namely

- (a) when he has been placed under the orders of such officers
- (b) when he is being conveyed in or is on board a Vehicle, vessel or aircraft which is being commanded by such officer;
- (c) when he is serving in or is a patient in a hospital or medical establishment in which such officer is on duty;
- (d) when he forms part of or is serving with a body of the Air Force which is acting with a body of the regular Army or the Navy, and any one of these bodies is on active service;
- (e) when he forms part of or is serving with a body of the Air Force acting in an emergency with a body of the regular Army or the Navy and an order in writing is made by the officer commanding that body of the Air Force that an emergency exists and it is necessary for officers of the regular Army or the Navy, as the case may be, to exercise command over persons subject to the Act;

NOTE:- A copy of every such order shall forthwith be sent to the Central Government.

- (f) when he is serving in any place in which or with any body of the Air Force with which, there is present any officer of the regular Army or the Navy and the Central Government has by special order declared that it is necessary for the officers of the regular Army or the Navy to exercise command over persons subject to the Act in that place or with that body of the Air Force.

NOTES

1.1 This rule prescribes the conditions in which an officer of the Army or the Navy shall be an 'officer' within the meaning of clause (b) of S. 4 (xxiii) AFA.

1.2 See S. 4 (xxiii) AFA and Notes thereto.

2. Army and Navy personnel derive their powers of command and punishment over persons subject to the AFR, from the definitions of the terms 'officer' and 'superior officer' as contained in S. 4 (xxiii) and (xxvii) AFA

3.1 An officer of the Army or the Navy may exercise the same powers of trial and punishment over a person subject to AFA, in relation to whom he is an 'officer' within the meaning of S.4 (xxiii) AFA read with R. 158 AFR, as, in similar circumstances, an air force officer holding an equivalent rank may exercise, e.g. : -

(a) If the Army or the Navy officer is the officer commanding of the accused (that is to say, he is in command of the unit or detachment to which the accused belongs or is attached), such officer may try such accused person and may dismiss the charge, may order summary of evidence, may refer the case to superior authority for permission under S. 83 AFA or for trial by court-martial, or may, in the case of persons below the rank of warrant officer, award minor punishments, in the same manner as an air force officer of equivalent rank can do. The superior authority to which a case may be referred or an application for trial may be made will, however, not be the Army or the Naval authority. It will always be the competent air force authority having jurisdiction, notwithstanding that the accused might be serving in a unit or detachment of the Army or the Navy.

(b) If the Army or the Navy officer is a subordinate commander and has been authorised to exercise powers of minor punishment in relation to any person subject to AFA, he may exercise such powers in the same manner and to the same extent as an air force officer holding an equivalent rank could have done, if he was so authorised.

3.2 The procedures to be followed by Army or Navy officers while holding trials or awarding punishments to person subject to AFA will be the same as laid down in the AFA and AFR.

3.3 No officer of the Army or the Navy has been conferred powers of punishment under S.86 AFA or for convening courts-martial under AFA.

4. Army and Navy personnel posted to air force units may be tried and punished only in accordance with the AA and NA respectively.

.5.1 Clause (c) - An AMC officer (not seconded to the IAF) is an 'officer' within the meaning of S.4 (xxiii) AFA read with R. 158 AFR. Such AMC officer who is either on the posted strength of an Air Force hospital or medical establishment, or is attached to such hospital or medical establishment, can be legally handed over temporary command of such hospital or medical establishment. Such officer can exercise powers of punishment under S.82 AFA over Sergeants and below who are patients in such hospital, provided by a general or special order, such persons have been attached to such hospital.

5.2 Army/Navy officers on duty with AF hospitals or medical establishments have the same power over air force personnel who are serving in or are patients in such hospitals,

as if the said officers were Air Force officers.

6.1 For definition of 'active service', see Ss. 4(i) and 9 AFA.

6.2 For definition of 'Air Force' and 'officer', see S. 4(iv) and (xxiii) AFA.

159. Conditions prescribed under section 4 (xxvii). — When a person subject to the Act has been placed under the orders of an officer, junior commissioned officer, warrant officer, petty officer or non-commissioned officer of the regular Army or the Navy, such officer, junior commissioned officer, warrant officer petty officer or non-commissioned officer, as well as those other officers, junior commissioned officer, warrant officers, petty officers or non-commissioned officers of the regular Army or the Navy who are directly superior in command to such officer, junior commissioned officer, warrant officer, petty officer or non-commissioned officer shall for the purposes of the Act and these rules be superior officers in relation to such persons

NOTES

1.1 This rule prescribes the conditions in which persons belonging to the Army or the Navy may, within the meaning of S. 4(xxvii) AFA become 'superior officer' of persons subject to AFA.

1.2 An officer of the Army or the Navy who is an 'officer' within the meaning of S. 4 (xxiii) AFA read with R. 159 AFR will automatically be also a superior officer in the same circumstances in which an air force officer holding an equivalent rank will be a superior officer. In such circumstances it will not be necessary that the conditions prescribed in this rule must also exist. But a junior commissioned officer, warrant officer, petty officer or a non-commissioned officer of the Army or the Navy cannot be a superior officer of a person subject to AFA, unless the latter is serving under such conditions as prescribed in this rule.

1.3 See S. 4 (xxvii) AFA and Notes thereto.

2.1 For definition of 'officer', 'warrant officer', and 'non-commissioned officer', see S. 4 (xxiii), (xxix) and (xx) AFA.

2.2 For definition of 'superior officer', see S. 4(xxvii) AFA.

160. Prescribed officer under section 7 (1). — The prescribed officer for the purposes of sub-section (1) of section 7 shall be officer commanding a station, wing, squadron or unit, nominated in this behalf by the Air or other officer commanding the command or group in which the person is for the time being serving.

NOTES

1. See S. 7 AFA and Notes thereto.
- 2.1 For definition of 'officer', and 'commanding officer', see S. 4 (xxiii) and (xv) AFA.
- 2.2 For definition of 'air officer', see S. 4 (ix) AFA.
- 2.3 For definition of 'unit', see S. 4 (xxviii) AFA.

160A. Prescribed officers under section 20(3). - Prescribed officer for the purpose of sub-section 3 of section 20 shall be the Air or other officer commanding group, and in respect of airmen serving at Air Head Quarters or units directly under Air Head Quarters, the AOA.

NOTES

1. This rule was inserted vide SRO 24E of 1974.
2. See S. 20 AFA and Notes thereto.
- 3.1 For definition of 'officer', see S. 4 (xxiii) AFA.
- 3.2 For definition of 'air officer', see S. 4 (ix) AFA.

161. Prescribed officer under section 80. — The prescribed officer for the purposes of section 80 shall be the officer commanding the Forces in the field, or the air or other officer commanding the Command, group, or in the field any detached portion of the air force, in which the trial was held, or any officer superior in command to such air or other officer.

NOTES

1. See S. 80 AFA and Notes thereto.

2.1 For definition of 'officer' and 'commanding officer', see S. 4 (xxiii) and (xv) AFA.

2.2 For definition of 'the Forces', see S. 4 (xix) AFA. See also Note 17 to S. 4 AFA.

2.3 For definition of 'Air Force', see S. 4 (iv) AFA.

2.4 For definition of 'air officer', see S. 4 (ix) AFA.

162. Prescribed officer under section 92 (i). — The prescribed officer for the purpose of clause (i) of section 92 shall be the Chief of the Air Staff.

NOTES

1. See S. 92 AFA and Notes thereto.
2. For definition of 'Chief of the Air Staff', see S. 4 (xiv) AFA.

163. Prescribed officer under section 94 of the Act. - The prescribed officer for purposes of section 94 shall, in the case of an officer or a warrant officer, be the Chief of the Air Staff and, in the case of a person other than an officer or a warrant officer be the officer empowered to convene a court-martial for his trial.

NOTES

1. See S. 94 AFA and Notes thereto.
- 2.1 For definition of 'officer' and 'warrant officer', see S. 4 (xxiii) and (xxix) AFA.
- 2.2 For definition of 'Chief of the Air Staff', see S. 4 (xiv) AFA.
- 2.3 For definition of 'court-martial', see S.4 (xvi) AFA.

164. Prescribed Authority under section 98. — Any penal deduction from the pay and allowances of a person subject to the Act, made under chapter VIII thereof, may be remitted as provided below.

(a) the Central Government may remit to any extent any penal deduction from the pay and allowances of any person.

(b) where an airman absents himself without leave for a period not exceeding five days, the officer who is in command of the unit, from which he absented himself at the time when such absence terminated, or the Chief of the Air Staff may, if a satisfactory explanation is given by such airman, remit in whole or in part the forfeiture of pay and allowances to which that absence renders him liable provided that the airman is not convicted by a court-martial on a charge for such absence.

(c) A forfeiture of pay and allowances incurred by any person subject to the Act owing to his absence as a prisoner of war may in whole or in part be remitted by the Chief of the Air Staff or by the officer commanding the air forces in the field, except when such forfeiture has been ordered by the Central Government under clause (h) of section 91.

NOTES

1. See S. 98 and Notes thereto.

2.1 Under clause (a), the Central Government has full powers of remission. It is not circumscribed by the rank of the person convicted or how he has been convicted.

2.2 Clause (b) applies only where forfeiture of pay and allowances is caused due to AWL for a period not exceeding five days and the offender has not been convicted by a court-martial. Apart from the CAS, the power of remission is exercisable under this clause only by the officer, who was the CO of the unit from which the person absented himself, at the time when such absence terminated.

2.3 The, forfeiture ordered by the Central Government under S. 91 (h) AFA, cannot be remitted under clause (e) of the rule.

3.1 For definition of 'officer' and 'Chief of the Air Staff', see S. 4 (xxiii) and (xiv) AFA.

3.2 For definition of 'commanding officer', see S. 4 (xv) AFA.

3.3 For definition of 'airman', see S. 4 (viii) AFA.

3.4 For definition of 'court-martial' and 'unit', see S. (xvi) and (xxviii) AFA.

165. Prescribed authorities under section 99 and 100. - (1) The prescribed authorities for the purpose of section 99 and 100 shall be the officer commanding the air forces in the field under whom the person was serving at the time he became a prisoner of war or was found missing, or the Director of Personal Services Air Headquarters, or any authority superior either to the said officer commanding or the said Director.

(2) Any such authority may, in its discretion and subject to a maximum of 50 per cent of the pay and allowances of the prisoner of war or the person missing, make such provision from time to time for the dependents of the prisoner of war or the person missing, as the case may be, for whom in its judgment such provision should be made.

NOTE

1. See Ss. 99 and 100 AFA and Notes thereto.

166. Prescribed officers under section 108 (1). - The following shall be the prescribed officers for the purposes of sub-section (1) of section 108, namely :—

(a) an Air or other officer commanding command or an independent group, may appoint any person subject to the Act and serving under him, to exercise the powers of a provost-marshal in relation to the persons serving under the command of such air or other officers;

(b) the Air Officer in charge of administration at the Air Headquarters

may appoint any person subject to the Act serving in the Air Headquarters or the units directly under the Air Headquarters to exercise the powers of a provost-marshal in relation to all persons serving in the Air Headquarters and such units;

(c) an officer commanding the air forces in the field may appoint any person subject to the Act and serving under him to exercise the powers of a provost-marshal in relation to such air forces.

NOTES

1. See S. 108 AFA and Notes thereto.
2. For definition of 'provost-marshal', see Ss. 4 (xxv) and 108 AFA.
3. Clause (a) of this rule substituted by SRO 24E of 1974.

167. Prescribed officers under section 124 - The prescribed officers for the purposes of section 124 shall be the air or other officer commanding the Command or the officer commanding the Forces or the air forces in the field, under whom the accused person is serving.

NOTES

1. See S. 124 AFA and Notes thereto.
- 2.1 For definition of 'officer', see S. 4 (xxiii) AFA.
- 2.2 For definition of 'air officer', see S. 4 (ix) AFA.

168. Prescribed officer under section 141 (1). — The prescribed officer for the purposes of sub-section (1) of section 141 shall be the officer commanding the unit to which the person appears to have belonged, or alleges that he belongs or had belonged, but

(a) in the case of officers, the Director of Personnel (Officers); and

(b) in the case of airmen, Officer Commanding, Air Force Record Office, shall also be the prescribed officer.

NOTES

1. See S. 141 AFA and Notes thereto.

2.1 For definition of 'officer' and 'airman', see S. 4 (xxiii) and (viii) AFA.

2.2 For definition of 'commanding officer', see S. 4 (xv) AFA.

2.3 For definition of 'unit', see S. 4 (xxviii) AFA.

169. Manner of custody under section 144 (4). — For the purposes of subsection (4) section 144 the accused shall be confined in such manner as may, in the opinion of the proper air force authority, be best calculated to keep him securely without unnecessary harshness.

NOTES

1. See S. 144 AFA and Notes thereto.
2. For definition of 'proper air force authority', see R. 2 (d) AFR.

170. Prescribed officer under section 145. — The prescribed officer for the purposes of section 145 shall be the Chief of the Air Staff or the air or other officer who has powers to convene a court- martial for the trial of the accused person.

NOTES

1. See S. 145 AFA and Notes thereto.

2.1 For definition of 'officer' and 'Chief of the Air Staff', see S.4 (xxiii) and (xiv) AFA.

2.2 For definition of 'air officer', see S. 4 (ix) AFA.

2.3 For definition of 'court-martial', see S.4 (xvi) AFA.

171. Prescribed officer under section 161 (2) — The prescribed officer for the purposes of sub-section (2) of section 161 shall be any officer superior in command to the officer who confirmed the proceedings, provided that he has powers not less than that of an air officer commanding a Command.

NOTES

1. See S. 161 AFA and Notes thereto.
2. For definition of 'officer' and 'air officer', see S. 4 (xxiii) and (ix) AFA.

172. Prescribed officer under section 162 and annulment of proceedings. -

(1) The prescribed officer for the purposes of section 162 shall be any officer superior in command to the officer who confirmed the proceedings.

(2) The proceedings of any court-martial may be annulled under the said section after considering the advice of the Chief Legal Adviser or Deputy Chief Legal Adviser.

NOTES

1. See S. 162 AFA and Notes thereto.

2.1 For definition of 'officer', see S. 4 (xxiii) AFA.

2.2 For definition of 'Chief Legal Adviser', see S. 4 (xi) AFA.

2.3 For definition of 'court-martial', see S. 4 (xvi) AFA.

173. Prescribed officer under section 166 (1). — The prescribed officer for the purposes of sub-section (1) of section 166 shall be any officer superior in command to the officer who confirmed the proceedings.

NOTES

1. See S. 166 AFA and Notes thereto.
2. For definition of 'officer', see S. 4 (xxiii) AFA.

174. Prescribed officer under section 177. - The prescribed officer for the purposes of section 177 shall be the air or other officer commanding a Command but in relation to persons convicted on active service, the officer commanding the air forces in the field shall also be the prescribed officer.

NOTES

1. See S. 177 AFA and Notes thereto.
- 2.1 For definition of 'officer' and 'air officer', see S. 4 (xxiii) and (ix) AFA.
- 2.2 For definition of 'commanding officer', see S. 4 (xv) AFA.
- 2.3 For definition of 'active service', see Ss. 4 (i) and 9 AFA.

FIRST SCHEDULE

(See **Rule 7**)

FORM OF ENROLMENT AS COMBATANT

Form A.1

The prescribed periods for which persons shall be enrolled are stated in the appropriate orders of the Government of India, and save as is hereinafter provided, no person shall, by reason of an error in his enrolment paper or otherwise, be compelled to serve for a period longer than that for which he should have been enrolled though he may do so voluntarily provided his services are required.

Enrolment of No Name (in block letters).....
. as a in the Air Force.

Part 1

(Questions to be put before enrolment)

You are warned that if, after enrolment, it is found that you have given a willfully false answer to any of the first thirteen of the following questions you will be liable to be punished as provided in the Air Force Act, 1950.

(ALL THE ANSWERS ARE TO BE WRITTEN IN BLOCK LETTERS)

Questions

1.

What is your name ? (underline surname)

2.

(a) What is your place of birth ?

State Village/Town, District and State of birth.

(b) What is your date of birth ?

(State in Christian Era).

(N. B : To support the date of birth the person being enrolled will be required to produce in original, together with an attested copy, one of the certificates

specified in Govt orders from time to time).

3.

What is your permanent home address ?

(a) Village/Town

(b) Thana

(c) Post Office

(d) Pergunnah/Tehasil

(e) District/Taluka

(f) State

4.

(a) What is your religion ?

(b) Are you a member of a Scheduled Caste or Scheduled Tribe ? If so, state caste or tribe.

5.

(a) Are you a citizen of India ? If so, whether by birth or descent or registration or naturalisation or otherwise ?

(b) Are you a subject of Nepal or Sikkim or Bhutan ? If so, state of which of the three.

(c) If you are not a citizen of India or a subject of NEPAL OR SIKKIM OR BHUTAN what is your nationality ?

(N.B. In case of foreign nationals other than subjects of Nepal or Sikkim or Bhutan, consent of the Central Government signified in writing, if any should be produced before a person is enrolled. In the case of a subject of Nepal other than a Gorkha a certificate of eligibility must be given by the Government of India).

(d) Have you migrated from areas in Pakistan or Burma or Ceylon, or the East African countries or Kenya, Uganda, United Republic of Tenzania (formerly Tanganyika and Zanzibar) ? If so, state :

(i) What was the date of your migration and from which country ?

>(ii) If you migrated from Pakistan on or after 19th July, 1948, was a certificate of eligibility issued to you by the Government of India ?

(N.B. In favour of persons of Indian origin who have migrated from Pakistan

Burma, Ceylon and East African countries of Kenya, Uganda and United Republic of Tenzania (formerly Tanganyika and Zanziber) with the intention of permanently settling in India, a certificate of eligibility must be given by the Government of India which will be for a period of one year after which such candidates will be retained in service subject to their having acquired Indian Citizenship)

6.

What are your educational qualifications ? (original certificates, with one attested copy of each, are to be produced).

7.

Are you married ? If so, state

(i) Date of marriage(s).

(ii) Name(s) of wife/wives*

(iii) Nationality of wife/wives.

(*where a wife is deceased or has been divorced, the date of death/divorce should be stated).

8.

(a) What is your fathers name and address ? If dead, state last address, District and State.

(b) What is or was the nationality of your father ? If he is or was an Indian citizen, state whether by birth, descent, registration, naturalization or otherwise.

9.

or have you ever been a member of a party or organisation of a political, communal or cultural nature ? If so, state the name of the party or organisation with the period or periods of your membership therein.

10.

(a) Are you in Government service or have you been a Government servant ? If so, state full particulars.

(b) Are you in receipt of any allowance from Govt. ? If so, on what account?

11.

Do you now belong to any of the Armed Forces of India, the Reserves of any of the

three Services, the Auxiliary Air Force, the Territorial Army or Nepal State Army or any of the forces of a foreign country ?

12.

(a) Have you ever served in any of the Armed Forces in India, the Reserves of any of the three Services, the Auxiliary Air Force. the Territorial Army or Nepal State Army or any of the forces of a foreign country ? If so, state in which and the cause of discharge. If you have served in more, than one of the above named forces or if you have served the same force in two or more distinct periods, state the cause of discharge separately in each case.

(b) Do you desire your former service in the Indian Armed Force to count for the purpose of calculation of the Good Conduct Pay and or pension, if admissible ? If so, do you agree to recovery being effected of any gratuity you may have received for your former service in not more than 36 monthly installments from your pay commencing from the date of this enrolment and undertake to refund to the Government through such recoveries or otherwise the above gratuity in full within 36 months of the date of your present enrolment ?

13.

Have you ever been arrested prosecuted, convicted, imprisoned, bound over, internal, external or otherwise dealt with under any law in force in India or outside ? If so, state particulars.

14

Have you ever suffered from any of the following .

(a) Head injury or any serious injury.....

(b) Fits or convulsions of any kind.....

(c) Leprosy.....

(d) Pulmonary Tuberculosis (including any family history of Pul, T.B.)

15

Are you willing to be inoculated or reinoculated and vaccinated or revacinated ?

16

Are you willing to be enrolled as a combatant in the Air Force ?

17

Are you willing to go wherever ordered by air, land or sea and not to allow any caste or social usages to interfere with the duties for which you are enrolled ?

18.

Are you willing to serve in the Air Force until discharged, (and in the Regular Air Force (Reserve), in accordance with the condition of service as specified in Part II of this Form of enrolment provided that the President shall so long require your services ?

19.

Do you have any objection to take the following oath or to make the following affirmation at the time of your attestation ?

FORM OF OATH

I, do swear in the name of God 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 Air Force of the Union of India, and go wherever ordered by air, land or sea 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 Air Force of the Union of India and go wherever ordered by air, land or sea 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.

CERTIFICATE

I, do solemnly declare that the above answers made by me to the above questions are true.

Place

Signature of person enrolled

Date

.....Signature

..... Name*

..... Address

.....

(*Name in Block letters)

of witness

Part II

SECTION 1

CONDITIONS OF SERVICE FOR PERSONS ENROLLED FOR

REGULAR AND RESERVE SERVICE

A. LIABILITY FOR REGULAR SERVICE

1. You will serve in the Air Force for a period of not less than..... years of regular service. On completion of this period you may extend your regular service, if permitted to do so, by such specified period or periods as may be fixed.
2. On your completion of the initial period of regular service in the Air Force and of such extensions of regular service as have been granted to you will be liable to be transferred to the Regular Air Force Reserve.
3. In the event of your desertion service between the day of desertion and that of apprehension or surrender shall not count towards regular service.
4. If, on completion of the initial period of regular service and of the extensions, if any, as have been granted to you, you are still in regular service and continue

thus to serve, you will be either transferred to the Regular Air Force Reserve or discharged from the Air Force Service within three months from the date of your applying that you do not wish to continue in Air Force Service, but you will be liable to for such transfer or discharge or completion of the aforesaid initial period of regular service or the further extension or at any time thereafter at the discretion of the competent authority.

5. You will be entitled to receive your discharge from the Air Force with all convenient speed if

(a) On completion of the initial period of regular service or of such extension or extensions, if any, of regular service as have been granted to you, you are not transferred to the Regular Air Force Reserve, and, are not permitted to extend or further extend your regular service ; or

(b) Within three months from the date of submitting your application under paragraph 4 above, you are not transferred to the Regular Air Force Reserve :

Provided that you will not be entitled to discharge if a state of war exists between India and a foreign power or in the opinion of the Central Government war is imminent or a Proclamation of Emergency is in operation or the strength of the trade in which you are mustered is ten percent below the authorised establishment.

B. LIABILITY FOR RESERVE SERVICE

6. Following the termination of your service in the Air Force and subject to the provisions of paragraphs 7 to 10 below, you will be liable to serve in the Regular Air Force Reserve for a period of six years.

7. In case you are discharged from the Air Force at your own request before you have completed the initial period of regular service for which you are now enrolled or such further extensions as have been granted to you, the unexpired portion of the initial period of the regular service or the further extensions will be added to the period of your above reserve liability.

8. You may, at any time during the period of your reserve liability, be transferred for service to the Regular Air Force Reserve for the remaining period of such liability.

9. You shall cease to member of the Regular Air Force Reserve after you have completed the aforesaid period of service in that Reserve ; but if the competent authority so thinks fit, he may, require you further to serve in that Reserve for such period or periods and under such conditions, if any as may from time to time be laid down in the Reserve Auxiliary Air Forces Act, 1952, and the rules made thereunder.

DECLARATION

I, do solemnly declare that I fully understand and consent to fulfill the above conditions of service for which I am being enrolled.

Place

Signature of person enrolled

Date

.....Signature

..... Name*

..... Address

.....

(*Write Name in Block letters)

of witness

SECTION 2

CONDITIONS OF SERVICE FOR PERSONS ENROLLED IN SPECIAL CASES
WHEN AUTHORISED IN TIME OF WAR OR EMERGENCY

When you have served for ----- years in the Air Force you will be entitled to receive your discharge with all convenient speed,

DECLARATION

I,do solemnly declare that I fully understand and consent to fulfill the above conditions of service for which I am being enrolled.

Place

Signature of person enrolled

Place

Signature of person enrolled

Date

.....Signature

..... Name*

..... Address

.....

(*Write Name in Block letters)

of witness

PART III

DESCRIPTION ON ENROLMENT

To be completed by Medical officer

Apparent Age in years.-.....

Chest measurement (a) Minimum (Cms)

(b) Maximum ----- (Cms)

Height ----- Meters ----- Cms

Identification Marks. (1) -----

(2) -----

I consider (Name) ----- fit for enrolment in (Trade/Group
..... in the Air Force.

Date

(signature of Medical Officer)

Station

Rank and Name of M.O

Part IV

CERTIFICATE BY ENROLLING OFFICER

1. The conditions of service contained in Section 1/Section 2* of Part II for which he is now enrolled were read and explained to the above named person *by me/*in my presence.
2. After having cautioned him that if he should make any false answer to and of the question Nos-1 to 13 Part I, he would be liable to the punishment as provided in the Air Force Act, 1950, I put all the questions set forth in Part I to him and his answer to each such question has been duly entered.
3. I certify that the date of birth was verified from the original produced before me vide question 2 of Part I.
4. I further certify that I have examined the original certificate from which it is proved that his educational qualifications are -----
5. I am satisfied that he fully understands the questions put to him and the conditions of service which he has undertaken, and that he consents to these conditions.

Signed at _____ this _____ day of _____ 19

Signature of Enrolling Officer
Rank and Name of Enrolling Officer

*(Strike out whatever is not applicable)

SECOND SCHEDULE

(See Rule 23)

FORM OF DELAY REPORT UNDER SECTION 104, AIR FORCE ACT, 1950

Eight Day Delay Report pursuant to the Air Force Act 1950, section 104 and rule 23 of the Air Force Rule, 1969.

First (Second. Third _____ etc.) Report

Unit ----- Reference No _____

Command Group ----- Date _____

1. Number, rank and name of the accused _____

2. Particulars of offences :

Sl no

Date of Commission

Particulars of Offence (Give facts in brief)

date of Discovery of offence

1

2

3

3. Date and nature of initial arrest, i.e., close or open _____

4 Total period of arrest upto the date of this report to be calculated as per section 93, Air Force Act, 1950

(a) Close arrest

Total period in days

From ----- to -----

From ----- to -----

Total period in close arrest ----- days

(b) Open

Total period in days

From _____ to _____

From _____ to _____

Total period in open arrest ----- days

(c) Total period of arrest (i.e., (a) plus (b) above) days

5. On the date of this report the accused.

is in close arrest *

is in open arrest *

has been released without

prejudice to re-arrest *

6. Remarks for his continued retention in arrest are _____

7. If the total period of retention in arrest exceeds 60/90 days quote Air Headquarters letter communicating the approval of the C. A S/ Central Government for continued retention in arrest _____ Air/HQ/ _____ dated _____

8. Investigation under rule 24 of the, Air Force Rules 1969

Completed on the same date

(a) Commenced or (date and completed on ----- date ---- is in progress

(b) Reasons for delay in the completion of the investigation are _____

9. Summary of evidence :

Completed on the same date *

(a) Commenced on _____ (date) and completed on _____ (date) is in progress *

(b) Reasons for delay in the commencement/ completion of the summary of evidence are _____

10. Application for trial :

(a) made vide letter no. _____ date _____

(b) not yet made cause _____

11. Date of trial has not yet been fixed*/has been fixed as ____ *

Name and rank Officer Commanding
_____ (Unit)

To

The _____ (Convening Officer)

Copy to

(1) Air or other officers commanding intermediate formations

(2) * C L A , Air Headquarters

* D C L A HQ _____ Command

In the case of third and subsequent reports only. (See rule 23 (2) of the Air Force Rules 1969)

THIRD SCHEDULE

[See Rule 24 (9)]

FORMS OF SUMMONS

Form C. 1

Form of summons to a witness to attend the hearing of the charge by the Commanding Officer or to attend the taking of a Summary of Evidence.

To

(a) Whereas charge for having committed an offence triable by Court Martial has been referred before me against.

(b) Number ____ Rank ____ Unit _____ and whereas I have directed the hearing of the charge to take place or (c) a Summary of Evidence to be taken in writing at (place) _____ (d) on the _____ day of 19 ____ at ____ O' clock in the (e) ____ noon. Now, therefore, in pursuance of section 134 of the Air Force Act, 1950 and sub rule (9) of rule 24 of Air Force Rules 1969, I do hereby summon and require you to attend as a witness the hearing of the said charge of (f) the taking of the said summary of Evidence at the said place and hour and to bring with you the documents hereinafter mentioned namely _____ (g) whereof you shall fail at your peril. Given under my hand at _____ the ____ day _____ of _____ 19 ____.

Signature, Name
Rank and Unit
Commanding Officer of the accused

(a) Insert the name and address of the person to whom the summons is to be sent.

(b) Inset the number, rank, name and Unit of the accused.

(c) Delete one of the purposes.

(d) Insert the place where hearing of the charge is to take place or the Summary of Evidence is to be taken.

(e) Specify forenoon or afternoon.

(f) Delete one of the purposes

(g) Specify the documents (if any) which the witness is to bring (otherwise delete).

Note : The summons shall be served in the manner specified in Section 134 of the Air Force Act 1950.

THIRD SCHEDULE

[See Rule 24(9)]

FORMS OF SUMMONS

Form C. 2

Form of Summons to a witness Summoned to attend a Court-Martial

To

_____ A. B _____

Whereas a _____ court-martial has been ordered to assemble at _____ on the _____ day of _____ 19 ____ for the trial of _____ of the (unit) now, therefore, pursuant to section 134 of the Air Force Act 1950, I do hereby summon and require you A _____ B _____ to attend, as a witness, the sitting of the said Court at _____ on the _____ day of _____ at _____ O' clock in the forenoon (and to bring with you the documents hereinafter mentioned namely _____), and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at _____ on the _____ day of _____ 19 ____

(Signature)
Convening Officer (or) Judge
Advocate or Presiding Officer of the Court
or Commanding Officer of the Accused

FOURTH SCHEDULE

[See Rule 31 (5)]

FORMS FOR SUMMARY DISPOSAL OF CHARGES UNDER SECTION 86,
AIR FORCE ACT, 1950

Form D.1

SUMMARY DISPOSAL FORM

(When the authority dealing summarily with the case decides (with the written consent of the accused) to dispense with the attendance of all the witnesses against the accused and the accused has no witness in defence)

Particulars of the Accused

- (a) Service No. _____
- (b) Rank (Substantive/Acting) _____
- (c) Name _____
- (d) Unit _____

PROCEEDINGS

Questions to be put to the accused by the officer dealing with the case before the charge is read.

Question No. 1 to the Accused	Have you received a copy of the charge-sheet and summary of evidence, not less than forty-eight hours ago ?	Answer _____
--	---	--------------

Question No. 2 to the Accused	Have your had sufficient time to prepare your defence ?	Answer _____
--	---	--------------

(If the answer to any of the above questions is in the negative, the officer dealing summary summarily with the case should record whether any adjournment was allowed or other orders were issued by him)	Answer _____
---	--------------

The officer dealing with the case shall than read the charge(s) to the accused. The charge sheet is

Exhibit 'A' then attached to the proceedings as exhibit 'A'

Question
No. 3
to the
Accused

Have you agreed in writing that the witnesses
against you need not give their evidence in
person ?

Answer _____

Exhibit 'B'

The written consent of the accused to dispense
with the attendance of witness is then examined
and attached to the proceedings as exhibit 'B'

Question
No. 4
to the
Accused

Are you guilty or not guilty of the charge(s)
against you which you heard read ?

Answer _____

First Charge...

Second Charge

Third Charge..

The summary of evidence is then read aloud or
the authority dealing with the case informs the
accused that he has already perused it the
summary of evidence is attached to the
proceedings as exhibit 'C'

Question
No. 5
to the
Accused

Do you wish to make (or hand in) a statement ?
Your statement may deal with the facts of the
case with your character and with matters in
mitigation of punishment .

Answer _____

Exhibit 'D'

(If the accused makes an oral statement, its gist,
of the statement if in writing , should be
attached to the proceedings as Exhibit 'D')

Exhibit 'E'

The officer dealing with the case shall then (I)
consider all the evidence and determine whether
the accused is guilty of the offence(s) or not and
(ii) if he determines that the accused is guilty,
examine and consider the accuser's record of
service or conduct sheet copy of the conduct
sheet is attached to the proceedings as Exhibit
'E'

If he intends to award either the punishment of
forfeiture of seniority of rank or service or the
punishment of stoppage of pay and allowances,

he shall not announce and record his finding unless the accused says in answer to the following question that he will accept his award.

Question
No. 6
to the
Accused

Will you accept my award, or do you elect to be tried by court martial ?

Answer _____

Finding

Award

Place

Signature

Name

Date :

(Rank and
designation of
the officer
dealing
summarily
with the case)

Note : In every case in which a punishment is awarded, the original and a certified true copy of the proceeding together with Exhibits shall be forwarded through proper channel to the superior Air Force Authority as defined in section 89 Air Force Act, 1950.

FOURTH SCHEDULE

[See Rule 31 (5)]

FORMS FOR SUMMARY DISPOSAL OF CHARGES UNDER SECTION 86,
AIR FORCE ACT, 1950

Form D. 2

SUMMARY DISPOSAL FORM

(When the authority dealing summarily with the case does not decide to dispense with the against the accused or when the accused or when the accused requires the attendance of witnesses for or against him)

PARTICULARS OF ACCUSED

- (a) Service No
- (b) Rank (Substantive/Acting
- (c) Name
- (d) Unit

PROCEEDINGS

Questions to be put to the accused by the officer dealing with the case before the charge is read. Answer _____

Question No. 1 to the Accused Have you received a copy of the charge-sheet and summary of evidence, not less than forty-eight hours ago ? Answer _____

Question No. 2 to the Accused Have your had sufficient time to prepare your defence ? Answer _____

(If the answer to any of the above questions is in the negative, the officer dealing summarily with the case should record whether any adjournment was allowed or

other orders were issued by him)

The officer dealing with the case shall then read the charge(s) to the accused. The charge sheet is then attached to the proceedings as Exhibit **' _ '

(The next question shall be put to the accused only when the authority dealing summarily with the case decides, with the written consent of the accused, to dispense with the attendance of one or more of the witnesses)

Question
No. 3
to the
Accused

Have you agreed in writing that the witnesses against you need not give their evidence in person ?

Answer _____

The written consent of the accused to dispense with the attendance of witness is then examined and attached to the proceedings as Exhibit**

Question
No. 4
to the
Accused

Are you guilty or not guilty of the charge(s) against you which you heard read ?

Answer _____
First Charge...
Second Charge
Third Charge..

The officer dealing with the case shall then proceed to examine the prosecution witnesses, if any, in relation to the charge(s) to which the accused pleads "not guilty" is not accepted by him, but before doing so, he shall put the following question to the accused.)

Question
No. 5
to the
Accused

Do you wish that the evidence be taken on oath ?

(If the accused desires that the evidence shall be taken on oath, the oath or affirmation contained in rule 118 of the Air Force Rules, 1969, shall be administered to each witness before he gives evidence. the accused shall be allowed to put questions in cross-examination to prosecution witnesses (Also see note 1

below) The evidence of prosecution witnesses shall be recorded in brief on a separate sheet and attached to the proceedings as Exhibit **

* The summary of evidence is then read aloud or the authority dealing with the case informs the accused that he has already perused it in so far as it relates to the charge(s) to which the accused has pleaded "guilty" and the evidence of the witnesses whose attendance has been dispensed with. The summary of evidence is attached to the proceedings as Exhibit**

Question No. 6 to the Accused Do you wish to make or hand in a statement ? Answer _____
Your statement may deal with the facts of the case with your character and with matters in mitigation of punishment .

If the accused makes an oral statement, its gist, of the statement if in writing , should be attached to the proceedings as Exhibit**

Question No. 7 to the Accused Do you wish to adduce any evidence in your defence ? Answer _____

If the accused calls any witness the evidence for the defence shall be recorded in brief on a separate sheet and attached to this record as Exhibit **. The officer dealing with the case shall then (i) consider all the evidence and determine whether the accused is guilty of the offence(s) or not and (ii) if he determines that the accused is guilty, examine and consider the accuser's record of service or conduct sheet.

The copy of the conduct sheet shall be attached to this record as Exhibit**.

If the officer dealing the case intends to award either the punishment of forfeiture of seniority of rank or service or the punishment of

stoppage of pay and allowances, he shall not announce and record his finding unless the accused says in answer to the following question that he will accept his award.

Question
No. 8
to the
Accused

Will you accept my award, or do you elect to be tried by court martial ?

Answer _____

Finding

Award

Place

Signature
Name

Date :

(Rank and
designation of the
officer dealing
summarily with
the case)

* To be struck out if required.

** All Exhibits to be marked alphabetically.

Note : (1) If a witness gives evidence different from that given by him when the summary of evidence was taken, the officer dealing summarily with the case should put questions to the witness as to the difference. He may also put to a witness any questions which he may otherwise wish for eliciting the truth in the case.

(2) In every case in which a punishment is awarded, the original and a certified true copy of the proceeding together with Exhibits shall be forwarded through proper channel to the superior Air Force Authority as defined in section 89 Air Force Act, 1950.

FIFTH SCHEDULE

[See Rule 34(1)]

SECTION 1

PROFORMA CHARGE-SHEET

The accused, (a)

.....

is charged with -

Section (b) -----

(c) -----

Air Force Act,
1950

in that he,

(d) -----

(-----) Rank

Place

Officer

Date (e) -----

Commanding

[a] Here state name and description of the person charged as required by rule 35 of the Air Force Rules, 1969, e.g.,

Pilot Officer A. B. Nair [1234] of No. 101 Squadron, Air Force. an officer of the regular air force.

or

12345 Sergeant Nair, A. B., of No. 101 Squadron, Air Force, attached to Air Force Station, Phagwara, an airman of the regular air force.

or

Pilot Officer A B. Nair (1234), (or 12345 Sergeant Nair, A.B.) of No. 101 Squadron, Air Force, an officer (or airman] of the Regular Air Force Reserve for the Auxiliary Air Force (or the Air Defence Reserve) called up for training for medical examination, (or service in aid of the civil power, or Air Force Service) under the Reserve and Auxiliary Air Force Act, 1952.

or

Shri A B Nair (Pass No.....) lascar (or upper division clerk or civilian gazetted officer] of No.101 Squadron Air Force, being a person subject to the Air Force Act, 1950. as an airman below non commissioned officer (or noncommissioned officer or officer or warrant officer] under the provision of section 2 [d] read with section 6 of the said act.

[b] Here state section, sub-section and clause of the Air Force Act, 1950 under which the person is charged, e.g., section 45 or section 41:2, or section 40 [a] or section 71.

[c] Here give statement of the offence as required under rule 36 [3] of the Air Force Rules, 1969, e. g.,

Behaving in a manner unbecoming his position and the character expected of him.

or

On active service is obeying a lawful command given by his superior officer

or

Using criminal force to his superior officer when such officer is in the execution of his

office

or

Committing a civil offence, that is to say, that punishable under section 379 of the Indian penal Code.

[d) Here give statement of the particulars of the act, neglect or omission constituting the offence as per rule 36 [4], [5] and [6] of the Air Force Rules, 1969.

(e) The unit stated here must be the unit to which the parson charged belongs or is attached as shown at the commencement of the charge sheet.

FIFTH SCHEDULE

[See Rule 34(1)]

SECTION 2

ILLUSTRATION OF CHARGE-SHEET

Note : The following is an illustration of a complete charge sheet, with statement of offence and particulars, as it would be placed before a district court martial.

CHARGE-SHEET

The accused, 12345 Corporal Nair A. B., of No.101 Squadron, Air Force, an airman of the regular air force, is charged with

First charge FEIGNING DISEASE IN HIMSELF

Section 46
[b] Air Force
Act, 1950

in that he, at PHAGWARA on, pretended to Flight Lieutenant A.T. Lal (3456) Senior Medical Officer, Air Force Station PHAGWARA, that he was suffering from violent pains in his head and in his stomach whereas he was not so suffering.

Second charge ABSENTING HIMSELF WITHOUT LEAVE

Section
39(a), Air
Force Act.

in that he, at PHAGWARA on absented himself from the Air Force camp area without leave hours, until apprehended by the civil police at NAGWARA at hours on

PHAGWARA

C.D.E,

..... 19

Rank

Officer Commanding

No.101 Squadron, Air Force

To be tried by District Court-Martial

PALAMPUR

XY

Convening Officer

(or Staff Officer, who should
sign for the convening
officer)

Note : SIXTH AND SEVENTH SCHEDULES
HAVE NOT BEEN INCLUDED IN THESE NOTES.

SIXTH SCHEDULE

FORMS AS TO COURTS-MARTIAL

SECTION I - GENERAL

Form - F.1

Form of Declaration of Exigencies of the Service or the Necessities of Discipline under rule 42 of the Air Force Rules, 1969.

In my opinion [*exigencies of the service, namely (state them)] render it impossible to observe the provision of rules _____ on the trial of _____ by _____

court-martial assembled pursuant to the order of the of

Signed at this day of 20.....

(Instruction:- This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings. It should not be included in the convening order but should be a separate document).

* (or the necessities of discipline)

(or inexpedient)

State the rule or rules which cannot be observed (see rule 42)

SECTION II – FORMS AS TO GENERAL AND DISTRICT COURT- MARTIAL

Form F 2(a)

Form of order for the Assembly of a General (or District Court- Martial under the Air Force Act , 1950.

Orders by (Place)

Commanding the (Date)

The details of officers as mentioned below will assemble at on theday offor the purpose of trying by acourt-martial the accused person (persons) named in the margin

(and such other person or persons as may be brought before them.)

(Here insert any opinion regarding the constitution of the court rendered necessary by the provisions of rule 46,47 and 48 of the Air Force Rules, 1969.)

The senior officer to sit as Presiding Officer

Members

Waiting Members

Judge - Advocateis appointed Judge-Advocate.

Interpreter is appointed Interpreter.

Prosecutor is appointed Prosecutor.

The accused will be warned, and all witnesses duly required to attend.

The proceedings (of which only one copy is required) will be forwarded to.....

Signed this day of 20

§ These members and the waiting members may be mentioned by name or the number and ranks and the mode of appointment may alone be named.

Here add any order regarding counsel - vide rules 103 and 101 of the Air Force Rules, 1969.

Form - F.2 (b)

Form of Proceedings of a General (or District) Court-Martial

(including some of the incidents which may occur to vary the ordinary course of procedure, with instructions for the guidance of the Court).

PROCEEDINGS OF A..... COURT-MARTIAL, assembled at..... on theday of 20..... by order of Commanding dated the day of20

PRESIDING OFFICER

Rank Name Unit

MEMBERS

Rank Name Unit

Judge-Advocate

[Interpreter]

Trial of ^{1*}

At o'clock the trial commences.

² (1) The order convening the Court is read [orally translate] and [a copy thereof], is marked signed by the presiding officer [Judge-Advocate] and attached to the proceedings.

The charge-sheet and the summary of evidence are laid before the Court.

[Instruction :- All documents relating to the court, or the matters before it, which are intended to form part of the proceedings answering any question referred to the convening officer) at whatever period of the trial they are received should be read in Open Court, marked so as to identify them, signed by the presiding officer (Judge-Advocate), and attached to the proceeding.]

¹ Here insert No., Rank, name and Unit.

² Denote paragraph number.

The Court satisfies itself that ³ is not available to serve owing to

³ waiting member takes his place as a member of the court.

The Court satisfied itself as provided by rules 49 and 50 of the Air Force Rules, 1969.

⁵ (2) The above named, the accused, is brought before the court ⁶ appears to assist (or as Counsel/Defending Officer for) the accused.

⁶ appears as prosecutor, and takes his place.

VARIATION

⁶ appears as counsel for the prosecutor.

Question by the names of the presiding officer and members of the court are read over in the hearing of the accused, and they severally answer to their names.

Question by the presiding officer to the accused; Do you object to be tried by me as presiding officer, or by any of the officers whose names you have heard read over ?

Answer by accused No.

[**Instruction:-** The questions are to be numbered throughout consecutively in a single series. The letters Q. and A. in the margin may stand for Question and Answer respectively.]

VARIATIONS

Challenging Officers

Answer : I object to

Question to accused — Do you object to any other person?

(This question must be repeated until all the objections are ascertained).

Answer :

Question to accused - What is your objection to (the junior officer objected to)?

Answer by accused:.....

The accused in support of his objection to requests permission to call etc. etc. is called into Court, and is questioned by the accused.

The Court is closed to consider the objection.

Decision - The Court disallows the objection

The Court is re-opened and the above decision is made known to the accused,

or

Decision - The Court allows the objection.

The Court is re-opened, and the above decision is made known to the accused.

.....retires,

Fresh Member⁷ takes his place as member of the Court.

(This only applies in the case of there being a waiting member of the Court)

3 Here insert Rank, Name, Number and Unit.

4 Here insert reason.

5 Denotes paragraph number.

6 Here insert the personal particulars and legal qualifications if any.

7 Insert Rank, Name, Number and Unit.

He appears to the Court to be eligible and not disqualified to serve on this court martial.

Question to accused - Do you object to be tried by (the fresh member)?

Answer -

(If he objects, the objection will be dealt with in the same manner as the former objection.)

Question to the accused - What is your objection to (the junior of the officers objected to)?

(This objection will be dealt with in the same manner as the former objection).

The Court adjourns for the purpose of fresh members being appointed.

or

The Court is of the opinion that in the interests of justice and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because [here state the reasons.]

At o'clock on the Court resumed its proceedings, and an order appointing fresh officers is read, marked, signed by the presiding officer (judge-advocate) and attached to the proceedings.

The Court satisfies itself with respect to such fresh officer as provided by

Rule 49.

[Instruction :- The procedure as to challenging fresh officers, and the procedure, if any objection is allowed, will be the same as above.]

The presiding officer and members of the Court, as constituted after the above proceedings are as follows

PRESIDING OFFICER

RankName Service Number Unit

MEMBERS

Rank Name Service Number. Unit

The presiding officer, members and judge-advocate are duly sworn [or affirmed] (also any officer under Instruction).

[Instruction :- Following procedure shall be adopted if any interpreter and/or short-hand writer are now required to be sworn].

Question to the accused : Do you object to as Interpreter?

Answer

[Instruction :- In case of objection, the same procedure will be followed as in the case of an objection to a member of the court.]

..... is duly sworn (or affirmed) as interpreter.

Question to the accused: Do you object to as shorthand writer?

Answer:-
.....

[Instruction :- In case of objection, the same procedure will be followed as in the case of an objection to a member of the Court.]

..... is duly sworn (or affirmed) as shorthand writer.

[Instruction :- The witnesses, if in Court, other than the prosecutor, should be ordered out of the Court at this stage of the proceeding.]

CHARGE SHEET

8 (3)The charge-sheet is signed by the presiding officer [Judge-Advocate] marked 'B-2' and annexed to the proceedings.

8 Denotes paragraph number

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Question to the accused: Are you guilty or not guilty of the [first] charge against you, which you have heard read?

A -

[**Instruction** :- When there is more than one charge the foregoing question will be asked after each charge is read, the number of the charge being stated.]

[**Instruction** :- If the accused pleads guilty to any charge, the provisions of rule 60(2) must be complied with, and the fact that they have been complied with must be recorded]

VARIATIONS

The accused objects to the charge.

Question to the accused. - What is your objection?

Decision

The Court is closed to consider its decision.

The Court disallows the objection [or the Court allows the objection, and agrees to report to the convening officer].

The Court is re-opened, and the above decision is read to the accused.

The Court proceeds to the trial [or adjourns.]

Plea to jurisdiction - the accused pleads to the general jurisdiction of the Court.

Question to the accused - What are the grounds of your plea?

A. -

Q. Do you wish to produce any evidence in support of your plea?

A. -

Witnesses — Witnesses are examined on oath [or affirmation].

[**Instruction** :- The examination, etc., of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, will proceed as directed below in paragraphs (4) and (6). The prosecutor will be entitled to reply after all the evidence is given.]

Decision - The Court is closed to consider its decision.

The Court allows [or overrules] the plea [or resolves to refer the point to the convening authority, or decides specially that

The Court is re-opened, and the above decision is read to the accused.

The Court proceeds to the trial [or adjourns].

VARIATION

Plea in bar of trial - Accused, besides the plea of guilty [or, not guilty], offers a plea in bar of trial.

Question to the accused - What are the grounds of your plea?

A. -

Q. Do you wish to produce any evidence in support of your plea?

A. -

Witnesses - Witness examined on oath [or affirmation].

[Instruction :- The examination, etc., of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, will proceed as directed below in paragraphs (14) and (6). The prosecutor will be entitled to reply after all the evidence is given.]

Decision - The Court is closed to consider its decision.

The Court allows the plea and resolves to adjourn [or to proceed to the trial on another charge] [Or the Court overrules the plea].

The Court is re-opened, and the above decision is read to the accused.

The Court adjourns [or proceeds with the trial on another charge] [or proceeds with the trial].

VARIATIONS

Though the accused pleads "Guilty" to the charge, the court records a plea of "Not Guilty" as required by Rule 60(4)

Or

Refused to plead - As the accused does not plead intelligibly [or refuses to plead to the above charge, or does not plead "guilty" to the above charge] the Court enters a plea of "not guilty".

[Instruction :- Where the Court has recorded a plea of "guilty" on some and a plea of "not guilty" on other charges, the trial in respect of the charges on which a plea of "guilty" has been recorded, will not proceed, until the proceedings upto and including findings, in respect of the other charges on which the plea is "not guilty" have been completed.]

PROCEEDINGS ON PLEA OF NOT GUILTY

9 (4.) Question to the accused. - Do you wish to apply for an adjournment on the ground that any of the rules relating to the procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A. -

[Instruction :- if the accused desires to make an application for adjournment, the court will hear any statement or evidence which he may desire to adduce in support thereof, and any statement of the prosecutor or evidence in answer thereto, Witnesses will be examined, cross-examined, etc., as provided hereinafter in this paragraph and in paragraph (6).]

VARIATION

If an adjournment is applied for by the accused:

Decision - The Court is closed to consider its decision.

The Court allows (or over-rules) the application by the accused for adjournment or allows adjournment upto

The court is re-opened, and the above decision is read to the accused.

9 Denotes paragraph numbers

[If the prosecutor makes an address]. The prosecutor makes the following address [or, if the address is written, hands in a written address, which is read (orally translated), marked, signed by the presiding officer (Judge-Advocate) and attached to the proceedings].

[Instruction :- Where the address of the prosecutor is not in writing, the Court should record so much as appears to it material, and so much as the prosecutor requires to be recorded.]

10 The prosecutor proceeds to call witnesses.

First witness for prosecution.
being duly sworn (affirmed) is

examined by the prosecutor.

cross-examined by the
Accused

Re-examined by the Prosecutor.

Examined by the Court.

_____ His
evidence is read to the witness.

[Instruction :- The fact that sub-rules (2) (3) and (4) of rule 119 have been complied with should be recorded)

The witness withdraws

10 here insert his number, rank, name and unit and appointment (if any), or description.

VARIATIONS

The accused declines to cross-examine this witness.

[Instruction :- in every case where the accused does not cross-examine a witness for the prosecution this statement is to be made, in order that it may appear on the face of the proceedings that he has had the opportunity give to him for cross-examination.]

The Court, at the request of the accused allows the cross-examination of the witness to be postponed.

The accused [or the prosecution] objects to the following question ¹¹

The Court is closed to consider their decision

The Court overrules [or allows] the objection, and the Court is re-opened and the decision announced.

The witness, on his evidence being read to him, makes the following explanation or alteration -

Examined by the prosecutor as to the above explanation or alteration.

Examined by the accused as to the above explanation or alteration.

The prosecutor and accused decline to examine him respecting the above explanation or alteration.

11 Give also grounds of objection by the person requesting opinion of the Court, the reply by the other person(s) and advice by the judge-advocate, if any. See Rule 95.

Second witness for prosecution

.....being duly sworn [affirmed], is examined by the prosecutor.

[The examination, etc., of this and every other witness proceeds as in the case of the first witness.]

Adjournment

At O'clock the Court adjourns until O'clock on the Second day.

On the of 20...., ato'clock, the Court re-assembles pursuant to adjournment, present the same members as on the of

VARIATION

[Instructions :- (a) If a member is absent, and his absence will reduce the Court below the legal minimum and it appears to the members present that the absent member cannot attend within a reasonable time, the presiding officer or senior member present will thereupon report the case to the convening officer.

(b) If the judge-advocate is absent, and cannot attend within a reasonable time' the court will adjourn, and the presiding officer will thereupon report the case to the convening authority.]

Absent member - [Rank - Name - Unit] being absent.

[The absence is accounted for].

A medical certificate [or letter, or as the case may be] is produced, read, marked, signed by the presiding officer (judge-Advocate) and attached to the proceedings.

the Court adjourn until.....

or,

There being present [not less than the legal minimum] members, the trial is proceeded with.

[Instructions: - (a) If the Court, in consequence of the adjournment having been prolonged by the senior officer on the spot, or otherwise, does not meet on the day to which it previously adjourned or if the adjournment was until further orders, the words "pursuant to adjournment" will be omitted from the above form, and the cause of its meeting at the above time will be entered in the proceedings.

(b) If the place of meeting has been altered by orders or otherwise, the place of meeting and the reason for meeting at that place will be entered in the proceedings.]

Examination (cross-examination) of continued

The prosecution is closed.

VARIATION

(If the accused offers a plea of "no case")

Accused offers a plea of no case, and in support thereof says [or hands in a written address, which is read (orally translated), marked Exhibit signed by the presiding officer (Judge-Advocate), and attached to the proceedings].

The prosecutor makes the following reply [or, if the reply is in writing, hands in a written reply, which is read (orally translated) marked Exhibit signed by the presiding officer (Judge-Advocate), and attached to the proceedings];

or,

The prosecutor declines to make a reply.

[If the prosecutor makes a reply, the accused will have a right to make a counter-reply].

[Instructions :- (a) Where the reply of the prosecutor is not in writing, the court should record so much as appears to it material, and so much as the prosecutor requires to be recorded.

(b) If the address (or counter-reply) of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the address (or counter-reply) is not in writing and not delivered by the accused himself,

the material portions should be recorded.

In other case, any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken whether a request is made or not, to record every point brought forward in support of the plea.]

The Judge-Advocate hands in a written advice, which is read (orally translated) marked Exhibit, signed by the presiding officer, and attached to the proceedings. The court is closed to consider its decision.

The court disallows the plea [or allows the plea] (or allows the plea on and charges and disallows the plea on and charges).

The court is reopened, and the above decision is read to the accused and the accused is informed that the decision is subject to confirmation.

[If there are no charge or charges on which the trial may proceed, adopt procedure from paragraph (9), and omit procedure given below upto and including para (8), otherwise.....].

The trial proceeds on and charges.

DEFENCE

The accused (or counsel for the accused, or the defending officer may make an opening address).

The accused [or counsel for the accused, or the defending officer makes the following address or, if the address is written, hands in a written address, which is read (orally translated), marked Exhibit, signed by the presiding officer (Judge-Advocate), and attached to the proceedings].

[Instructions :- Where the address of the accused (or counsel for the accused or the defending officer) is not in writing, the court should record so much as appears to it material, and so much as the accused (or counsel for the accused or the defending officer) requires to be recorded.]

Question to the accused - Do you wish to make any statement as to the facts of the case?

A.

VARIATION

The court, at the request of the accused, adjourns until to enable him to prepare his defence.

The accused in his defence says [or hands in a written address,

which is read (orally translated), marked Exhibit, signed by the presiding officer (Judge-Advocate) and attached to the proceedings].

[Instructions :- If the statement of the accused is not in writing, the material portions should be taken down in the first person as nearly as possible in his own words. In any case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in defence or in mitigation of punishment.]

Question to the accused - Do you intend to call any witness in your defence?

A. - Yes (No).

Q. - Is he a witness as to character only?

A. -

VARIATION

12 (5) [Instructions - If the accused calls no witness to the facts of the case adopt this and omit paragraph (6)]

First witness as to character.

The accused calls the following witnesses as to character;

13 is duly sworn (affirmed).

Examined by the accused

.....

12 Denotes paragraph number

13 Here insert his number, rank, name and unit and appointment (if any); or other description.

Cross-examined by the prosecutor.

Re-examined by

Examined by the court.

His evidence is read to the witness.

[Instructions :- The fact that sub-rules (2), (3) and (4) of rule 119 have been complied with should be recorded.]

The witness withdraws.

VARIATIONS

The prosecutor declines to cross examine this witness.

The witness, on the evidence being read to him, makes the following explanation or alterations.

Examined by the accused as to the above explanations or alterations.

Examined by the prosecutor as to the above explanations or alterations.

The accused and the prosecutor decline to examine him in respect of the above explanations or alterations.

[The prosecutor may, in reply to the witnesses as to character call witnesses to produce proof of former conviction either by a court-martial or by a criminal court and the entries in the service conduct sheet.]

The prosecutor addresses the court about the evidence for the prosecution as follows:..... [or, if the address is in writing, hands in a written address, which is read (orally translated) marked Exhibit, signed by the presiding officer (Judge-Advocate) and attached to the proceedings]

[Instructions :- Where the address of the prosecutor is not in writing the court should record so much as appears to them material and so much as the prosecutor requires to be recorded.]

The accused (or the counsel for the accused or the defending officer) addresses the court in reply as follows:..... [or hands in a written address, which is read, (orally translated) marked Exhibit....., signed by the presiding officer (Judge-Advocate) and attached to the proceedings].

(Instructions :- If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the address is not in writing and not delivered by the accused himself the material portions should be recorded.

In either case any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of the punishment.

VARIATION

The court, at the request of the prosecutor, adjourns until to enable the prosecutor to

prepare his address.

The court, at the request of the accused, adjourns until.....to enable the accused to prepare his reply.

After this adopt procedure from paragraph (7), and omit paragraph (6).

14 (6) (**Instructions** :- If the accused calls witnesses to the facts of the case, then omit paragraph (5) and adopt this).

..... 15 16 is duly sworn (Affirmed).

Examined by the Accused

Cross-Examined by the Prosecutor.

Re-examined by the Accused.

14 . Denotes paragraph number.

15 . All witnesses including witnesses as to character will be numbered consecutively and examined, cross-examined, etc. in the same manner.

16 . Here insert his number, rank, name and unit and appointment (if any) or other description.

Examined by the Court.

His evidence is read to the witness.

(**Instruction** :- The fact that sub-rules (2), (3) and (4) or rule 119 have been complied with should be recorded.)

The witness withdraws.

VARIATIONS

The prosecutor declines to cross-examine this witness.

The witness on his evidence being read to him, makes the following explanations or alterations.

Examined by the accused as to the above explanation or alteration.

Examined by the prosecutor as to the above explanation or alteration.

The accused and prosecutor decline to examine him respecting such explanation or alteration.

The prosecutor (by the leave of the Court) calls witness in reply ¹⁷.

The accused (or the counsel for the accused or the defending officer) makes the following address (or, if the address is in writing hands in a written address, which is read (orally translated) marked....., signed by the presiding officer (Judge—Advocate), and attached to the proceedings.).

17 . To be numbered consecutively further to prosecution witnesses already examined earlier. Witnesses will be examined, cross-examined, etc., in the same manner as other prosecution witnesses.

The prosecutor makes the following reply (or, if the reply is in writing, hands in a written reply, which is read (orally, translated) marked....., signed by the presiding officer (Judge-Advocate), and attached to the proceedings);

or,

The prosecutor declines to make a reply.

(Instructions : - Whether the reply of the prosecutor is not in writing, the Court should record so much as appears to it material, and so much as the prosecutor requires to be recorded).

If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the address is not in writing and not delivered by the accused himself, the material portions should be recorded.

In either case, any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.

VARIATION

The Court, at the request of the accused, adjourns until to enable the accused to prepare his address.

The Court, at the request of the prosecutor, adjourns until to enable the prosecutor to prepare his reply.

SUMMING UP

18 (7) The Judge-Advocate hands in a written summing up, which is read (orally translated) marked ... signed by the presiding officer, and attached to the proceedings.

VARIATIONS

The Judge-Advocate and the Court think a summing up unnecessary.

Or,

The Court, at the request of the judge-advocate, adjourns until to enable him to prepare his summing up.

FINDING

18 (8) The Court is closed for the consideration of the finding.

The Court finds that the accused No. Rank

Name Unit is:

19 Guilty of Not guilty of the charge but is guilty of the charges. charge.

or,

19 Guilty of is guilty of the charge (all the charges).

or,

19 Special finding is guilty of the charge, and guilty of the charge with the exception that

19 Special finding is not guilty of desertion, but is guilty of absence without leave from the to the, being a period of days.

(Instruction :- Any special finding allowed by section 138 of the Air Force Act, 1950, may be expressed in this form);

or,

the court adjourns for the purpose of consulting the convening (or as the case may be,

confirming) officer:

On re-assembly on the day of and on reading the opinion of , which is marked and annexed to the proceedings, court finds that the accused, etc.

PROCEEDINGS ON ACQUITTAL OF ALL THE CHARGES

(Instruction : - This form shall not be adopted if there is plea of "Guilty" on any charge(s) in respect of which the proceedings are yet to continue).

18 (9) ¹⁹ Acquittal - The Court finds that the accused No RankName Unit is not guilty of the charge (or all the charges)

Signed at ,this day of20....

(Signature) (Signature)

Judge-Advocate Presiding officer

18 Denotes paragraph number

19 To be entered in the margin

INSANITY

19 Insanity - The court finds that the accused No Rank..... Name Unit is of unsound mind and consequently incapable of making his defence.

or,

committed the act (acts) alleged as constituting the offence (offences) specified in the charge (charges) but was by reason of unsoundness of mind incapable of, knowing the nature of that act (those acts) (or, but was, by reason of unsoundness of mind incapable of knowing that that acts was wrong (those acts were wrong) (or 'contrary to law).

Signed at , this day of20....

(Signature) (Signature)

Judge—Advocate Presiding Officer

CONFIRMATION

Confirmed

At this day of20.....

Signature of Confirming
Authority

PROCEEDINGS ON PLEA OF GUILTY

(10) The Court reopens and the charges(s) on which a plea of "Guilty" has been recorded are read in the hearing of the accused.

Question to the accused - Do you wish to make a statement with reference to the charge?

A. - Yes (No)

(Instructions: - The accused may in accordance with rule 62(3) make any statement he wishes with reference to the charge)

The accused says (or, if the statement. is in writing, hands in a written statement which is read (orally translated), marked ,signed by the Presiding Officer (Judge-Advocate) and attached, to the proceedings.

(Instruction : — If the statement of the accused is not in writing, the material portion, should be taken down in the first person, and as nearly as possible in his own words. In any case, any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not to record every point brought forward in mitigation of punishment.)

VARIATION

The court gives permission to the accused to call witnesses to prove this statement that (here specify the statement which is to be proved).

[Instructions: - The examination, etc, of witnesses called in pursuance of this permission will proceed in the same manner as in paragraph (6)].

The summary of evidence is read (orally translated), marked, signed by the presiding officer, (Judge-Advocate), and attached to the proceedings.

(Instructions :- If there is no summary of evidence, sufficient evidence to enable the court to determine the sentence and to enable the confirming officer to know all the circumstances connected with the case will be taken as in paragraph (4). No address will be allowed).

Question to the accused — Do you wish to make any statement in mitigation of punishment?

A. - No.

Or ,

The accused in mitigation of punishment says or if the statement is in writing hands in a written statement, which is read (orally translated), marked, signed by the presiding officer (Judge-Advocate) and attached to the proceedings.)

(Instruction :- If the statement of accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the statement is not in writing and not delivered by the accused himself the material portions should be recorded.

In either case any matter which is requested by or on behalf of the accused to be recorded should. be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment)

Evidence as to Character

Question to the Accused — Do you wish to call any witnesses as to character?

A. - Yes. (No).

[Instruction: — The examination, etc., of witnesses as to character will proceed as in paragraph (5).]

The accused Number, Rank Name
Unit is found guilty of the charge [all the charges].

VARIATION

The Court being satisfied from the statement of the accused [or the summary of evidence, or otherwise], that the accused did not understand the effect of the plea of "guilty" in respect of and charges, alters the record and enters a plea of "Not Guilty" in respect of them.

[Instructions: — The court will then proceed in respect of the charges [or which the plea has been altered, as in paragraph (4)]

PROCEEDINGS ON CONVICTION

Before Sentence

(II) The Court being re-opened the accused is again brought before it.

..... is duly sworn [or affirmed].

Evidence of character, etc.

Question — What record have you to produce in proof of former convictions against accused and of his character?

Answer by witness — I produce a statement certified under the hand of the officer having custody of the service [or other official] records.

The statement is read [orally translated] marked signed by the presiding officer [Judge-Advocate), and attached to the proceedings.

Q. - Is the accused the person named in the statement you have heard read?

A. -

Q. - Have you compared the contents of the above statement with the service [or other official] records?

A. -

Q. - Are they true extracts from the service [or other office] records and is the statement of entries in the conduct sheet a fair and true summary of those entries?

A. -

Cross-examined by the Accused

Re-examined

or,

The accused declines to cross-examine this witness.

[Instructions :- Any further question will be put and any evidence produced which the Court requires as to any point respecting the character and service of the accused on which the Court desires to have information for the purpose of their sentence.

At the request of the accused, or by the direction of the Court, the service or other official books, or a certified copy of the material entries therein must be produced for the purpose of comparison with the statement.

The accused is entitled to call the attention of the Court to any entries in the service or other official books, or in the certified copy above mentioned, and to show that they are inconsistent with the statement.

When all the evidence on the above matters has been given the accused may address the Court thereon.]

Question to accused - Do you wish to address the Court?

Answer -

The Court is closed for the consideration of the sentence.

SENTENCE

The Court sent
the accused
.....
Rank

Name Unit :-

(a) ²⁰ Death. - To suffer death by being hanged by the neck until he be dead [or to suffer death by being shot to death].

(b) ²⁰ Imprisonment

for life. - To suffer imprisonment for life.

(c) ²⁰ Rigorous (Simple)

Imprisonment. - To suffer rigorous [simple] imprisonment foryears [months or days.]

(d) ²⁰ Detention. - To undergo detention for years [months or days].

(e) ²⁰ Cashiering. - To be cashiered.

(f) ²⁰ Dismissal. - To be dismissed from the service.

(g) ²⁰ Reduction. - To be reduced to the rank of

[or to the ranks] [or to the classification of].

(h) ²² (i) ²⁰ Forfeiture of

seniority. - To take precedence in the rank held by him as if his name had appeared between the names of and in the Air Force List (month and year);

Or

²² (ii) ²⁰ Forfeiture

of seniority. - To forfeit (specify period) seniority of rank, that is to say, to take precedence in the rank held by him as if his name had appeared between those of and in the Air Force List (month and year);

²⁰ The words in italics are to be entered in the margin.

²¹ Terms of imprisonment or detention for any period not amounting to one month (i.e., a

calendar month) will be awarded in days; for any period of one year or more years will be awarded in years; and in any other case, will be awarded in months, or if required, in months and days.

22 Court-martial may forfeit only past seniority in the substantive rank held. (i) or (ii) are for use in cases of persons whose names are published in the Air Force List, while (iii) is for use in other cases, (iv) should be used where it is intended to adjust the precedence of the accused within a group of persons who alongwith the accused were promoted to the same substantive rank with effect from the same date.

Or

22 (iii) ²⁰ Forfeiture

of seniority. - To forfeit(Specify period) seniority of rank, that is to say, to take precedence in the rank held by him as if his appointment to the rank of (here specify the substantive rank head) bore date

(iv) ²⁰ Forfeiture

of past service

for promotion. - To forfeit(here specify period) past service for the purpose of promotion.

(i) ²⁰ Forfeiture of

service for.....- To forfeit(here specify period) for the purpose of.....(here specify increased pay, and/or pension and/or any other prescribed purpose)

(j) ²⁰ Severe Reprimand

or Reprimand. - To be severely reprimanded (or reprimanded)

(k) Forfeiture of Pay

and Allowances. - To forfeit pay and allowances for a period of.....

(l) ²⁰ Forfeiture of

Arrears and other

public money. - To forfeit all arrears of pay and allowances and other public money due to him at the time of his dismissal (cashiering)

(m) ²⁰ Stoppage. -

To be put under stoppage of pay and allowances until he has made good to (here specify the Central Government or other person to whom the loss or damage was occasioned by the offence) the value of the following articles, viz. (state the articles and the value of each), (Until he shall have made good to (here specify the Central Government or other person to whom the loss or damage was occasioned by the offence) the sum of in respect of (state the circumstances in respect of which the same is awarded).

(Note:- Where it is intended to award this, punishment in order to make good the loss or damage to two or more persons, the names of, and the amounts of loss or damage to be made good to each of such persons should be specified separately.)

20 The words in italics are to be entered in the margin.

22 A court-martial may forfeit only past seniority in the substantive rank held. (i) or (ii) are for use in cases of persons whose names are published in the Air Force List, while (iii) is for use in other cases. (j) should be used where it is intended to adjust the precedence of the accused within group of persons who alongwith the accused were promoted to the same substantive rank with effect from the same date.

23 See Rule 152.

(n) ²⁰ Field Punishment. - To suffer field punishment No..... for a period of

RECOMMENDATION TO MERCY

The court recommend the accused to mercy on the ground that

SIGNATURE

Signed at.....this..... day of.....20.....

(Signature) (Signature)

Judge—Advocate Presiding Officer

REVISION

(12) At..... on the.....day of20at.....o'clock, the Court re-assemble by order offor the purpose of re-considering their

Present, the same members as on the..... day

VARIATION

[Instruction:- If a member is absent and the absence will reduce the Court below the required minimum, and it appears to the members present that such absent member cannot attend within a reasonable time, the presiding officer, or, in his absence the senior member present shall thereupon report the case to the convening officer.]

Absent member—[Rank, name, service number, unit] being absent.

[The absence is accounted for.]

21 while confirming a sentence of imprisonment to be suffered in civil prison, the confirming authority is separately to recommend whether the prisoner should be classified as division/ class A for 1), B (or II), or C for III) prisoner, or in civil prisons where there are only two divisions or classification, he should be classified as Division Class A (or 1) or B for 11) prisoner.

22 See Section 166, Air Force Act, 1950.

23 See Rule 152

A medical certificate [or, letter, or other document, as the case may be] is produced, read, marked signed by the presiding officer (Judge-Advocate), and attached to the proceedings.

There being present [not less than the required minimum] members, the Court proceeds.

The letter [order or memorandum] directing the re-assembly of the Court [or the revision], and giving the reasons of the confirming authority for requiring a revision of the finding [finding and sentence] [or sentence] is read, marked signed by the presiding officer [Judge-Advocate] and attached to the proceedings.

[Instructions :- If the confirming authority so orders, additional evidence may be taken on revision; such evidence will be taken as in paragraphs (4) and (6).]

Revised finding - The Court having attentively considered the observations of the confirming authority, and the whole of the proceedings:

(a) does now revoke its finding and sentence, and finds that the accused is.....and sentences him to

or

(b) does now revoke its sentence, and now sentences the accused, etc. etc..

or

(c) does now respectfully adhere to its sentence [or finding and sentence]

Signed.....this.....day of20.....

(Signature) (Signature)

Judge-Advocate. Presiding Officer.

CONFIRMATION²⁴

(13) Confirmed.

or

Confirmed. I direct that the sentence of imprisonment shall be carried out by confinement in air force custody [or in air force (military) (civil) prison] ²⁵

or

I vary the sentence so that it shall be as follows and confirm the finding and the sentence as so varied.

or

I confirm the finding and sentence of the Court, but mitigate [remit, or commute].....

or

I confirm the finding of the Court on the..... and charges and reserve for confirmation by superior authority the finding on theand

charges, and the sentence;

or

I confirm the finding of the Court, but reserve the sentence for confirmation by superior authority;

or

I confirm the finding of the Court, and the sentence of the Court as to and reserve the sentence so far as it.....for confirmation by superior authority;

or

[Where the finding is not confirmed.]

Not confirmed [the reasons for non-confirmation may be stated.]

Signed at.....this.....day of.....20.....

(Signature
of
Confirming
Authority)

24 while confirming a sentence of imprisonment to be suffered in civil prison, the confirming authority is separately to recommend whether the prisoner should be classified as division/class A(or I), B (or II) or C(Or III) prisoner, or in civil prisons where there are only two divisions or classifications, he should be classified as Division Class A (or I) or B(or II)

25 See section 166, Air Force Act 1950.

[**Instruction** :- Any remarks of the confirming authority should be separate and form no part of the proceedings.]

SECTION-III - FORMS AS TO SUMMARY GENERAL COURT-MARTIAL

FORM F.3

FORM FOR ASSEMBLY AND PROCEEDINGS OF A SUMMARY

GENERAL COURT-MARTIAL UNDER THE AIR FORCE ACT, 1950

A-Order convening the Court

At (place).....this.....day of.....20.....

26 (1) Beginning of Form in cases falling under clause (a) of section 113 of the Air Force Act, 1950.

Whereas it appears to me.....an officer empowered in this behalf by an order of the Central Government/Chief of the Air Staff²⁷ that the person/persons named in the Appendix and being subject to Air Force Law, has/have committed the offence/offences in the said Appendix mentioned;

26 (2) Beginning of Form in cases falling under clause (b) of section 113 of the Air Force

Act, 1950.

Whereas it appears to me.....the/an²⁷ officer commanding the forces in the field/empowered in this behalf by the officer commanding the forces in the field²⁷ on active service that the person /persons²⁷ named in the Appendix, and being subject to Air Force Law, has/have²⁷ committed the offence/offences²⁷ mentioned in the said Appendix.

26 (3) Beginning of Form in cases falling under clause (c) of section 113 of the Air Force Act 1950.

Whereas it appears to me.....an officer now in command of.....being a detached portion of the Air Force upon active service that the person/persons named in the Appendix and being subject to Air Force Law, has/have committed the offence/offences²⁷ mentioned in the said Appendix and whereas I am of opinion that it is not practicable with due regard to discipline and the exigencies of the service that the said offence/offences should be tried by an ordinary general court-martial;

26 only one of these will be used, the two which are inapplicable being struck out.

27 Strike out whichever is not required.

(4) End of form applicable to all cases.

I hereby convene a summary general court-martial to try the said person/persons and to consist of

.....
.....

[Ranks, names and units of members]

[Here enter the special order (if any) under rule 139]

(Signature of
Convening Officer)

B—Certificate of Presiding Officer as to proceedings

I certify that the above Court assembled on the.....day of20....., and duly tried the person/persons²⁷ named in the said Appendix, and that the plea, finding and sentence in the case of such/each²⁷ such persons were as stated in the third and fourth columns of the said Appendix.

I further certify that the members of the Court, the witnesses (where so required by the Air Force Act, 1950) and the interpreter were duly sworn or affirmed.

Signed at (place).....this.....day of.....20.....

(Signature
of
Presiding
Officer)

C—Confirmation

I have dealt with the finding/findings and sentence/ sentences²⁷ in the manner stated in the last column of the said Appendix and, subject to what I have there stated, I hereby confirm the above finding/findings²⁷ and sentence/sentences

Signed at (place).....this.....day of.....20.....

(Signature
Commanding
Officer) of

²⁶Only one of these will be used, the two which are inapplicable being struck out.

²⁷Strike out whichever is not required.

APPENDIX

Date.....20.....

Name of alleged offender ²⁸

Offence charged

Plea

Finding, and if convicted sentence ²⁹

How dealt with

by confirming

Officer

Ram Bux

(Bannia)

Theft of Government

Property

Guilty
Confirmed

Rigorous

Imprisonment

For.....

I remit.....

30 EF.....

.....

201202 AC

Jhanda Singh.....

Squadron.

On active

Service breaking

into house

for plunder

Not Guilty

Guilty Field Punishment

No.1, for

Two months

confirmed EF

212561 LAC

Hussein Khan

.....

Squadron

Being a sentry sleeping,

on post

in time

of war'

Not

Guilty

Guilty Death by being shot to death Recommended to
mercy.

Confirmed but commuted, to field punishment No. I, for three months ³⁰

E.F

Person accompanying force (name unknown) white Jacket and trousers, scar on right
check.

Impeding Provost Marshal

Not Guilty

Not Guilty

Confirmed ³⁰

E.F

Airman in

uniform of

Air Force

(name unknown

Civil

Offence

Rape

Not Guilty

Guilty Imprisonment for life

Confirmed ³⁰E.F

A.B..... C.D..... X.Y.....

.....

Convening Presiding Judge Advocate

Officer Officer (if any)

NOTE:- Record of evidence as required vide rule 139 will be made separately, signed by the Presiding Officer and Judge-Advocate, if any, and shall be attached to the Appendix.

28 If the name of the person charged is unknown, he may be described as unknown with such addition as will identify him.

29 Recommendation to mercy to be inserted in this column.

30 Signature of Confirming Officer.

SEVENTH SCHEDULE

[See rules 144 , 145 147 149(1) 150(1) and 151]

FORMS OF WARRANTS

Form G.1

Warrant for use when prisoner sentenced to detention is to be delivered into the custody of an officer in charge of a military or air force detention barrack (Air Force Act, 1950 Section 170).

To the Officer in charge.....

of the Military/Air Force Detention Barrack at (¹).....

Whereas (number, Rank, Name, Unit).....was on theday of20.....convicted of (the offence to be briefly stated) by his commanding Officer / a(²) Court-Martial and was sentenced to undergo detention for (sentence to be entered in full but without signature).

And whereas the said sentence has been duly confirmed by (³)..... as required by law (⁴)

This is to require and authorise you to receive (Name)....., into your custody together with this warrant, and there carry the aforesaid sentence of detention into execution according to law. The sentence has effect from the (⁵)

Given under my hand at.....this the.....

day of.....20.....

Unit stamp Signature (⁶)

(¹) Enter place.

(²) General, District or Summary General.

(³) Enter name and description of confirming authority or in the case of an award by Commanding Officer delete this portion.

(⁴) Add if necessary, "with a remission of....."

(⁵) Enter date on which the original sentence was signed.

(⁶) Signature of Commanding Officer of prisoner or other prescribed officer-See rule 144

Form G.2

Warrant of commitment for use when a prisoner is sentenced to imprisonment which is to be undergone in a military or Air Force prison (Air Force Act, 1950, section 166).

To: The Commandant of the Military/Air Force Prison at (1)

Whereas at a (2)Court-Martial held aton theday of.....20 (Number, Rank, Name).....of(Unit) was duly convicted of.....(the offence is to be briefly stated here as "desertion", "theft", "receiving stolen goods", "disobedience of lawful command" or as the case may be).

And whereas the said (2)Court-Martial on the.....day of.....20..... passed the following sentence upon the said (Name)....., that is to say.

(Sentence to be entered in full, but without signature).

And whereas the said sentence has been duly confirmed by (3)as required by law (4).....

This is to require and authorise you to receive the said (Name).....into your custody together with this warrant and there carry the aforesaid sentence of rigorous/simple imprisonment into execution according to law. The sentence has effect from(5)

Given under my hand at.....this the.....day of.....20...

Unit Stamp Signature (6)

(1) Enter name of military or air force prison.

(2) General, District or Summary General.

(3) Name and description of confirming authority.

(4) Add, if necessary, "with a remission of

(5) Enter date upon which original sentence was signed.

(6) Signature of Commanding Officer of prisoner or other prescribed officer - See Rule 144

Form G.3

Warrant of commitment for use when a prisoner is sentenced to rigorous or simple

imprisonment which is to be undergone in civil prison (Air Force Act, 1950, section 166).

To the Superintendent

of the (1).....Prison

Whereas at a (2).....Court-Martial held at.....on the.....day of20.....(Number, Rank, Name).....of theUnit was duly convicted of (the offence to be briefly) stated here, as "desertion", "theft", "receiving stolen goods", "forgery", "disobedience of lawful command" or as the case may be).

And whereas the said (2).....Court-Martial, on the.....day of.....20.....passed the following sentence upon the said (Name).....that is to say.

(Sentence to be entered in full, but without signature)

And whereas the said sentence has been duly confirmed by (3).....as required by law (4).....

This is to require and authorise you to receive the said (Name) into your custody together with this warrant, and there carry the aforesaid sentence of rigorous/simple imprisonment into execution according to law. The sentence has effect from the (5).....

The confirming authority has recommended that while undergoing imprisonment in the civil prison the prisoner be placed in division / class A (or I) / B (or II) / C (or III) and if there are only two divisions / classifications in the civil prison, he be placed in division / class A (or I) / B (or II)

Given under my hand at.....this the.....

day of.....20.....

Unit Stamp signature(6)

(1) Enter name of prison.

(2) General, District or Summary General.

(3) Name and description of confirming authority.

(4) Add if necessary "with a remission of

(5) Enter date on which the original sentence was signed.

(6) Signature of Commanding Officer of prisoner or other prescribed officer-See Rule (11).

(7) Strike out whichever is inapplicable.

Form G.4

Warrant of commitment for use when a prisoner is sentenced to imprisonment for life (Air Force Act, 1950, section 165).

To the Superintendent

of the (1)Prison.

Whereas at a (2)Court-Martial, held aton theday of 20...(Number, Rank, Name) of the Unit was convicted of (the offence to be briefly stated here, as "treacherously corresponding with the enemy", "mutiny", "desertion on active service", or as the case may be).

And whereas the said (2) Court-martial on the day of20..... passed the following sentence upon the said (Name) that is to say

(Sentence to be entered in full, but without signature)

And whereas the said sentence has been duly confirmed by (3) as required by law (4).....

This is to require and authorise you to receive the said (Name).....into your custody in the said prison as by law is required, together with this warrant, until he shall be delivered over by you with the said warrant to the proper authority and custody for the purpose of undergoing the aforesaid sentence of imprisonment for life. The aforesaid sentence has effect from the (5)

The confirming authority has recommended that while undergoing imprisonment in the civil prison, the prisoner be placed in division/class A (or '1)/B (or 11)/C (or III), and if there are only two divisions/classifications in the civil prison, he be placed in division/class A (or I)/B (or II)⁷

Given under my hand atthisday of20.....

Unit Stamp Signature (6)

(1) Enter name of prison.

(2) General or Summary General.

(³) Name and description of confirming authority.

(⁴) Add if necessary "with a remission of....."

(⁵) Enter date on which the original sentence was signed.

(⁶) Signature, of Commanding Officer of prisoner or other prescribed officer—See Rule 144.

(⁷) Strike out whichever is not applicable.

Form G. 5

Warrant for committing a person sentenced to death by a court-martial to the custody of an air force, military or civil prison or air force or military detention barrack pending confirmation or the carrying out of the sentence (rule 147 of the Air Force Rules, 1969).

To

The Superintendent/Commandant

(¹)

Whereas at a (²) Court—martial held at (³) on the..... day of..... 20...(Number)..... (Rank).....(Name).....of the (Unit).....

was convicted of the following offence(s), that is to say (⁴).....

And whereas the said (²) court-martial on the..... day of 20..... passed sentence of death on the said (name)

This is to require and authorise you to receive and hold the said (name).....into your custody in the (¹) as by law is required, together with this warrant, until such time as a further warrant in respect of the said (name)..... shall be issued to you.

Given under my hand at this the..... day of..... 20.....

Unit Stamp Signature (⁵)

(¹) Enter name of prison or detention barrack.

(²) Enter "General" or "Summary General".

(³) Enter the name of place where trial was held.

(⁴) Here briefly set out the offences and the relevant sections of the Air Force Act, 1950.

(⁵) Signature of the commanding officer.

Form G.6

Warrant to obtain person sentenced to death from air force, military or civil prison or air force or military detention barrack to carry out such sentence (Air Force Rule 150).

To

The Superintendent/Commandant.

(¹)

Whereas No.....(Rank).....(Name).....of the (unit).....was by a (²)court-martial held at place.....on the day of.....20....., was convicted of the offence(s) of (³) and by a sentence passed on theday of..... 20....., sentenced to suffer death;

And whereas the said sentence having been duly confirmed by (⁴)..... as by law required, a warrant to carry out the said sentence has been issued to me;

And whereas the aforesaid person under sentence is held in your custody in the said (³) under a warrant issued by (³)

This is to require and authorise you to deliver forthwith the said (name) to the officer/warrant officer/non-commissioned officer bringing this warrant.

Given under my hand at.....this.....day of20.....

(Unit Stamp) Signature (⁶)

(¹) Enter name of the prison or detention barrack.

(²) Enter "General" or "Summary General".

(³) Here briefly set out the offences and the relevant section of the Air Force Act, 1950.

(⁴) Name and designation or confirming authority.

(⁵) Enter name and designation of officer who signed original warrant.

(⁶) Signature, name and designation of the provost-marshal or other officer nominated in

the death warrant for carrying out the sentence of death.

Form G. 7
Death Warrant (rule 149)
PART I

To

(¹)

Whereas (number)..... rank.....

(Name)..... of

(Unit).....

was by a (²)

court—martial held at (Place)

convicted of the offence (s) of (³)

and by a sentence passed on the

day of20.....sentenced to.....

suffer death by (⁴).....

And whereas in accordance with the Air Force Act, 1950, the finding and sentence of .the said court-martial have been confirmed and promulgated.

And whereas I am satisfied, having regard to the provisions of rule 148 of the Air Force

Rules, 1969, that the sentence of death may be carried into effect.

Now, therefore, I hereby order you to carry into effect

the said sentence on the above named (number)

(rank)..... (name)

at by (⁵)

the.....day of

20..... , and for so doing this shall be sufficient warrant.

When the said sentence has been carried into effect the return below shall be completed and the warrant returned to me.

Signed at..... This the day 20

(Signature (⁶)
.....

Rank

Commanding
.....

PART II

Return of warrant

The above sentence passed on (number)

(rank).....(name).....

was carried into effect at (⁷)..... hours on theday of.....

(Signature) (¹)
.....

(Signature) (⁸)
.....

PART III

Certificate of medical officer

I, (⁹)..... a commissioned medical officer in the Armed Forces of India, hereby certify that I have this day examined the body of

(number)..... (rank).....(name).....

..... upon whom sentence of death was this day carried into effect at (7).....and that on examination I found that the said person was dead.

Signed at.....this theday of 20.....

Commissioner
India.

(1) Enter the rank, name and designation of the Provost-marshal or other officer responsible for carrying the sentence of death into effect.

(2) Insert "General" or "Summary General".

(3) Here briefly set out the offences and the relevant sections of the Air Force Act, 1950.

(4) Insert "being shot to death" or "being hanged by the neck until he be dead".

(5) Insert "shooting" or "hanging".

(6) Signature of the officer issuing the warrant under rule 149 of the Air Force Rules, 1969.

(7) Insert the name and address of the prison or establishment or description of the place where the sentence of death was carried into effect.

(8) Signature of the officer nominated under rule 150(2) (c) of the Air Force Rules, 1969.

(9) Rank, name, number and unit of the commissioned medical officer.

Form G.8

Warrant for use when prisoner under a sentence other than of death is to be delivered into military or air force custody (Air Force Act, 1950, section 171).

To the Superintendent/commandant

of the (1).....Prison

Whereas (Number, Rank Name)..... (date) of the

.....Unit is confined in the (1)prison
under a warrant issued by (2)
in pursuance of sentence of (3)
passed upon him by a (4)Court-Martial held at
on;and whereas (5) has in the exercise
of the powers conferred upon him by the Air Force Act, 1950, passed the following order
regarding the aforesaid sentence, that is to say—

(6)

.....

.....T

This is to require and authorise you to forthwith deliver said
(Name)..... to the officer or non-commissioned officer bringing this
warrant.

Given under my hand at.....this the day
of.....20.....

Unit Stamp Signature (7).....

(1) Enter name of civil, military or air force prison.

(2) Enter name or designation of officer who signed original warrant.

(3) Enter original sentence (if this was reduced by the Confirming Officer or other superior authority the sentence should be entered thus— "2 years" rigorous imprisonment reduced by Confirming Officer to 1 year").

(4) General, District or Summary General.

(5) Name and designation of authority issuing order.

(6) Order to be set out, in full.

(7) Signature of prescribed officer. See rule 145

Form G.9

Warrant for use when a prisoner under sentence other than of death is pardoned or his trial set aside, or when the whole sentence, or the unexpired portion thereof is remitted (Air Force Act, 1950, section 171).

To the Superintendent/Commandant

.....of the (1))
.....Prison.

Whereas (Number, Rank, Name)..... (date) of the..... Unit is confined in the (1)..... prison under a warrant issued by (2)..... in pursuance of a sentence of (3)..... passed upon him by a (4)..... Court-Martial held at.....on..... and whereas (5)..... has, in the exercise of the powers conferred upon him by the Air Force Act, 1950 passed the following order regarding the aforesaid sentence, that is to say-

(6)
.....
.....

This is to require and authorise you to forthwith discharge the said (Name).....from your custody unless he is liable to be detained for some other cause; and for your so discharging him this shall be your sufficient warrant.

Given under my hand at.....this the.....day of.....20..,

Unit Stamp Signature (7).....

- (1) Enter name of civil, military or air force prison.
- (2) Enter name or designation of officer who signed original warrant.
- (3) Enter original sentence (if this was reduced by the Confirming Officer or other superior authority the sentence should be entered thus— "2 years' rigorous imprisonment reduced by the Confirming Officer to 1 year").
- (4) General, District or Summary General.
- (5) Name and designation of authority pardoning prisoner, mitigating sentence or setting aside trial.
- (6) Order to be set out in full.
- (7) Signature of prescribed officer - See rule 145.

Form G.10

Warrant for use when a sentence of rigorous or simple imprisonment is reduced by

superior authority or when one of imprisonment for life is commuted to one of rigorous or simple imprisonment (Air Force Act, 1950, section 171).

To the Superintendent/Commandant

.....of the (1))
.....Prison.

Whereas (Number, Rank, Name)..... (date) of the..... Unit is confined in the (1)..... prison under a warrant issued by (2)..... in pursuance of a sentence of (3) passed upon him by a (4) Court-Martial held aton and whereas (5))..... has, in the exercise of the powers conferred upon him by the Air Force Act, 1950 passed the following order regarding the aforesaid sentence, that is to say-

(6)
.....
.....

This is to require and authorise you to keep the said (Name)..... in your custody together with this warrant and there to carry into execution the punishment of rigorous / simple imprisonment under the said order according to law. And this is further to require and authorise you to return to me the original warrant of commitment in lieu where of this warrant is issued. the period of such rigorous/simple imprisonment will reckon from the (7).....

Given under my hand at.....this the.....day of..... 20

Unit Stamp Signature(8).....

-
- (1) Enter name of civil, military or air force prison.
 - (2) Enter name or designation of officer who signed original warrant.
 - (3) Enter original sentence (if this was reduced by the Confirming Officer or oth superior authority the sentence should be entered thus- "2 years' rigoro imprisonment reduced by Confirming Officer to 1 year").
 - (4) General, District or Summary General.
 - (5) Name and designation of authority reducing/commuting sentence.
 - (6) Order to be set out in full.

(7) Enter date on which original sentence was signed.

(8) Signature of prescribed officer - See rule 145

Form G.11

Warrant to obtain into air force custody person sentenced to death from air force, military or civil prison or an force or military detention barrack for a purpose other than carrying out the sentence of death (Rule 151 of the Air Force Rules, 1969).

To

The Superintendent/Commandant

(1)

Whereas (number).....(rank).....
(name).....of the (unit) having been
convicted by a (2)court-martial held at
(place).....on theday of.....20.....

and sentenced by the said court martial to suffer death is held in your custody in the said
(1), under a warrant issued by (4
).....

And whereas (5)..... has in exercise of the powers
conferred upon him by the Air Force Act, 1950 passed the following order regarding the
aforesaid sentence, that is to say—

This is to require and authorise you to forthwith deliver the said (name)..... to
the officer/warrant officer or non commissioned officer bringing this warrant.

Given under my hand at..... this the day of
.....20.....

Unit Stamp Signature(7).....

(1) Enter name of the prison or detention barrack.

(²) Enter "General" or "Summary General".

(³) Here briefly set out the offences and the relevant sections of the Air Force Act, 1950.

(⁴) Enter name or designation of officer who signed original warrant.

(⁵) Name and designation of the authority issuing order.

(⁶) Order to be set out in full.

(⁷) Signature of Commanding Officer.

Form G.12

Warrant for use when a person sentenced to death is pardoned or his trial is set aside, or when the sentence of death is not confirmed or is remitted (rule 151 of the Air Force Rules, 1969).

To

The Superintendent/Commandant

(¹)

Whereas (number).....(rank).....
(name).....of the (unit) having been
convicted by a (²)court-martial held at
(place).....on theday of.....20.....

and sentenced by the said court martial to suffer death is held in your custody in the said
(¹)....., under a warrant issued by (⁴)
.....

And whereas (⁵).....has in exercise of the
powers conferred upon him by (⁶)..... passed the following
order that is to say:

(⁷)

This is to require and authorise you to forthwith discharge the said (name)
..... from your custody unless he is liable to be detained for some other
cause; and for your so discharging him this shall be your sufficient warrant.

Given under my hand atthis
the.....day of.....20.....

Unit Stamp (Signature)⁽⁸⁾.....

(1) Enter name of the prison or detention barrack.

(2) Enter "General" or "Summary General".

(3) Here briefly set out the offences and the relevant sections of the Air Force Act, 1950.

(4) Enter name and designation of officer who signed original warrant.

(5) Enter name or designation of the confirming authority or the authority pardoning or remitting the sentence of death, or setting aside the trial.

(6) Enter the section and the Act, or the article of the Constitution under which the order has been passed.

(7) Order to be set out full.

(8) Signature, rank name and designation of the Commanding Officer.

Form G.13

Warrant for, use when sentence of death is commuted to imprisonment (including life imprisonment or the sentence of death or imprisonment including life imprisonment) is commuted to detention to be served at same place (Air Force Act, 1950, section 171).

To

The Superintendent/Commandant

(1).....

Whereas (number).....(rank).....(name).....(Unit).....having been convicted by a⁽²⁾.....court-martial held at (place).....on the.....day of20.....of the offence(s) of ⁽³⁾..... and sentenced by the court - martial to⁽⁴⁾..... is held in your custody in the said (1)..... under a warrant issued by ⁽⁵⁾.....

And whereas ⁽⁶⁾..... has, in exercise of powers conferred upon him by the Air Force Act, 1950 passed the following regarding the aforesaid sentence, that is to say ⁽⁷⁾.....

.....
This is to require and authorise you to keep the said (name)in your custody together with this warrant, and there to carry into execution the punishment of (8) under the said according to law, And this is further to require and authorise you to return to me the original warrant of commitment. in lie whereof this warrant is issued. The period of such (9) will reckon from the (10)day of20.....

To

The Superintendent/Commandant

(1).....

Whereas (number).....(rank).....(name).....(Unit).....having been convicted by a(2)court-martial held at (place).....on the.....day of20.....of the offence(s) of (3) and sentenced by the court - martial to(4) is held in your custody in the said (1) under a warrant issued by (5)

And whereas (6)has, in exercise of the power conferred upon him by the Air Force Act, 1950 passed the following order regarding the aforesaid sentence, that is to say (7) This is to require and authorise you to keep the said (name)..... in your custody together with this warrant In the said(1) as by law is required until he shall be delivered over by you with the said warrant to the proper authority and custody for the purpose of undergoing the punishment of (8) under the said order. And this is further to require and authorise you to return to me the original Warrant of commitment in lieu whereof this warrant is issued. The period of such (9) will reckon from the (10) day of.....20

Given under my hand at.....this the..... day of.....20

Unit Stamp Signature(11).....

(1) Enter name of the prison or detention barrack.

(2) Enter "General", "District" or "Summary General".

(3) Here briefly set out the offences and the relevant sections of the Air Force Act, 1950.

(⁴) Enter original sentence, e.g., death, life Imprisonment, rigorous/simple imprisonment for 2 years, etc., (if the original sentence of imprisonment was reduced by the confirming or other superior authority, the sentence should be entered thus - "2 years' rigorous imprisonment reduced by the confirming officer to 1 year").

(⁵) Enter name or designation of officer who signed original warrant.

(⁶) Enter name and designation of the authority committing the sentence.

(⁷) Order to be set out in full.

(⁸) Enter "imprisonment for life", "rigorous / simple imprisonment for..... " or "detention for "as the case may be.

(⁹) Enter "life imprisonment", "imprisonment" or "detention" as the case may be.

(¹⁰) Enter date on which original sentence was signed.

(¹¹) Signature of Commanding Officer or prescribed officer

(See rules 145 and 151 of the Air Force Rules, 1969).

Form G.14

Warrant for use when sentence of death is commuted to imprisonment (including life imprisonment) or the sentence of death or imprisonment (including life imprisonment) is commuted to detention to be served at a different place (Air Force Act, 1950, section 171).

(⁵) Enter name or designation of officer who signed original warrant.

(⁶) Enter name and designation of the authority commuting the sentence.

(⁷) Order to be set out in full.

(⁸) Enter "imprisonment for life", or "rigorous/simple imprisonment for.....", or "detention for..... ", as the case may be.

(⁹) Enter -"life imprisonment", "imprisonment" or "detention", as the case may be.

(¹⁰) Enter date on which original sentence is signed.

(¹¹) Signature of Commanding Officer or prescribed officer.

(See Rules 145 and 151)

Appendix 'A'

**(Refers to
Notes on AF
Law Chap 4
Para 1)**

STATEMENT OF OFFENCES

SECTION 34

**OFFENCES IN RELATION TO THE ENEMY AND
PUNISHABLE WITH DEATH**

(a)

Shamefully	~ abandoning a ~ delivering up a	~ garrison ~ fortress ~ post ~ place ~ guard	~ committed to his charge. ~ which it was his duty to defend.
------------	-------------------------------------	--	--

(b)

Using means to	~ compel ~ induce	~ a commanding officer ~ other person	~ to abandon a ~ shamefully to deliver up a	~ garrison ~ fortress ~ post ~ place	~ committed to his charge. ~ which it was his duty to defend.
----------------	----------------------	--	--	---	--

Intentionally using means to	~ compel ~ induce	~ a person subject to	~ military ~ naval ~ air force	~ law to abstain from acting against the enemy.
	~ discourage	~ a person subject to	~ military ~ naval ~ air force	~ law from acting against the enemy.

(c)

In the presence of the enemy	~ shamefully casting away his	~ arms. ~ ammunition ~ tools. ~ equipment.
	~ misbehaving in such manner as to show cowardice.	

(d)

Treacherously	~ holding correspondence with ~ communicating intelligence to	~ the enemy. ~ a person in arms against the Union.
---------------	--	---

(e)

Assisting the enemy with	<ul style="list-style-type: none"> ~ money. ~ arms. ~ ammunition ~ stores. ~ supplies.
--------------------------	---

(f)

Treacherously Through cowardice	~ sending a flag of truce to the enemy.
------------------------------------	---

(g)

In time of war	~ intentionally occasioning a false alarm in	<ul style="list-style-type: none"> ~ section. ~ camp. ~ quarters.
During an air operation	~ spreading reports calculated to create	<ul style="list-style-type: none"> ~ alarm. ~ despondency.

(h)

In time of action leaving his	<ul style="list-style-type: none"> ~ Commanding Officer ~ post ~ guard ~ piquet ~ patrol ~ party 	<ul style="list-style-type: none"> ~ without being regularly relieved. ~ without leave.
-------------------------------	--	---

(i)

Having been made a prisoner of war voluntarily	~ serving with ~ aiding	~ the enemy.
--	----------------------------	--------------

(j)

Knowingly	~ harbouring ~ protecting	~ an enemy not being a prisoner.
-----------	------------------------------	----------------------------------

(k)

When a sentry, in time of	~ war ~ alarm	~ sleeping upon his post. ~ being intoxicated.
---------------------------	------------------	---

(l)

Knowingly doing an act calculated to imperil the success of the	~ military forces of India. ~ naval forces of India. ~ air forces of India.	
	~ force co-operating with ~ part of forces co-operating with	~ military forces of India. ~ naval forces of India. ~ air forces of India.

(m)

Treacherously Shamefully	~ causing the	~ capture ~ destruction	~ by the enemy of any aircraft belonging to the forces.
-----------------------------	---------------	----------------------------	---

(n)

Treacherously	~ using a false ~ altering an ~ interfering with an	~ air signal.
---------------	--	---------------

(o)

Having been ordered by his superior officer When under order	~ to carry out an air force operation	~ treacherously ~ shamefully	~ failing to use his utmost exertions to carry such orders into effect.
---	--	---------------------------------	---

SECTION 35

OFFENCES IN RELATION TO THE ENEMY AND NOT PUNISHABLE WITH DEATH

(a)

Being taken prisoner	~ by want of due precaution. ~ through disobedience of orders. ~ through wilful neglect of duty.
Having been taken prisoner failing to rejoin his service when able to do so.	

(b)

Without due authority	~ holding correspondence with ~ communicating intelligence to	~ the enemy.
-----------------------	--	--------------

Having come by the knowledge of a	~ correspondence with ~ communication of intelligence to	~ the enemy without due authority willfully omitting to discover it immediately to his	~ commanding or other superior officer.
-----------------------------------	--	--	---

(c)

Without due authority sending a flag of truce to the enemy.

(d)

Negligently causing the	~ capture ~ destruction	~ by the enemy of an aircraft belonging to the Government.
-------------------------	----------------------------	--

(e)

Having been ordered by his superior officer When under orders	~ to carry out any war like operation in the air	~ negligently ~ through default	~ failing to use his utmost exertion to carry such orders into effect.
--	--	------------------------------------	--

SECTION 36

OFFENCE PUNISHABLE MORE SEVERELY ON ACTIVE SERVICE

THAN AT OTHER TIMES -

(a)

When on active Service	<ul style="list-style-type: none"> ~ forcing a safeguard. ~ forcing a sentry. ~ using criminal force to a sentry.
------------------------	--

(b)

When on active service	~ breaking into a	<ul style="list-style-type: none"> ~ house ~ other place 	~ in search of plunder.
------------------------	-------------------	--	-------------------------

(c)

When a sentry (on active Service)	<ul style="list-style-type: none"> ~ sleeping upon his post. ~ being intoxicated.
-----------------------------------	---

(d)

(When on active service) leaving his	<ul style="list-style-type: none"> ~ guard ~ piquet ~ patrol ~ post 	~ without orders from his superior officer.
--------------------------------------	---	---

(e)

When on active service	<ul style="list-style-type: none"> ~ intentionally ~ through neglect 	<ul style="list-style-type: none"> ~ occasioning a false alarm in 	<ul style="list-style-type: none"> ~ camp. ~ garrison. ~ quarter.
When on active service	~ spreading reports calculated to create unnecessary	<ul style="list-style-type: none"> ~ alarm. ~ despondency. 	

(f)

When on active service	~ making known	~ parole ~ watchword ~ countersign	~ to a person not entitled to receive it.
When on active service	~ knowingly giving a	~ parole ~ watchword ~ countersign	~ different from what he received.

(g)

When on active service	~ without due authority	~ altering ~ interfering with	~ an air signal.
------------------------	-------------------------	----------------------------------	------------------

SECTION 37

MUTINY

(a)

Beginning Inciting Causing	~ a mutiny	~ in the ~ in any force co-operating with the	~ military ~ naval ~ air	~ force of India.
----------------------------------	------------	--	--------------------------------	-------------------

Conspiring with	~ another person to cause ~ other persons to cause	~ a mutiny	~ in the ~ in any force co-operating with the	~ military ~ naval ~ air	~ force of India.
-----------------	---	------------	--	--------------------------------	-------------------

(b)

Joining in a mutiny	~ in the ~ in any force co-operating with the	~ military ~ naval ~ air	~ force of India.
---------------------	--	--------------------------------	-------------------

(c)

Being present in a mutiny	~ in the ~ in any forces co-operating with the	~ military forces of India ~ naval forces of India ~ air forces of India	~ does not use his utmost endeavours to suppress the same.
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(d)

Knowing	~ the existence of	~ a mutiny ~ an intention to commit a mutiny			~ in the ~ in any forces co-operating with the	~ military ~ naval ~ air	~ forces of India	~ does not without delay give information thereof to his commanding or other superior officer.
Having reason to believe in		~ a conspiracy with	~ another person ~ other person	~ to cause a mutiny				

(e)

Endeavouring to seduce a person in the	~ military ~ naval ~ air	~ forces of India from his	~ duty. ~ allegiance to the union.
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SECTION 38

DESERTION AND AIDING DESERTION

(a)

(When on active service)	~ deserting the service.
(When under orders for active service)	~ attempting to desert the service.

(b)

Harbouring a person subject to the AF Act, 1950 knowing him to be a deserter.

(c)

Being cognizant of	~ desertion ~ attempt at desertion	~ of a person subject to AF Act, 1950 not forthwith	~ giving notice to his own or some other superior officer. ~ taking steps in his power to cause such person to be apprehended.
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SECTION 39

ABSENCE WITHOUT LEAVE

(a) Absenting himself without leave.

(b) Without sufficient cause overstaying leave granted to him.

(c)

Being on leave of absence and having received information from proper authority that the	~ unit ~ detachment	~ to which he belongs, has been ordered on active service, failing without sufficient cause, to rejoin without delay.
--	------------------------	---

(d)

Without sufficient cause failing to appear at the time fixed at the	~ parade ~ place appointed for	~ exercise. ~ duty.
---	-----------------------------------	------------------------

(e)

When on	~ parade ~ line of march	~ quitting	~ the parade ~ line march	~ without sufficient cause. ~ without leave from his superior officer.
---------	-----------------------------	------------	------------------------------	---

(f)

When	~ in camp ~ elsewhere	~ being found	~ beyond the limits fixed by a ~ in a place prohibited by a	~ general ~ local ~ (other)	~ order.
------	--------------------------	---------------	--	-----------------------------------	----------

(g)

Without	~ leave from his superior officer ~ due cause	~ absenting himself from a school after being duly ordered to attend there.
---------	--	---

SECTION 40

STRIKING OR THREATENING SUPERIOR OFFICER

(a)

(When on active service)*	~ Using criminal force to ~ Assaulting	~ his superior officer (being in execution of his office)*
---------------------------	---	--

(b)

(When on active service)*	using threatening language to his superior officer (being in the execution of his office).*
---------------------------	---

(c)

(When on active service)*	using insubordinate language to this superior officer (being in the execution of his office)*.
---------------------------	--

* The bracketed portions are to be included only if applicable.

SECTION 41

DISOBEDIENCE TO HIS SUPERIOR OFFICER

(1)

Disobeying, in such manner as to show wilful defiance of authority a lawful command given personally by his superior officer in the execution of his office.

(2)

(When on active service)* disobeying a lawful command given by his superior officer.

*The bracketed portion is to be included only if applicable.

SECTION 42

INSUBORDINATION AND OBSTRUCTION

(a)

When concerned in a	~ quarrel ~ affray ~ disorder	~ refusing to obey ~ using criminal force to ~ assaulting	~ an officer who ordered him into arrest.
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(b)

Using criminal force to Assaulting	~ a person in whose custody he was lawfully placed.
------------------------------------	---

(c)

Resisting an escort whose duty it was	~ to apprehend him ~ to have him in charge.
---------------------------------------	--

(d)

Breaking out of	~ Barracks. ~ camps. ~ quarters.
-----------------	--

(e)

Neglecting to obey a	~ general ~ local ~ other	~ order.
----------------------	---------------------------------	----------

(f)

Impeding	~ the provost marshal. ~ a person lawfully acting on behalf of the provost marshal.
Refusing, when called upon, to assist in the execution of his duty	~ a provost marshal. ~ a person lawfully acting on behalf of the provost marshal.

(g)

Using criminal force to Assaulting	~ a person bringing	~ provisions ~ supplies	~ to the forces.
------------------------------------	---------------------	----------------------------	------------------

SECTION 43

FRAUDULENT ENROLMENT

(a)

Without having obtained a regular discharge from the air force	~ enrolls himself in ~ enters	~ the air force.			
With out having fulfilled the conditions enabling him to	~ enroll ~ enter	~ enrolling himself in ~ entering	~ a part of the	~ military ~ naval	~ forces of India.

(b)

Being concerned in the enrolment in any part of the force of a person when he	~ knew ~ had reason to believe.	~ such person to be so circumstanced that by enrolling he committed an offence against the AF Act.
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SECTION 44

FALSE ANSWERS ON ENROLMENT

Making at the time of enrolment, a wilfully false answer to a question set forth in the prescribed form of enrolment which was put to him by the enrolment officer before whom he appeared for the purpose of being enrolled.

SECTION 45

UNBECOMING CONDUCT

Behaving in a manner unbecoming the position and character of	~ an officer. ~ a warrant officer.
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SECTION 46

CERTAIN FORMS OF DISGRACEFUL CONDUCT

(a)

Disgraceful conduct of	~ a cruel ~ an indecent ~ an unnatural	~ kind.
------------------------	--	---------

(b)

~ Malingering.		
~ Feigning ~ Producing	~ disease ~ infirmity	~ in himself.
(3) Intentionally	~ delaying his cure. ~ aggravating his disease. ~ aggravating his infirmity.	

(c)

Voluntarily causing hurt to himself with intent to render himself unfit for service.
Voluntarily causing hurt to a person with intent to render that person unfit for service.

SECTION 47

ILL TREATING A SUBORDINATE

~ Using criminal force to ~ Ill treating	~ a person subject to the AF Act being his subordinate in	~ rank. ~ position.
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SECTION 48

INTOXICATION

(When on active service) Intoxication.
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SECTION 49

PERMITTING ESCAPE OF PERSON IN CUSTODY

(a)

When in command of a	~ guard	~ wilfully	~ releasing without proper authority a person committed to his charge.	
	~ piquet	~ without reasonable excuse		
	~ patrol			
	~ post	~ refusing to receive a	~ a prisoner ~ a person	~ committed to his charge.

(b)

~ Willfully		~ committed his charge.
~ Without reasonable excuse	~ allowing to escape a person	~ whom it was his duty to keep. ~ whom it was his duty to guard.

SECTION 50

IRREGULARITY IN CONNECTION WITH ARREST OR CONFINEMENT

(a)

Unnecessarily detaining a person in	~ arrest	~ without bringing him to trial.
	~ confinement	
Unnecessarily failing to bring a person's	~ arrest	~ before the proper authority for investigation.
	~ confinement	

(b)

After having committed a person to air force custody failing without reasonable cause to deliver	~ at the time of committal or as soon as practicable, and in any case within forty eight hours after such committal to the	~ officer ~ person	~ into whose custody the person arrested was committed, an account in writing of the offence with which the person so committed was charged.
--	--	-----------------------	--

SECTION 51

ESCAPE FROM CUSTODY

Being in lawful custody	~ escaping ~ attempting to escape.
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SECTION 52

OFFENCES IN RESPECT OF PROPERTY

(a)

Committing theft of property belonging to	~ the Government.	
	~ a military	~ mess.
	~ a naval	~ band.
	~ an air force	~ institution.
	~ a person subject to Military Law. ~ a person subject to Naval Law. ~ a person subject to Air Force Law.	

(b)

Dishonestly	~ misappropriating ~ converting to his own use	~ property belonging to	~ the Government.	
			~ a military ~ a naval ~ an air force	~ mess. ~ band. ~ institution.
			~ a person subject to	~ military law. ~ naval law. ~ air force law.

(c)

Committing criminal breach of trust in respect of property belonging to	~ the Government.	
	~ a military ~ a naval ~ an air force	~ mess. ~ band. ~ institution.

Committing criminal breach of trust in respect of property belonging to	~ a person subject to	~ military law. ~ naval law. ~ air force law.
---	-----------------------	---

(d)

Dishonestly	~ receiving ~ retaining	~ property in respect of which an offence under Sec 52	~ (a) ~ (b) ~ (c)	~ has been committed	~ knowing ~ having reason to believe	~ the commission of such offence.
-------------	----------------------------	--	-------------------------	----------------------	---	-----------------------------------

(e)

Wilfully	~ destroying ~ injuring	~ property of the Government entrusted to him.
----------	----------------------------	--

(f)

Such an offence as is mentioned in clause(f) of section 52 of the AF Act, 1950	~ with intent to	~ defraud. ~ cause wrongful gain to a person. ~ cause wrongful loss to a person.
--	------------------	--

SECTION 53

EXTORTION AND CORRUPTION

(a)

Committing extortion.

(b)

Exacting without proper authority	~ money ~ provision ~ service	~ from a person.
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SECTION 54

MAKING AWAY WITH EQUIPMENT

(a)

Making away with	~ arms, ~ ammunition, ~ equipment,	~ the property of the Government	~ issued to him for his use. ~ entrusted to him.
Being concerned in making away with	~ Instruments, ~ tools, ~ clothing, ~ other things,		

(b)

Losing by neglect	~ arms, ~ ammunition, ~ equipment, ~ Instruments, ~ tools, ~ clothing, ~ other things,	~ being the property of the Government	~ issued to him for his use. ~ entrusted to him.
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(c)

~ Selling		
~ Pawning	~ a medal	
~ Destroying	~ a decoration	~ granted to him.
~ Defacing		

SECTION 55

INJURY TO PROPERTY

(a)

~ Wilfully ~ Without reasonable excuse	~ destroying ~ injuring	~ arms, ~ ammunition, ~ equipment, ~ Instruments, ~ tools, ~ clothing, ~ other things,	~ being the property of the Government	~ issued to him for his use. ~ entrusted to him.
		~ property belonging to	~ a military ~ a naval ~ an air force	~ mess. ~ band. ~ institution.
			~ a person subject to military law. ~ a person subject to naval law. ~ a person subject to AF law.	
			~ a person	~ serving with ~ attached

				to	
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(b)

~ Wilfully ~ Without reasonable excuse	~ committing an act causing	~ damage to ~ destruction of	~ property of the Government by fire.
~ Wilfully ~ Without reasonable excuse		~ killing ~ injuring ~ making away with ~ ill treating ~ losing	~ an animal entrusted to him

SECTION 56

FALSE ACCUSATIONS

(a)

Making a false accusation against a person subject to the Air Force Act, 1950	~ knowing ~ having reason to believe	~ such accusation to be false.
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(b)

In making a complaint under	~ Sec 26 ~ Sec 27	~ of the Air force Act, 1950	~ making a statement affecting the character of a person subject to the Air Force act, 1950	~ knowing ~ having reason to believe	~ such statement to be false.
In making a complaint under	~ Sec 26 ~ Sec 27	~ of the Air force Act, 1950	~ knowingly and wilfully suppressing	~ a material fact. ~ material facts.	

SECTION 57

FALSIFYING OFFICIAL DOCUMENTS AND FALSE DECLARATION

(a)

In a	~ report	~ made by him	~ knowingly making ~ being privy to the making of	~ a false statement. ~ a fraudulent statement.
	~ return	~ signed by him		
	~ list	~ of the contents of which it was his duty to ascertain the accuracy		
	~ certificate			
	~ book			
	~ other document			

(b)

In a	~ report ~ return ~ list ~ certificate ~ book ~ other documents	~ made by him ~ signed by him ~ of the contents of which it was his duty to ascertain the accuracy.	~ knowingly making ~ being privy to the making of	~ an omission with intent to defraud.
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(c)

Knowingly, and with intent to	~ injure a person ~ defraud	~ suppressing ~ defacing ~ altering ~ making away with	~ a document which it was his duty to	~ preserve. ~ produce.
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(d)

Being his official duty to make a declaration respecting a matter, knowingly making a false declaration.

(e)

~ Obtaining for himself	~ a pension ~ an allowance	~ by a false statement which he	~ knew to be false.	
			~ believed to be false. ~ did not believe to be true.	
~ Obtaining for a person	~ an advantage ~ a privilege	~ by making a false entry in a		~ book ~ record.
		~ by making a document containing a false statement.		
		~ by omitting to make a	~ true entry ~ document containing a true statement.	

SECTION 58

SIGNING IN BLANK AND FAILURE TO REPORT

(a)

When signing a document relating to	<ul style="list-style-type: none"> ~ pay ~ arms ~ ammunition ~ equipment ~ clothing ~ supplies ~ stores ~ a property of the Government. 	~ fraudulently leaving in blank a material part for which his signature was a voucher.
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(b)

Refusing to	~ make a	~ report	~ which it was his duty to	~ make.
Omitting by culpable neglect to	~ send a	~ return		~ send.

SECTION 59

OFFENCES RELATING TO COURT MARTIAL

(a)

Being duly	<ul style="list-style-type: none"> ~ summoned ~ ordered to attend 	~ as a witness before a Court Martial	<ul style="list-style-type: none"> ~ wilfully ~ without reasonable excuse 	~ making default in attending.
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(b)

Refusing to	<ul style="list-style-type: none"> ~ take an oath legally required by a court martial to be taken. ~ make an affirmation legally required by a court martial to be made.
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(c)

Refusing to	~ produce ~ to deliver	~ a document in his	~ power ~ control	~ legally required by a court martial to be	~ produced by him. ~ delivered by him.
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(d)

Refusing when a witness to answer a question which he was by law bound to answer.

(e)

Being guilty of contempt of court martial by	~ using	~ insulting ~ threatening	~ language.
	~ causing	~ an interruption ~ a disturbance	~ in the proceedings of such Court.

SECTION 60

FALSE EVIDENCE

Having been duly	~ sworn before ~ affirmed before	~ a court martial ~ a court competent under the Air Force Act, 1950 to administer an oath or affirmation	~ making a false statement which he	~ knew to be false. ~ believed to be false. ~ did not believe to be true.
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SECTION 61

UNLAWFUL DETENTION OF PAY

After receiving the pay of a person subject to the AF Act, 1950 unlawfully	~ detaining ~ refusing to pay	~ the same when due.
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SECTION 62

OFFENCES IN RELATION TO AIRCRAFT AND FLYING

(a)

Wilfully Without reasonable excuse	~ damaging ~ destroying ~ losing	~ an aircraft ~ aircraft material	~ belonging to the Government.
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(b)

An act Neglect	~ likely to cause	~ damage to ~ destruction to ~ loss of	~ an aircraft ~ aircraft material	~ belonging to the Government.
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(c)

Without lawful authority	~ disposing of	~ aircraft ~ aircraft material	~ belonging to the Government.
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(d)

An act in Neglect in	~ flying aircraft ~ the use of aircraft ~ relation to aircraft ~ relation to aircraft material	~ causing ~ likely to cause	~ loss of life. ~ bodily injury to a person.
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(e)

During a state of war	~ willfully and without proper occasion	~ causing the	~ sequestration	~ by ~ under the authority of	~ a neutral state of an aircraft belonging to the Government.
	~ negligently		~ destruction in		

SECTION 63

OTHER OFFENCES RELATING TO ACT OF AIRCRAFT AND FLYING

(a)

Signing a certificate in relation to	~ an aircraft ~ aircraft material	~ belonging to the Government without ensuring the accuracy thereof.
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(b)

Being the pilot of an aircraft belonging to the Government, flying it	~ at a height less than such height as is specified by the CAS.
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(c)

Being the pilot of an aircraft belonging to the Government, flying it so as to	~ cause ~ be likely to cause	~ unnecessary annoyance to any person.
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SECTION 64

DISOBEDIENCE OF LAWFUL COMMAND OF CAPTAIN OF AIRCRAFT

(a)

Being in an aircraft, disobeying a lawful command given by the captain of the aircraft, as respects a matter	~ relating to flying ~ relating to handling ~ affecting the safety	~ of such aircraft.
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(b)

Being the captain of a glider aircraft towed by another aircraft, disobeying a lawful command given by the captain of the towing aircraft	~ relating to flying ~ relating to handling ~ affecting the safety	~ of such aircraft.
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SECTION 65

VIOLATION OF GOOD ORDER AND DISCIPLINE

~ An Act ~ An omission	~ prejudicial to good order and air force discipline.
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SECTION 66

MISCELLANEOUS OFFENCES

(a)

When in command	~ at a post ~ on the march	~ receiving a complaint that a person under his command has	~ beaten ~ maltreated ~ oppressed	~ a person	~ and failing to have due reparation made to the injured person.
			~ disturbed	~ a fair ~ a market	~ and failing to report the case to the proper authority.
			~ committed	~ a riot ~ a trespass	

(b)

By defiling a place of worship	~ intentionally	~ insulting the religion	~ of a person.
By (otherwise)		~ wounding the religious feelings	

(c)

Attempting to commit suicide by doing an act towards the commission of the same.
--

(d)

Being below the rank of Warrant Officer, when off duty, appearing	~ without proper authority	~ in ~ about	~ camp ~ cantonment	~ carrying	~ a rifle. ~ a sword. ~ (other offensive weapon).
		~ in ~ about ~ when going to ~ when returning from	~ a town ~ a bazaar		

(e)

Accepting	~ for himself ~ for any other person	~ a gratification as a	~ motive for procuring	~ the enrolment of a person.	~ for a person in the service.
Obtaining			~ reward for procuring	~ leave of absence	
Agreeing to accept				~ promotion ~ an advantage ~ an indulgence	
Attempting to obtain					

(f)

Committing an offence against the	~ property ~ person	~ of an inhabitant of ~ of a resident in	~ the country in which he was serving.
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SECTION 67

ATTEMPT

Attempting to (specify offence attempted) and doing an act towards the commission of the same.

SECTION 68

ABETMENT OF OFFENCES THAT HAVE BEEN COMMITTED

Abetment of an offence specified in Section (specify the Section) of the Air Force Act, 1950, in consequence of which abetment such offence is committed.

SECTION 69

ABETMENT OF OFFENCE PUNISHABLE WITH DEATH AND NOT COMMITTED

Abetment of an offence, punishable with death under Section [34, 37 or 38(1)] of the Air Force Act, 1950, in consequence of which abetment such offence is not committed.

SECTION 70

ABETMENT OF OFFENCE PUNISHABLE WITH IMPRISONMENT

AND NOT COMMITTED

Abetment of an offence specified in Section (specify the section) of the Air Force Act, 1950, and punishable with imprisonment, in consequence of which abetment, such offence is not committed.

SECTION 71

CIVIL OFFENCES

Committing a civil offence, that is to say,	(state the offence as described in Indian Penal Code or other law in force in India), punishable under Section (specify the section) of the Indian Penal Code (or other law as the case may be).
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Appendix 'A'

(Refers to Notes on AF
Law Chap 4 Para 1)

STATEMENT OF OFFENCES

SECTION 34

OFFENCES IN RELATION TO THE ENEMY AND PUNISHABLE WITH DEATH

(a)

Shamefully	~ abandoning a ~ delivering up a	~ garrison ~ fortress ~ post ~ place ~ guard	~ committed to his charge. ~ which it was his duty to defend.
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(b)

Using means to	~ compel ~ induce	~ a commanding officer ~ other person	~ to abandon a ~ shamefully to deliver up a	~ garrison ~ fortress ~ post ~ place	~ committed to his charge. ~ which it was his duty to defend.
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Intentionally using means to	~ compel ~ induce	~ a person subject to	~ military ~ naval ~ air force	~ law to abstain from acting against the enemy.
	~ discourage	~ a person subject to	~ military ~ naval ~ air force	~ law from acting against the enemy.

(c)

In the presence of the enemy	~ shamefully casting away his	~ arms. ~ ammunition ~ tools. ~ equipment.
	~ misbehaving in such manner as to show cowardice.	

(d)

Treacherously	~ holding correspondence with ~ communicating intelligence to	~ the enemy. ~ a person in arms against the Union.
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(e)

Assisting the enemy with	~ money. ~ arms. ~ ammunition ~ stores. ~ supplies.
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(f)

Treacherously Through cowardice	~ sending a flag of truce to the enemy.
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(g)

In time of war	~ intentionally occasioning a false alarm in	~ section. ~ camp. ~ quarters.
During an air operation	~ spreading reports calculated to create	~ alarm. ~ despondency.

(h)

In time of action leaving his	~ Commanding Officer ~ post ~ guard ~ piquet ~ patrol ~ party	~ without being regularly relieved. ~ without leave.
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(i)

Having been made a prisoner of war voluntarily	~ serving with ~ aiding	~ the enemy.
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(j)

Knowingly	~ harbouring ~ protecting	~ an enemy not being a prisoner.
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(k)

When a sentry, in time of	~ war ~ alarm	~ sleeping upon his post. ~ being intoxicated.
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(l)

Knowingly doing an act calculated to imperil the success of the	~ military forces of India. ~ naval forces of India. ~ air forces of India.	
	~ force co-operating with ~ part of forces co-operating with	~ military forces of India. ~ naval forces of India. ~ air forces of India.

(m)

Treacherously Shamefully	~ causing the	~ capture ~ destruction	~ by the enemy of any aircraft belonging to the forces.
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(n)

Treacherously	~ using a false ~ altering an ~ interfering with an	~ air signal.
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(o)

Having been ordered by his superior officer When under order	~ to carry out an air force operation	~ treacherously ~ shamefully	~ failing to use his utmost exertions to carry such orders into effect.
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SECTION 35

OFFENCES IN RELATION TO THE ENEMY AND NOT PUNISHABLE WITH DEATH

(a)

Being prisoner	taken	~by want of due precaution. ~through disobedience of orders. ~through wilful neglect of duty.
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having been taken prisoner failing to rejoin his service when able to do so

(b)

Without due authority	~holding correspondence with communicating intelligence to	~the enemy
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Having come by the knowledge of a	~correspondence with communication of intelligence to	~the enemy without due authority willfully omitting to discover it immediately to his	~commanding or other superior officer
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(c)

Without due authority sending a flag of truce to the enemy.

(d)

Negligently causing the	~capture ~destruction	~by the enemy of an aircraft belonging to the Govt.
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(e)

Having been ordered by his superior officer	~to carry out any war like operation	~negligently ~through default	~failing to use his utmost exertion to carry such orders into effect.
when under orders	in the air		

SECTION 36

OFFENCE PUNISHABLE MORE SEVERELY ON ACTIVE SERVICE

THAN AT OTHER TIMES -

(a)

When on active Service	~ forcing a safeguard. ~ forcing a sentry. ~ using criminal force to a sentry.
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(b)

When on active service	~ breaking into a	~ house ~ other place	~ in search of plunder.
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(c)

When a sentry (on active Service)	~ sleeping upon his post. ~ being intoxicated.
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(d)

(When on active service) leaving his	~ guard ~ piquet ~ patrol ~ post	~ without orders from his superior officer.
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(e)

When on active service	~ intentionally ~ through neglect	~ occasioning a false alarm in	~ camp. ~ garrison. ~ quarter.
When on active service	~ spreading reports calculated to create unnecessary	~ alarm. ~ despondency.	

(f)

When on active service	~ making known	~ parole ~ watchword ~ countersign	~ to a person not entitled to receive it.
When on active service	~ knowingly giving a	~ parole ~ watchword ~ countersign	~ different from what he received.

(g)

When on active service	~ without due authority	~ altering ~ interfering with	~ an air signal.
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SECTION 37

MUTINY

(a)

Beginning Inciting Causing	~ a mutiny	~ in the ~ in any force co-operating with the	~ military ~ naval ~ air	~ force of India.	
Conspiring with	~ another person to cause ~ other persons to cause	~ a mutiny	~ in the ~ in any force co- operating with the	~ military ~ naval ~ air	~ force of India.

(b)

Joining in a mutiny	~ in the ~ in any force co- operating with the	~ military ~ naval ~ air	~ force of India.
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(c)

Being present in a mutiny	~ in the ~ in any forces co- operating with the	~ military forces of India ~ naval forces of India ~ air forces of India	~ does not use his utmost endeavours to suppress the same.
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(d)

Knowing	~ the existence of	~ a mutiny ~ an intention to commit a mutiny			~ in the	~ military	~ forces of India	~ does not without delay give information thereof to his commanding or other superior officer.
Having reason to believe in		~ a conspiracy with	~ another person ~ other person	~ to cause a mutiny	~ in any forces co-operating with the	~ naval ~ air		

(e)

Endeavouring to seduce a person in the	~ military ~ naval ~ air	~ forces of India from his	~ duty. ~ allegiance to the union.
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SECTION 38

DESERTION AND AIDING DESERTION

(a)

(When on active service)	~ deserting the service.
(When under orders for active service)	~ attempting to desert the service.

(b)

Harbouring a person subject to the AF Act, 1950 knowing him to be a deserter.

(c)

Being cognizant of	~ desertion ~ attempt at desertion	~ of a person subject to AF Act, 1950 not forthwith	~ giving notice to his own or some other superior officer. ~ taking steps in his power to cause such person to be apprehended.
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SECTION 39

ABSENCE WITHOUT LEAVE

(a) Absenting himself without leave.

(b) Without sufficient cause overstaying leave granted to him.

(c)

Being on leave of absence and having received information from proper authority that the	~ unit ~ detachment	~ to which he belongs, has been ordered on active service, failing without sufficient cause, to rejoin without delay.
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(d)

Without sufficient cause failing to appear at the time fixed at the	~ parade ~ place appointed for	~ exercise. ~ duty.
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(e)

When on	~ parade ~ line of march	~ quitting	~ the parade ~ line march	~ without sufficient cause. ~ without leave from his superior officer.
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(f)

When	~ in camp ~ elsewhere	~ being found	~ beyond the limits fixed by a ~ in a place prohibited by a	~ general ~ local ~ (other)	~ order.
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(g)

Without	~ leave from his superior officer ~ due cause	~ absenting himself from a school after being duly ordered to attend there.
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SECTION 40

STRIKING OR THREATENING SUPERIOR OFFICER

(a)

(When on active service)*	~ Using criminal force to ~ Assaulting	~ his superior officer (being in execution of his office)*
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(b)

(When on active service)*	using threatening language to his superior officer (being in the execution of his office).*
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(c)

(When on active service)*	using insubordinate language to this superior officer (being in the execution of his office)*.
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* The bracketed portions are to be included only if applicable.

SECTION 41

DISOBEDIENCE TO HIS SUPERIOR OFFICER

(1)

Disobeying, in such manner as to show wilful defiance of authority a lawful command given personally by his superior officer in the execution of his office.

(2)

(When on active service)* disobeying a lawful command given by his superior officer.

*The bracketed portion is to be included only if applicable.

SECTION 42

INSUBORDINATION AND OBSTRUCTION

(a)

When concerned in a	~ quarrel ~ affray ~ disorder	~ refusing to obey ~ using criminal force to ~ assaulting	~ an officer who ordered him into arrest.
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(b)

Using criminal force to Assaulting	~ a person in whose custody he was lawfully placed.
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(c)

Resisting an escort whose duty it was	~ to apprehend him ~ to have him in charge.
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(d)

Breaking out of	~ Barracks. ~ camps. ~ quarters.
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(e)

Neglecting to obey a	~ general ~ local ~ other	~ order.
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(f)

Impeding	~ the provost marshal. ~ a person lawfully acting on behalf of the provost marshal.
Refusing, when called upon, to assist in the execution of his duty	~ a provost marshal. ~ a person lawfully acting on behalf of the provost marshal.

(g)

Using criminal force to Assaulting	~ a person bringing	~ provisions ~ supplies	~ to the forces.
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SECTION 43

FRAUDULENT ENROLMENT

(a)

Without having obtained a regular discharge from the air force		~ enrolls himself in ~ enters	~ the air force.		
With out having fulfilled the conditions enabling him to	~ enroll ~ enter	~ enrolling himself in ~ entering	~ a part of the	~ military ~ naval	~ forces of India.

(b)

Being concerned in the enrolment in any part of the force of a person when he	~ knew ~ had reason to believe.	~ such person to be so circumstanced that by enrolling he committed an offence against the AF Act.
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SECTION 44

FALSE ANSWERS ON ENROLMENT

Making at the time of enrolment, a wilfully false answer to a question set forth in the prescribed form of enrolment which was put to him by the enrolment officer before whom he appeared for the purpose of being enrolled.

SECTION 45

UNBECOMING CONDUCT

Behaving in a manner unbecoming the position and character of	~ an officer. ~ a warrant officer.
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SECTION 46

CERTAIN FORMS OF DISGRACEFUL CONDUCT

(a)

Disgraceful conduct of	~ a cruel ~ an indecent ~ an unnatural	~ kind.
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(b)

~ Malingering.		
~ Feigning ~ Producing	~ disease ~ infirmity	~ in himself.
(3) Intentionally	~ delaying his cure. ~ aggravating his disease. ~ aggravating his infirmity.	

(c)

Voluntarily causing hurt to himself with intent to render himself unfit for service.
Voluntarily causing hurt to a person with intent to render that person unfit for service.

SECTION 47

ILL TREATING A SUBORDINATE

~ Using criminal force to ~ Ill treating	~ a person subject to the AF Act being his subordinate in	~ rank. ~ position.
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SECTION 48

INTOXICATION

(When on active service) Intoxication.

SECTION 49

PERMITTING ESCAPE OF PERSON IN CUSTODY

(a)

When in command of a	~ guard	~ wilfully	~ releasing without proper authority a person committed to his charge.	
	~ piquet	~ without reasonable excuse		
	~ patrol			
	~ post	~ refusing to receive a	~ a prisoner ~ a person	~ committed to his charge.

(b)

~ Willfully		~ committed his charge.
~ Without reasonable excuse	~ allowing to escape a person	~ whom it was his duty to keep. ~ whom it was his duty to guard.

SECTION 50

IRREGULARITY IN CONNECTION WITH ARREST OR CONFINEMENT

(a)

Unnecessarily detaining a person in	~ arrest ~ confinement	~ without bringing him to trial.
Unnecessarily failing to bring a person's	~ arrest ~ confinement	~ before the proper authority for investigation.

(b)

After having committed a person to air force custody failing without reasonable cause to deliver	~ at the time of committal or as soon as practicable, and in any case within forty eight hours after such committal to the	~ officer ~ person	~ into whose custody the person arrested was committed, an account in writing of the offence with which the person so committed was charged.
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SECTION 51

ESCAPE FROM CUSTODY

Being in lawful custody	~ escaping ~ attempting to escape.
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SECTION 52

OFFENCES IN RESPECT OF PROPERTY

(a)

Committing theft of property belonging to	~ the Government.	
	~ a military ~ a naval ~ an air force	~ mess. ~ band. ~ institution.
	~ a person subject to Military Law. ~ a person subject to Naval Law. ~ a person subject to Air Force Law.	

(b)

Dishonestly	~ misappropriating ~ converting to his own use	~ property belonging to	~ the Government.	
			~ a military ~ a naval ~ an air force	~ mess. ~ band. ~ institution.
			~ a person subject to	~ military law. ~ naval law. ~ air force law.

(c)

Committing criminal breach of trust in respect of property belonging to	~ the Government.	
	~ a military ~ a naval ~ an air force	~ mess. ~ band. ~ institution.

Committing criminal breach of trust in respect of property belonging to	~ a person subject to	~ military law. ~ naval law. ~ air force law.
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(d)

Dishonestly	~ receiving ~ retaining	~ property in respect of which an offence under Sec 52	~ (a) ~ (b) ~ (c)	~ has been committed	~ knowing ~ having reason to believe	~ the commission of such offence.
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(e)

Wilfully	~ destroying ~ injuring	~ property of the Government entrusted to him.
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(f)

Such an offence as is mentioned in clause(f) of section 52 of the AF Act, 1950	~ with intent to	~ defraud. ~ cause wrongful gain to a person. ~ cause wrongful loss to a person.
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SECTION 53

EXTORTION AND CORRUPTION

(a)

Committing extortion.

(b)

Exacting without proper authority	~ money ~ provision ~ service	~ from a person.
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SECTION 54

MAKING AWAY WITH EQUIPMENT

(a)

Making away with	~ arms, ~ ammunition, ~ equipment,	~ the property of the Government	~ issued to him for his use.
Being concerned in making away with	~ Instruments, ~ tools, ~ clothing, ~ other things,		~ entrusted to him.

(b)

Losing by neglect	~ arms, ~ ammunition, ~ equipment, ~ Instruments, ~ tools, ~ clothing, ~ other things,	~ being the property of the Government	~ issued to him for his use. ~ entrusted to him.
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(c)

~ Selling		
~ Pawning	~ a medal	
~ Destroying	~ a decoration	~ granted to him.
~ Defacing		

SECTION 55

INJURY TO PROPERTY

(a)

~ Wilfully ~ Without reasonable excuse	~ destroying ~ injuring	~ arms, ~ ammunition, ~ equipment, ~ Instruments, ~ tools, ~ clothing, ~ other things,	~ being the property of the Government	~ issued to him for his use. ~ entrusted to him.	
		~ property belonging to	~ a military ~ a naval ~ an air force	~ mess. ~ band. ~ institution.	
			~ a person subject to military law. ~ a person subject to naval law. ~ a person subject to AF law.		
			~ a person	~ serving with ~ attached to	~ the Air Force.

(b)

~ Wilfully ~ Without reasonable excuse	~ committing an act causing	~ damage to ~ destruction of	~ property of the Government by fire.
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~ Wilfully ~ Without reasonable excuse	~ killing ~ injuring ~ making away with ~ ill treating ~ losing	~ an animal entrusted to him
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SECTION 56

FALSE ACCUSATIONS

(a)

Making a false accusation against a person subject to the Air Force Act, 1950	~ knowing ~ having reason to believe	~ such accusation to be false.
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(b)

In making a complaint under	~ Sec 26 ~ Sec 27	~ of the Air force Act, 1950	~ making a statement affecting the character of a person subject to the Air Force act, 1950	~ knowing ~ having reason to believe	~ such statement to be false.
In making a complaint under	~ Sec 26 ~ Sec 27	~ of the Air force Act, 1950	~ knowingly and wilfully suppressing	~ a material fact. ~ material facts.	

SECTION 57

FALSIFYING OFFICIAL DOCUMENTS AND FALSE DECLARATION

(a)

In a	~ report	~ made by him		
	~ return	~ signed by him	~ knowingly making	~ a false statement.
	~ list	~ of the contents of		
	~ certificate	which it was his duty to ascertain the accuracy	~ being privy to the making of	~ a fraudulent statement.
	~ book			
	~ other document			

(b)

In a	~ report	~ made by him		
	~ return	~ signed by him	~ knowingly making	~ an omission with intent to defraud.
	~ list	~ of the contents of		
	~ certificate	which it was his duty to ascertain the accuracy.	~ being privy to the making of	
	~ book			
	~ other documents			

(c)

Knowingly, and with intent to	~ injure a person ~ defraud	~ suppressing ~ defacing ~ altering ~ making away with	~ a document which it was his duty to	~ preserve. ~ produce.
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(d)

Being his official duty to make a declaration respecting a matter, knowingly making a false declaration.

(e)

~ Obtaining for himself ~ Obtaining for a person	~ a pension ~ an allowance	~ by a false statement which he	~ knew to be false.	
			~ believed to be false. ~ did not believe to be true.	
	~ an advantage ~ a privilege	~ by making a false entry in a		~ book ~ record.
		~ by making a document containing a false statement.		
		~ by omitting to make a	~ true entry ~ document containing a true statement.	

SECTION 58

SIGNING IN BLANK AND FAILURE TO REPORT

(a)

When signing a document relating to	~ pay ~ arms ~ ammunition ~ equipment ~ clothing ~ supplies ~ stores ~ a property of the Government.	~ fraudulently leaving in blank a material part for which his signature was a voucher.
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(b)

Refusing to Omitting by culpable neglect to	~ make a ~ send a	~ report ~ return	~ which it was his duty to	~ make. ~ send.
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SECTION 59

OFFENCES RELATING TO COURT MARTIAL

(a)

Being duly	~ summoned ~ ordered to attend	~ as a witness before a Court Martial	~ wilfully ~ without reasonable excuse	~ making default in attending.
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(b)

Refusing to	~ take an oath legally required by a court martial to be taken. ~ make an affirmation legally required by a court martial to be made.
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(c)

Refusing to	~ produce ~ to deliver	~ a document in his	~ power ~ control	~ legally required by a court martial to be	~ produced by him. ~ delivered by him.
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(d)

Refusing when a witness to answer a question which he was by law bound to answer.

(e)

Being guilty of contempt of court martial by	~ using	~ insulting ~ threatening	~ language.
	~ causing	~ an interruption ~ a disturbance	~ in the proceedings of such Court.

SECTION 60

FALSE EVIDENCE

Having been duly	~ sworn before ~ affirmed before	~ a court martial ~ a court competent under the Air Force Act, 1950 to administer an oath or affirmation	~ making a false statement which he	~ knew to be false. ~ believed to be false. ~ did not believe to be true.
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SECTION 61

UNLAWFUL DETENTION OF PAY

After receiving the pay of a person subject to the AF Act, 1950 unlawfully	~ detaining ~ refusing to pay	~ the same when due.
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SECTION 62

OFFENCES IN RELATION TO AIRCRAFT AND FLYING

(a)

Wilfully Without reasonable excuse	~ damaging ~ destroying ~ losing	~ an aircraft ~ aircraft material	~ belonging to the Government.
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(b)

An act Neglect	~ likely to cause	~ damage to ~ destruction to ~ loss of	~ an aircraft ~ aircraft material	~ belonging to the Government.
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(c)

Without lawful authority	~ disposing of	~ aircraft ~ aircraft material	~ belonging to the Government.
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(d)

An act in Neglect in	~ flying aircraft ~ the use of aircraft ~ relation to aircraft ~ relation to aircraft material	~ causing ~ likely to cause	~ loss of life. ~ bodily injury to a person.
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(e)

During a state of war	~ willfully and without proper occasion	~ causing the	~ sequestration	~ by ~ under the authority of	~ a neutral state of an aircraft belonging to the Government.
	~ negligently		~ destruction in		

SECTION 63

OTHER OFFENCES RELATING TO ACT OF AIRCRAFT AND FLYING

(a)

Signing a certificate in relation to	~ an aircraft ~ aircraft material	~ belonging to the Government without ensuring the accuracy thereof.
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(b)

Being the pilot of an aircraft belonging to the Government, flying it	~ at a height less than such height as is specified by the CAS.
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(c)

Being the pilot of an aircraft belonging to the Government, flying it so as to	~ cause ~ be likely to cause	~ unnecessary annoyance to any person.
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SECTION 64

DISOBEDIENCE OF LAWFUL COMMAND OF CAPTAIN OF AIRCRAFT

(a)

Being in an aircraft, disobeying a lawful command given by the captain of the aircraft, as respects a matter	~ relating to flying ~ relating to handling ~ affecting the safety	~ of such aircraft.
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(b)

Being the captain of a glider aircraft towed by another aircraft, disobeying a lawful command given by the captain of the towing aircraft	~ relating to flying ~ relating to handling ~ affecting the safety	~ of such aircraft.
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SECTION 65

VIOLATION OF GOOD ORDER AND DISCIPLINE

~ An Act ~ An omission	~ prejudicial to good order and air force discipline.
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SECTION 66

MISCELLANEOUS OFFENCES

(a)

When in command	~ at a post ~ on the march	~ receiving a complaint that a person under his command has	~ beaten	~ a person	~ and failing to have due reparation made to the injured person.
			~ maltreated		
			~ oppressed		
			~ disturbed	~ a fair ~ a market	~ and failing to report the case to the proper authority.
			~ committed	~ a riot ~ a trespass	

(b)

By defiling a place of worship	~ intentionally	~ insulting the religion	~ of a person.
By (otherwise)		~ wounding the religious feelings	

(c)

Attempting to commit suicide by doing an act towards the commission of the same.

(d)

Being below the rank of Warrant Officer, when off duty, appearing	~ without proper authority	~ in ~ about	~ camp ~ cantonment	~ carrying	~ a rifle. ~ a sword. ~ (other offensive weapon).
		~ in ~ about ~ when going to ~ when returning from	~ a town ~ a bazaar		

(e)

Accepting	~ for himself ~ for any other person	~ a gratification as a	~ motive for procuring	~ the enrolment of a person.	~ for a person in the service.
Obtaining			~ reward for procuring	~ leave of absence	
Agreeing to accept				~ promotion ~ an advantage ~ an indulgence	
Attempting to obtain					

(f)

Committing an offence against the	~ property ~ person	~ of an inhabitant of ~ of a resident in	~ the country in which he was serving.
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SECTION 67

ATTEMPT

Attempting to (specify offence attempted) and doing an act towards the commission of the same.

SECTION 68

ABETMENT OF OFFENCES THAT HAVE BEEN COMMITTED

Abetment of an offence specified in Section (specify the Section) of the Air Force Act, 1950, in consequence of which abetment such offence is committed.

SECTION 69

ABETMENT OF OFFENCE PUNISHABLE WITH DEATH AND NOT COMMITTED

Abetment of an offence, punishable with death under Section [34, 37 or 38(1)] of the Air Force Act, 1950, in consequence of which abetment such offence is not committed.

SECTION 70

ABETMENT OF OFFENCE PUNISHABLE WITH IMPRISONMENT

AND NOT COMMITTED

Abetment of an offence specified in Section (specify the section) of the Air Force Act, 1950, and punishable with imprisonment, in consequence of which abetment, such offence is not committed.

SECTION 71

CIVIL OFFENCES

Committing a civil offence, that is to say,	(state the offence as described in Indian Penal Code or other law in force in India), punishable under Section (specify the section) of the Indian Penal Code (or other law as the case may be).
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Appendix 'B'

NOTIFICATIONS UNDER THE AIR FORCE ACT, 1950

AND THE AIR FORCE RULES, 1969

DATE OF OPERATION OF THE ACT

1. S.R.O. 124, dated the 22nd July 1950.- In exercise of the powers conferred by sub-section, (2) of section 1 of the Air Force Act, 1950 (45 of 1950), the Central Government is pleased to appoint the 22nd July, 1950 as the date on which the said Act shall come into force.

(Gazette of India, 1950, Pt. II, Sec. 4, p. 87.)

ELIGIBILITY OF FEMALES FOR EMPLOYMENT ON SHORT SERVICE COMMISSIONS IN THE MEDICAL BRANCH

2. S.R.O. 415, dated the 12th November 1955. - In exercise of the powers conferred by section 12 of the Air Force Act, 1950 (45 of 1950), the Central Government hereby specifies the Medical Branch, a branch forming the part of the Air Force, as a branch in which females shall be eligible for employment on Short Service Commissions.

(Gazette of India, 1955, Pt. II, Sec. 4, p. 267.)

CLASSIFICATION OF CIVILIAN PERSONNEL WHEN UNDER AIR FORCE LAW

3. S.R.O. 330, dated the 14th December 1962. In exercise of the powers conferred by sub-section (1) of section 6 of the Air Force Act, 1950 (45 of 1950), the Central Government hereby -

(a) Directs that the classes of persons mentioned in the first column of the schedule hereto annexed, when subject to the said act under clause (d) of section 2 thereof, shall be so subject as the class of persons mentioned in the corresponding entry in the second column of the said Schedule; and

(b) Authorises the officer commanding any Air Force unit to give a like direction with

respect to any persons accompanying such unit, other than a Government servant, when subject to the said act under clause (d) of section 2 thereof, and to cancel such direction.

SCHEDULE

1 2

All Civil gazetted officers of Government

All other Government servants whose current monthly basic pay (excluding all allowances is more than Rs. 575.

All Government servants whose current monthly basic pay (excluding allowances) is not more than Rs. 575 and not less than Rs. 250.

All Government servants whose current

monthly basic pay (excluding all Officers

allowances) is less than Rs.250 but not less than Rs. 110.

Officers.

Warrant Officers

Non-Commissioned Officers

DECLARATION RESPECTING ACTIVE SERVICE

4. S.R.O. 5E dated 17th March, 1978 in exercise of the power conferred by section 9 of the Air Force Act, 1950 (45 of 1950), and in supersession of the notification of the Government of India in the Ministry of Defence, No. SRO 34E dt. the 6th December, 1971, The Central Government hereby declares that all persons subject to that act who are not on active service under clause (i) of Sec 4 thereof shall, while serving in the areas specified below and with reference to that act or of any other law for the time being in force, be deemed to be on active service within the meaning of that act :

(1) The states of

- (a) Jammu and Kashmir
- (b) Manipur (c) Nagaland
- (d) Tripura (e) Sikkim ;

(2) The union territories of -

- (a) The Andaman and Nicobar Islands
- (b) Arunachal Pradesh
- (c) Mizoram

(Gazette of India, 1978, Pt.II, Sec. 4,)

**WARRANT FOR CONVENING GENERAL COURTS MARTIAL
UNDER THE AIR FORCE ACT**

To

THE OFFICER, NOT BEING UNDER THE RANK OF
A GROUP CAPTAIN, COMMANDING _____

In pursuance of the provisions of the Air Force Act, 1950 (XLV of 1950), I do hereby empower you, or the officer on whom your command may devolve during your absence, not under the rank of Group Captain, from time to time, as occasion may require, to convene General Courts Martial for the trial, in accordance with the said Act and Rules made thereunder, of any person under your command who is subject to Air Force Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a General Court-Martial.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand at DELHI, this Twenty Third day of February, 1955.

Sd/- x x x x

(S MUKERJEE
Air Marshal
Commander-in-Chief.

**WARRANT FOR RECEIVING THE PROCEEDINGS
AND FOR CONFIRMING FINDINGS AND
SENTENCES OF GENERAL COURTS MARTIAL**

UNDER THE AIR FORCE ACT

TO

THE CHIEF OF THE AIR STAFF

In pursuance of the provisions of the Air Force Act, 1950 (XLV of 1950), the Central Government is hereby pleased to empower you, or the officer on whom your command may devolve during your absence, not under the rank of Group Captain, to receive the proceedings of General Courts-Martial held for the trial, in accordance with the said Act and the Rules made thereunder, of any person subject to Air Force Law, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act in the confirming officer, in such manner as may be best for the good of the Air Force.

Provided always that if by the sentence of any General Court-Martial, a person subject to Air Force Law has been sentenced to suffer death, you shall in such case, as also in the case of any other General Court-Martial in which you shall think fit so to do, withhold confirmation and transmit the proceedings to the Central Government.

And for so doing this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given at NEW DELHI, this 7th day of May 1955.

By order of the Central Government

Sd/- x x x x

(B.B. Ghosh)
Secretary to the
Government of India

**WARRANT FOR CONFIRMING FINDINGS AND
SENTENCES OF GENERAL COURTS MARTIAL
UNDER THE AIR FORCE ACT**

TO

**THE OFFICER, NOT BEING UNDER THE RANK OF A GROUP
CAPTAIN COMMANDING**

In pursuance of the provisions of the Air Force Act, 1950 (XLV of 1950), the Central Government is hereby pleased to empower you, or the officer on whom your command

may devolve during your absence, not under the rank of Group Captain, to receive the proceedings of General Courts-Martial held for the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command who is subject to Air Force Law, and confirm the findings and sentences thereof, and to exercise, as respects these courts and the persons tried by them, the powers created by the said Act in the confirming officer, in such manner as may be best for the good of the Air Force;

Provided always, that if by the sentence of any General Court-Martial, a Commissioned officer has been sentenced to suffer death or imprisonment, or to be cashiered or dismissed from service, or an airman has been sentenced to suffer death, you shall, in such case, and also in the case of any other General Court-Martial in which you may think fit so to do, withhold confirmation and transmit the proceedings to superior authority.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given at New Delhi, this Twenty First day of November, 1973.

By Order of the Central
Government

-

Sd/- x x x x

(GOVIND NARAIN)
Secretary to the
Government of India

Appendix 'D'

**EXTRACT FROM
THE CONSITUTION OF INDIA
PART III
FUNDAMENTAL RIGHTS**

33. Power of Parliament to modify the rights conferred by this part in their application etc - parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,

- (a) the members of the Armed Forces ; or
- (b) the members of the Forces charged with the maintenance of public order; or
- (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence ; or
- (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c).

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

**PART V
THE UNION**

53. Executive power of the Union - (1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall -

- (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority ; or
- (b) prevent Parliament from conferring by law functions on authorities other than the

President

72. Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases. - (1) The President shall have the power to grant pardons, reprieve, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence -

(a) in all cases where the punishment or sentence is by a Court Martial ;

(b) in all cases where the, punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends ;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

77. Conduct of business of the Government of India - (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases. - (1) An appeal shall lie to the Supreme Court from any judgement, decree or final order of a High Court in the territory of India, whether in a Civil, criminal or other proceeding, if the High Court certifies under Article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

(3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

Explanation for the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

134. Appellate jurisdiction of Supreme Court in regard to criminal matters. - (1) An appeal shall lie to the Supreme Court from any judgement final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court -

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death ; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) certifies under article 134A that the case is a fit one for appeal to the Supreme Court

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of Article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgement, final order or sentence in the criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

136. Special leave to appeal by the Supreme Court. - (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgement, determination sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

141. Law declared by Supreme Court to be binding on all courts - The law declared by the Supreme Court shall be binding on all courts within the territory of India.

PART VI

THE STATES

226. Power of High Courts to issue certain writs. - (1) Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, order or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories;

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which It is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.

227. Power of superintendence over all courts by the High Court -

(1) Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may -

(a) Call for returns from such courts

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such court; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein;

Provided that any rules made, forms prescribed or tables settled under clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court power of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

PART XII

FINANCE, PROPERTY, CONTRACTS AND SUITS

299. Contracts. - (1) All contracts made in the exercise of the executive power of the Union or of a state shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

PART XIV

SERVICES UNDER THE UNION AND THE STATES

Recruitment and conditions of service of persons serving the Union or a State. - Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State.

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

310. Tenure of office of persons serving the Union or a State. -

(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of

an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. - (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed

Provided further that this clause shall not apply -

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry or

(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

PART XVIII

EMERGENCY PROVISIONS

352. Proclamation of Emergency - (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened whether by war or external aggression or (armed rebellion), he may, by Proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation.

Explanation - A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or

rebellion, if the President is satisfied that there is imminent danger thereof.

(2) A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation.

(3) The President shall not issue a Proclamation under clause (1) or a Proclamation varying such proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank under Article 75) that such a Proclamation may be issued has been communicated to him in writing.

(4) Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolution of both Houses of Parliament. Provided that if any such proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People has been dissolved, or the dissolution of the House of the People takes place during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(5) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (4)

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of parliament the Proclamation shall unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

6. For the purposes of clauses (4) and (5), a resolution may be passed by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.

7. Notwithstanding anything contained in the foregoing clauses, the President shall revoke a Proclamation issued under clause (1) or a Proclamation varying such proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such Proclamation.

(8) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a proclamation issued under clause (1) or a Proclamation varying such Proclamation,

(a) to the Speaker, if the House is in session ; or

(b) to the President, if the House is not in session.

a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or, as the case may be, by the President, for the purpose of considering such resolution

(9) The Power conferred on the President by this article shall include the power to issue different Proclamations on different grounds, being war or external aggression or armed rebellion or imminent danger of war or external aggression or armed rebellion, whether or not there is a Proclamation already issued by the president under clause (1) and such Proclamation is in operation.

Extract From

The Army Act, 1950

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

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

(a) an officer of the Indian Reserve Forces;

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

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

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

(e) (Omitted)

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

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

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

79. Punishments otherwise than by court-martial. Punishments may also be inflicted in respect of offences committed by persons subject to this Act without the intervention of a court-martial and in the manner stated in sections 80, 83, 84 and 85.

80. Punishments of persons other than officers, junior commissioned officers and warrant officers Subject to the provisions of section 81, a commanding officer or such other officer as is, with the consent of the Central Government, specified by the Chief of the Army Staff, may, in the prescribed manner, proceed against a person subject to this Act otherwise than as an officer, junior commissioned officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,

(a) Imprisonment in military custody up to twenty-eight days

(b) detention upto twenty-eight days

(c) confinement to the lines up to twenty-eight days;

(d) extra guards or duties

(e) deprivation of a position of the nature of an appointment or of corps or working pay, and in the case of non commissioned officers, also deprivation of acting rank or reduction to a lower grade of pay

(f) forfeiture of good service and good conduct pay;

(g) severe reprimand or reprimand

(h) fine up—to fourteen days' pay in any one month

(1) penal deductions under clause (g) of section 9 1

(j) any prescribed field punishment up. to twenty-eight days, in the case of a person on active service.

81. Limit of punishments under section 80 (1) An award of punishment under section 80 shall not include field punishment in addition to one or more of the punishments specified in clauses (a), (b) and (c) of that section.

(2) In the case of an award of two or more of the punishments specified in clauses (a), (b),

(c) and (d) of the said section, the punishment specified in clause (c) or clause (d) shall take effect only at the end of the punishment specified in clause (a) or clause (b).

(3) When two or more of the punishments specified in the said clauses (a), (b) and (c) are awarded to a person conjointly, or when already undergoing one or more of the said punishments, the whole extent of the punishments shall not exceed in the aggregate forty-two days

(4) The punishments specified in clause (a), (b), (c) and (j), of section 80 shall not be awarded to any person who is of the rank of non-commissioned officer or was, at the time of committing the offence for which he is punished, of such rank.

(5) The punishment specified in clause (g) of the said section shall not be awarded to any person below the rank of a non-commissioned officer.

82. Punishments in addition to those specified in section 80.

The Chief of the Army Staff may, with the consent of the Central Government, specify such other punishments as may be awarded under section 80 in addition to or without any of the punishments specified in the said section, and the extent to which such other punishments may be awarded.

83. Punishment of officers, junior commissioned officers and warrant officers by brigade commanders and others :- An officer having power not less than a brigade, or an equivalent commander or such other officer as is, with the consent of the Central Government, specified by the Chief of the Army Staff may, in the prescribed manner, proceed against an officer below the rank of a field officer, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say

(a) severe reprimand or reprimand

(b) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

84. Punishment of officers, junior commissioned officers and warrant officers by area commanders and others :- An officer having power not less than an area commander or an equivalent Commander or an officer empowered to convene a general court-martial or such other officer as is, with the consent of the Central Government, specified by the Chief of the Army Staff may, in the prescribed-manner, proceed against an officer below the rank of lieutenant-colonel, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments that is to say

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

(b) severe reprimand or reprimand

(c) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

85. Punishment of junior commissioned officers:- A commanding officer or such other officer as is, with the consent of the Central Government specified by the Chief of the Army Staff may, in the prescribed manner proceed against a junior commissioned officer who is charged with an offence under this Act and award the punishment of stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

86. Transmission of proceedings :- In every case in which punishment has been awarded under any of the sections 83,84 and 85, certified true copies of the proceedings shall be forwarded, in the prescribed manner, by the officer awarding the punishment, to a superior military authority as defined in section 88.

87. Review of proceedings: - If any punishment awarded under any of the sections 83, 84 and 85 appears to a superior military authority as defined in section 88 to be illegal, unjust or excessive, such authority may cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case.

88. Superior military authority: - For the purpose of sections 86 and 87,"superior military authority" means ;

(a) in the case of punishments awarded by a commanding officer, any officer superior in command to such commanding officer

(b) in the case of punishments awarded by any other authority, the Central Government, the Chief of the Army Staff or other officer specified by the Chief of the Army Staff.

108. Kind of courts-martial. - For the purposes of this Act there shall be four kinds of courts-martial, that is to say, -

(a) general courts-martial;

(b) district courts-martial;

(c) summary general courts-martial ; and

(d) summary courts-martial;

116. Summary court-martial. - (1) A summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such be sworn or affirmed.

120. Powers of summary courts-martial. - (1) Subject to the provisions of sub-section (2), a summary court-martial may try any offence punishable under this Act.

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 69, or any offence against the officer holding the court.

(3) A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer; junior commissioned officer or warrant officer.

(4) A summary court-martial may pass any sentence which may be passed under this Act; except a sentence of death or (imprisonment for life) or of imprisonment for a term exceeding the limit specified in sub-section (5).

(5) The limit referred to in sub-section (4) shall be one year if the officer holding the summary court-martial is of the rank of lieutenant colonel and upwards, and three months if such officer is below that rank.

161. Finding and sentence of a summary court-martial, - (1) Save as otherwise provided in sub-section (2), the finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith.

(2) If the officer holding the trial is of less than five years service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a brigade.

162. Transmission of proceedings of summary court-martial.- The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer; and such officer, or the Chief of the Army Staff or any officer empowered in this behalf by the Chief of the Army Staff, may, for reasons based on the merits of the cases, but not any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the Court might have passed.

NOTIFICATION UNDER THE ARMY RULES, 1954

MUTUAL POWERS OF COMMAND

S.R.O.34 dt 5 Jan 63 In pursuance of clause (e) of rule 188 of the Army Rules, 1954, and in supersession of the notifications of the Government of India in the Ministry of Defence, Nos. 609 dated the 8th April 1950, SRO 8, dated the 13th January 1951. SRO 210, dated the 12th May,1951, SRO 240, dated the 25th June, 1955, SRO 399, dated the 29th

October 1955 and SRO 176, dated the 25th June, 1956 of the Central Government hereby declares that it is necessary for officers of the Indian Navy and the Air Force to exercise command over persons subject to the Army Act, 1950 (46 of 1950) who are attached to, or are serving in :

- (a) Air Force units or Naval Ships or Establishments; or
- (b) Army units commanded by such officers.

Extract from
The Navy Act 1957
(Act 62 of 1957)

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

(24) 'superior officer', when used in relation to a person subject to naval law, means any officer or petty officer who is senior to that person under regulations made under this Act and any officer or petty officer, who though not so senior to that person, is entitled under this Act or the regulations made thereunder to give a command to that person, and includes, when such person is serving under prescribed conditions, an officer, junior commissioned officer, warrant officer, non-commissioned officer of the regular Army or the Air Force of higher relative rank of that person or entitled under this Act or the regulations made thereunder to give a command to that person;

7. Relations between the members of the Navy, Army and Air Force acting together. - (1) When members of the regular Army and the Air Force or of either of these forces are serving with members of the regular Army or the Air Force shall exercise such command, if any, and be subject to such discipline as may be prescribed.

(2) Nothing in sub-section (1) shall be deemed to authorise the exercise of powers of punishment by members of the regular Army or the Air Force over members of the Indian Navy or the Indian Naval Reserve Forces, except as provided in clause (e) of sub-section (3) of section 93 or in such cases and subject to such conditions as may be prescribed.

9.3. Power of court-martial and commanding officers to try offences.

(1) An offence triable under this Act may be tried and punished by court-martial.

(2) An offence not capital which is triable under this Act and which is committed by a person other than an officer (and in cases by this Act expressly provided for when committed by an officer), may, subject to regulations made under this Act be summarily tried and punished by the Commanding Officer of the ship to which the offender belongs

at the time either of the commission or of the trial of the offence, subject to the restriction that the commanding officer shall not have power to award imprisonment or detention for more than three months, or to award dismissal with disgrace from the naval service

Provided that no sentence of imprisonment or dismissal shall be carried into effect until approved by the prescribed authorities.

(3) The power by this section vested in a commanding officer of a ship may subject to regulation made under this Act,

(a) as respect sailors on board a tender to the ship, be exercised in the case of a single tender absent from the ship, by the officer in command of such tender and in the case of two or more tenders absent from the ship in company or acting together, by the officer in immediate command of such tenders;

(b) as respects sailors on board any boat belonging to the ship, be exercised when such boat is absent on detached service by the officer in command of the boat ;

(c) as respects sailors on detached service either on shore or otherwise, be exercised by the officer in immediate command of those persons

(d) as respects sailors quartered in naval barracks, be exercised by the officer in command of the barracks

(e) As respects sailors attached to or serving with any body of the regular Army or the Air Force under prescribed conditions, be exercised by the commanding officer of any such body of the regular Army or the Air Force.

(3) The commanding officer of a ship or barracks may delegate the power of awarding punishments inferior in scale to dismissal, to other officers under his command in accordance with the regulations made under this Act.

The Naval Services (Army and Air Force Command) Regulations, 1961

S.R.O.80, dated the 24th February, 1961 (as amended by S.R.O. No. 106 dated the 21st March, 1961) :- In exercise of the powers conferred by section 184 read with clause (24) of section 3, sub-section (1) of section 7 and clause (e) of sub-section (3) of section 93 of the Navy Act, 1957(62 of 1957), the Central Government hereby makes the following regulations:-

1. Short title: - These regulations may be called "the Naval Services (Army and Air Force Command) Regulations, 1961".

2. Powers to exercise command over members of Naval Forces When members of the regular Army and the Air Force or of either of these forces are serving with members of the Indian Naval Reserve Forces under conditions specified in Regulation 3, the members of the regular Army and the Air Force may, under Section 7 of the Navy Act, 1957 exercise all powers of command other than powers of punishment, as if they were

members of the Naval Forces of corresponding rank and seniority.

3. Conditions for exercise of powers :- For the purposes of clause (24) of Section 3 and sub-section (1) of section 7 of the Navy Act, 1957 the following shall be the conditions, in which members of the Regular Army and the Air Force or either of these forces serving with members of the Indian Navy or Indian Naval Reserve Forces may exercise the powers of command referred to in Regulation 2 or be superior officers in relation to members of the Indian Navy or Indian Naval Reserve Forces, namely :-

(a) When a member of the Naval Forces is acting with a body of the regular Army or the Air Force which is on active service;

(b) When a member of the Naval forces is being conveyed on any convoy of the Army

(c) When a member of the Naval forces is on board an aircraft belonging to the Air Force

(d) When a member of the Naval forces is attached to or serving in any army or air Force Unit

(e) When a member of the Naval forces is serving in or is a patient in a hospital or medical unit, in which an officer of the regular Army or Air Force is on duty or is a patient ;

(f) Where a body of the Naval forces is acting with a body of the regular Army or Air Force and an order in writing applying section 7 of the Navy Act,1957 while those bodies are so acting has been made by the officers in command of each such body, provided that :-

(i) any such order may be made jointly by respective officer in command of Naval, Army and Air Force formation

(ii) any such order may be limited to a specified period or to a particular situation

(iii) in no case, shall any Naval officer appointed to the command of any ship or ships of the Indian Navy, be superseded when afloat by an officer of the regular Army or Air Force and that in no case shall any officer of the regular Army or Air Force appointed to the command of any body of the regular Army or Air Force, be superseded when on land or air as the case may be, by any Naval officer ; and

(iv) any such order, when made, shall be communicated as early as possible for the information of the Central Government, who shall have the power to revoke or vary the provisions of any such order when deemed advisable.

(g) Where a body of Naval forces is acting with a body of the regular Army or Air Force and the Central Government by special order have declared that it is

necessary for officers of the regular Army or Air Force to exercise command over persons subject to the Navy Act, 1957 in a particular place with that body of the Naval Force.

Provided that in no case shall any naval officer appointed to the command of any ship or ships of the Indian Navy be superseded when afloat by any officer of the regular Army or Air Force and that in no case, shall any officer of the regular Army or Air Force appointed to the command of any body of the regular Army or Air Force be superseded when on land or air as the case may be, by any Naval officer.

4. Condition governing summary trial and punishment of sailors: — The commanding Officer of any body of the regular Army or the Air Force may, under clause (e) of sub-section (3) of section 93 of the Navy Act 1957, exercise powers of summary trial and punishment as respects sailors who are attached to or serving with such body of the regular Army or the Air Force under conditions specified in clauses (a) to (e) of Regulation 3.

(THE INDIAN) MILITARY NURSING SERVICE ORDINANCE, 1943

(ORDINANCE NO. 30 of 1943)

An Ordinance to constitute a force to be called the Indian Military Nursing Service as part of the armed forces of the Union.

WHEREAS an emergency has arisen which makes it necessary to provide for the constitution of a force to be called the Indian Military Nursing Service as part of the armed forces of the Union

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor-General is pleased to make and promulgate the following Ordinance :-

1. Short title application and commencement. - (1) This Ordinance may be called **THE INDIAN MILITARY NURSING SERVICE ORDINANCE, 1943** .

(2) It applies to members of the Indian Military Nursing Services wherever they may be.

(3) It shall come into force at once.

2. Definitions. - In this Ordinance, unless there is anything repugnant in the subject or context, -

(a) "prescribed means prescribed by rules made under this Ordinance ;

(b) "regulation" means regulations made under this Ordinance.

3. Constitution of Indian Military Nursing Service. - (1) There shall be raised and maintained, in the manner hereinafter provided, as part of the armed forces of the Union and for service with the Indian Military forces an auxiliary force which shall be designated the Military Nursing Services (India).

4. Liability of service of members of Indian Military Nursing Service :-

(1) The members of the Indian Military Nursing Service shall be liable for service only with forces and persons subject to the Indian Army Act, 1911 @

5. Members to be of commissioned rank. - All members of the Indian Military Nursing Service shall be of commissioned rank and shall be appointed as officers of the Indian Military Nursing Service by the Central Government by notification in the Official Gazette.

6. Eligibility for appointment. (1) Any citizen of India if a woman and above the age of twenty-one, shall be eligible for appointment as an officer- in the Indian Military Nursing Services and, if she satisfies the prescribed conditions, may be appointed thereto in the manner laid down in section 5.

(2) Every person so appointed shall be subject to this Ordinance and to the rules and regulations made thereunder.

@ See now Army Act, 1950.

7. Dismissal from Indian Military Nursing Service. - The Central Government or an authority empowered by the Central Government in this behalf, or the Chief of the Army Staff may dismiss any officer from the Indian Military Nursing Service.

8. Liability to undergo training and perform duties. - Subject to the provisions of this Ordinance, a member of the Indian Military Nursing Service shall be bound to undergo such training and in such manner and to perform such duties in connection with Indian Military forces as may be laid down by regulations.

9. Application of Army Act and Indian Army Act, 1911 to members of Indian Military Nursing Service. - (1) The provisions of the Indian Army Act. 1911@ shall to such extent and subject to such adaptations and modifications as may be prescribed, apply to members of the Indian Military Nursing Service as they apply to Indian commissioned

officers, unless they are clearly inapplicable to women.

10. Power to make rules. - (1) The Central Government may, by notification in the Official Gazette make rules to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, rules may be made under this section –

(a) providing for the medical examination of persons offering themselves for appointment in the Indian Military Nursing Service

(b) providing for any matter which under this Ordinance is to be or may be prescribed.

11. Power to make regulations. The Chief of the Army Staff may make regulations consistent with this Ordinance and the rules made there under, providing for all matters to be laid down by regulations, and generally for all details connected with the organisation, pay, allowances, duties, discipline, training, clothing, equipment and leave of members of the Indian Military Nursing Service.

@ See now Army Act, 1950.

MILITARY NURSING SERVICES (INDIA) RULES 1944

In exercise of the powers conferred by section 10 of the Military Nursing Services (India) Ordinance, 1943 (30 of 1943), the Central Government is pleased to make the following Rules, namely :-

1. Short title. These Rules may be called the Military Nursing Services (India) Rules 1944.

2. Interpretation. (1) in these Rules —

(a) "the Ordinance" means the Military Nursing Services (India) Ordinance 1943;

(b) "Nursing Services" means the Military Nursing Services (India) raised in pursuance of the Ordinance;

(c) "the appropriate Act" means in relation to an officer of the Nursing Services, the Act, whether the Army Act (44 & 45 Vict, c. 58) or the Indian Army Act, 1911[@] (VIII of 1911), as applicable to her by virtue of section 9 of the Ordinance and these Rules.

(2) In relation to an officer of the Nursing Services

(a) the expression "Commanding Officer" in the provisions of the appropriate Act relating to courts-martial and to the powers of a Commanding Officer and in these Rules means the military officer in command of the hospital or other unit in which she is serving or to which she is attached;

@ See now Army Act, 1950.

(b) the expression "regimental" in the Army Act and in these Rules means connected with the Nursing Services or any corps or other sub-division thereof.

3. Application of appropriate Acts. - In so far as they are capable of such application but subject to the provisions of these Rules -

(a) the provisions of the Indian Army Act, 1911 shall apply to officer of the Nursing Services mentioned in Sub-section (1) of section 9 of the Ordinance, as if they were Indian commissioned officers, and

(b) the provisions of the Army Act shall apply to officers of the Nursing Services mentioned in Sub-section (2) of the said section, as if they were officers of the Regular Forces

and references in the said Acts to military ranks shall, in relation to the Nursing Services, be construed as references to the corresponding ranks laid down in the Regulations made under the Ordinance for officers of the Nursing Services.

4. Modification of Indian Army Act, 19 11[@] Of the provisions of section 25 to 41 of the Indian Army Act, 1911[@] only clause (d) of section 30 and clause (i) of section 39 shall apply to offences committed by officers of the Nursing Services referred to in sub-section (1) of section 9 of the Ordinance, and those provisions shall have effect in relation to such offences as if they were modified as follows :-

(i) Clause (d) of section 30- "An officer who absents herself without leave commits an offence against this Act.'

(ii) Section 40 - "An officer who is guilty of any act, conduct, disorder or neglect to the prejudice of good order and discipline commits an offence against this Act".

@ See now Army Act, 1950 and the corresponding sections.

6. Punishments, - (1) The provisions of this rule shall apply in relation to the offences mentioned in rules 4 and 5 committed by officers of the Nursing Services, in lieu of the provisions of the appropriate Acts, imposing punishments for such offences.

(2) An officer of the Nursing Services, on conviction by a court martial for any such offence as aforesaid, shall be liable to any one or more punishments according to the scale following that is to say :—

(a) Dismissal from His Majesty's Service.

(b) Forfeiture of seniority of rank in the corps to which she belongs, or in the case of

an officer whose promotion depends upon length of service forfeiture of all or any part of her service for the purpose of promotion.

(c) Severe reprimand.

(d) Reprimand.

(e) Stoppages.

7. Summary punishment. - (1) Notwithstanding anything contained in the appropriate Act, an officer of the Nursing Services below the equivalent rank of field officer may be summarily reprimanded by her commanding officer if of field rank.

(2) In addition to the summary reprimand to which she may be liable under sub-rule (1), any officer of the Nursing Services may be dealt with summarily in the manner provided by or under the appropriate Act provided that the only punishment which may be so awarded to her shall be those specified in clauses (b) to (e) of sub-rule (2) of rule 6.

8. Courts-Martial. - Where an officer of the Nursing Services accused of an offence is not dealt with summarily in accordance with rule 7, she shall, if subject to the Indian Army Act 1911 @ be tried by summary general court-martial, or if subject to the Army Act, by field general court-martial; and references in the appropriate Act to a court-martial of whatever description shall be construed as references to a summary general court-martial or 'to a field general court-martial, as the case may be.

9. Section 136 (1), Army Act not to apply in certain cases. - Sub section (1) of section 136 of the Army Act shall not apply to any deductions made from the pay of any officer of the Nursing Services upon the general special order of the Central Government, to meet any public claim, any regimental debt due from her or any regimental claim which such order may direct her to pay.

@ See now Army Act, 1950.

EXTRACT FROM

THE CODE OF CIVIL PROCEDURE, 1908

2. Definitions - In this Act, unless there is anything repugnant in the subject or Context -

(7) "Government Pleader" includes any officer appointed by the State Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader.

(7B) "India", except in sections 1, 29 43, 44, 44A, 78, 79 82, 83 and 87A, means the territory of India excluding the State of Jammu and Kashmir.

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree

(17) "public officer" means a person falling under any of the following descriptions, namely :

(a) every Judge;

(b) every member of an All India Service;

(c) every commissioned or gazetted officer in the military, naval or air force of the Union, while serving under the Government;

(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement

(f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience

(g) every officer whose duty it is, as such officer, to take, receive keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and

(h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty

(20) "signed", save in the case of a judgement or decree, include stamped.

ATTACHMENT

60. Property liable to attachment and sale in execution of decree.-

1. The following property is liable to attachment and sale in execution of a decree, namely, lands, houses, or other buildings, goods, money, bank-notes, cheques, bills

of exchange, hundies, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment debtor or by another person in trust for him or on his behalf;

provided that the following particulars shall not be liable to such attachment or sale, namely :-

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman

(b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him

(d) books of account

(e) a mere right to sue for damages

(f) any right of personal service ;

(g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified 'in the Official Gazette by the Central Government or the State Government in this behalf, and political pensions

(h) the wages of labourers and domestic servants, whether payable in money or in kind

(i) salary to the extent of four hundred rupees and two-thirds of the remainder in execution of any decree other than a decree for maintenance: provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and where such attachment has been made in execution of one and the same decree, shall, after, the attachment has continued for a total period of four months, be finally exempt from attachment in execution of that decree

- (ia) one third of the salary in execution of any decree for maintenance;
- (j) the pay and allowances of persons to whom the Air Force Act, 1950, or the Army Act, 1950 or the Navy Act 1957, applies
- (k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925, for the time being applies, in so far as they are declared by the said Act not to be liable to attachment
- (ka) all deposits and other sums in or derived from any fund to which the Public Provident Funds Act, 1968, for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment
- (kb) all moneys payable under a policy of insurance on the life of the judgement-debtor
- (kc) the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply
- (l) any allowance forming part of the emoluments of any servant of the Government of any servant of a railway company or local authority which the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while under suspension
- (m) an expectancy of succession by survivorship or other merely contingent or possible right or interest
- (n) a right to future maintenance
- (o) any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree ; and
- (p) where the judgment-debtor is a person liable for the payment of land-revenue any moveable property which, under any law for the time being, applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation I. - The moneys payable in relation to the matters mentioned in clauses (g), (h), (i), (ia), (l) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.

Explanation II. - In clauses (i) and (ia) 'salary' means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (i), derived by a person from his employ-ment whether on duty or on leave.

Explanation III - In clause (1) "appropriate Government" means -

- (i) as respect any person in the service of the Central Government, or any servant of

a Railway administration or of a cantonment authority or of the port authority of a major port, the Central Government.

(ii) omitted

(iii) as respects any other servant of the Government or a servant of any other local authority, the State Government.

Explanation IV - For the purposes of this proviso, "wages" included bonus, and "labourer" included a skilled, unskilled or semi-skilled labourer.

Explanation V - For the purposes of this proviso, the expression "agriculturist" means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI. - For the purposes of Explanation V, an agriculturist shall be deemed to cultivate land personally, if he cultivates land

(a) by his own labour, or

(b) by the labour of any member of his family, or

(c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both

(1A) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.

(2) Nothing in this section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land.

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC

OFFICERS IN THEIR OFFICIAL CAPACITY

79. Suits by or against Government. - In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be -

(a) in the case of a suit by or against the Central Government,
the Union of India, and

(b) in the case of a suit by or against a State Government, the State.

80. Notice. - (1) Save as otherwise provided in sub-section (2), no suit shall be instituted

against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity until the expiration of two month next after notice in writing has been delivered to, or left at the office of -

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government

(b) in the case of a suit against the Central Government where it relates to railway, the General manager of that railway

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other Officer authorised by that Government in this behalf

(c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims ; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (a); but the Court shall not grant relief in the suit whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirement of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated.

81. Exemption from arrest and personal appearance. In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity -

(a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,

(b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

82. Execution of decree. - (1) Where, in a suit by or against the Government or by or against a public officer in respect of any act purporting to be done by him in his official capacity, a decree is passed against the Union of India or a State or, as the case may be, the public officer, such decree shall not be executed except in accordance with the provisions of sub-section (2).

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such decree.

(3) The provisions of sub-sections (1) and (2) shall apply in relation to an order or award as they apply in relation to a decree, if the order or award-

(a) is passed or made against the Union of India or a State or a public officer in respect of any such act as aforesaid, whether by a Court or by any other authority, and

(b) is capable of being executed under the provisions of this Code or of any other law for the time being in force as if it were a decree.

ORDER V

ISSUE AND SERVICE OF SUMMONS

ISSUE OF SUMMONS

27. Service on civil public officer or on servant of railway company or local authority. - Where the defendant is a public officer (not belonging to the Indian Military, Naval or Air Forces) or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it by registered post pre-paid for acknowledgement for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

28. Service on soldiers, sailors or airmen. - Where the defendant is a soldier, sailor or airman, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

29. Duty of person to whom summons is delivered or sent for service.

(1) Where a summon is delivered or sent to any person for service under Rule 24, Rule 27 or Rule 28, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgement of the defendant, and such signature shall

be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

ORDER XVI

SUMMONING AND ATTENDANCE OF WITNESSES

R.8 Summons how served :- (1) Every summons under this Order, not being a summons delivered to a party for service under Rule 7A, shall be served as nearly as may be in the same manner as summons to a defendant and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

ORDER XVII

ADJOURNMENTS

R.1. Court may grant time and adjourn hearing. - (1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

Costs of adjournment.

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, -

(a) When the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary.

(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.

(c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, as the case may be, by the party or his pleader not present or

not ready as aforesaid.

R.2. Procedure if parties fail to appear on day fixed. - Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

Explanation. - Where the evidence or a substantial portion. of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.

R.3 Court may proceed notwithstanding either party fails to produce evidence, etc.- Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default,-

- (a) if the parties are present, proceed to decide the suit forth with; or
- (b) if the parties are, or any of them is, absent, proceed under Rule 2.

ORDER XIX

AFFIDAVITS

R.1 Power to order any point to be proved by affidavit.- Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bonafide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

R.2 Power to order attendance of deponent for cross-examination on.

(1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

R.3. Matters to which affidavits shall be confined. - (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted:

Provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hear -say or argumentative matter, or copies of or extracts from documents, shall (unless the Court

otherwise directs) he paid by the party filing the same.

ORDER XXVII

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC

OFFICERS IN THEIR OFFICIAL CAPACITY

R.1. Suits by or against Government - In any suit by or against the Government, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the cases

R.2 Persons authorised to act for Government.- Persons being ex officio or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

R.3 Plaints in suits by or against Government.- In suits by or against the Government instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the appropriate name as provided in Section 79.

R.4 Agent for the Government to receive process - The Government pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court.

R.5 Fixing of day of appearance on behalf of Government.- The Court, in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the Government and may extend the time at its discretion but the time so extended shall not exceed two months in the aggregate.

ORDER XXVIII

SUITS BY OR AGAINST MILITARY OR NAVAL MEN OR AIRMEN

R.1 Officers, soldiers, sailors or airmen who cannot obtain leave may authorise any person to sue or defend for them.- (1) Where any officers, soldier, sailor or airman, actually serving under the Government in such capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead.

(2) The authority shall be in writing and shall be signed by the officer, soldier, sailor or airman in the presence of (a) his commanding officer or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer, soldier, sailor or airman is serving in military, naval or air force staff employment, the head or other superior officer

of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the counter-signature shall be sufficient proof that the authority was duly executed, and that the officer, soldier, sailor or airman by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.- In this Order the expression "Commanding officer" means the officer in actual command for the time being of any regiment, corps, ship, detachment or depot to which the officer, soldier, sailor or airman belongs.

R.2 Person so authorised may act personally or appoint pleader. Any person authorised by an officer, soldier, sailor or airman to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer, soldier, sailor or airman could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer, soldier, sailor or airman.

R.3 Service on person so authorised, or on his pleader, to be good service.- Processes served upon any person authorised by an officer, soldier, sailor, or airman under Rule 1 or upon any 'pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

R. 5A. Government to be joined as a party in a suit against a public officer.- Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit.

R. 5B. Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement.- (1) In every suit or proceeding, to which the Government, or a public officer acting in his official capacity, is a party. it shall be the duty of the Court to make, in the first instance, every endeavor, where it is possible to do so consistently with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding at any stage, it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.

(3) The power conferred under sub-rule (2) is in addition to any other power of the Court to adjourn proceedings.

R.6. Attendance of person able to answer questions relating to suit against Government.- The Court may also, in any case in which the Government pleader is not accompanied by any person on the part of the Government, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

R.7 Extension of time to enable public officer to make reference to Government.- (1) Where the defendant is a public officer and, on receiving the summons considers it proper to make a reference to the Government before answering the plaint, he may apply to the

Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

R.8. Procedure to suits against public officer.- (1) Where the Government undertakes the 'defence of a suit against a public officer, the Government pleader upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(2) Where no application under sub-rule (1) is made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

R.8A.. No security to be required from Government or a public officer in certain cases.- No such security as is mentioned in Rules 5 and 6 of Order XLI shall be required from the Government or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

R. 8B. Definitions of "Government" and "Government Pleader".- In this Order unless otherwise expressly provided "Government" and "Government Pleader" mean respectively:-

(a) In relation to any suit by or against the Central Government, or against a public officer in the service of that Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this Order:

(b) x x x x x x

(c) in relation to any Suit by or against a State Government or against a public officer in the service of a State, the State Government and the Government pleader as defined in clause (7) of Section 2, or such other pleader as the State Government may appoint, whether generally or specially, for the purposes of this Order.

EXTRACT FROM
THE CODE OF CRIMINAL PROCEDURE, 1973
(ACT II OF 1974)

2. Definition.- In this code, unless the context otherwise requires,

(a) "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable" offence means any other offence;

(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which a police officer, may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

(d) "complaint" means any allegation made orally or in writing to a magistrate, with a view to his taking action under this Code, that some person, whether known or un-known, has committed an offence, but does not include a police report;

(l) "non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer, has no authority to arrest without warrant.

6. Classes of Criminal Courts. - Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every state, the following classes of Criminal Courts, namely:

(i) Courts of Session;

(ii) Judicial Magistrates of the first class and, in any Metropolitan area, Metropolitan Magistrates.

(iii) Judicial Magistrates of the second class; and

(iv) Executive Magistrates.

37. Public when to assist Magistrates and Police.- Every person is bound to assist a Magistrate or police officer reasonably demanding his aid

(a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorised to arrest; or

(b) in the prevention or suppression of a breach of the peace; or

(c) in the prevention of any inquiry attempted to be committed to any railway, canal, telegraph or public property.

38. Aid to person, other than police officer, executing warrant.-When a warrant is directed to a person, other than a police officer, any other person may aid in the execution of such warrant if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

39. Public to give information of certain offences. - (1) Every person, aware of the

commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860) namely -

- (i) Sections 121 to 126, both inclusive and section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);
- (ii) sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquility specified in Chapter VIII of the said Code);
- (iii) sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);
- (iv) Section 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc);
- (v) sections 302, 303 and 304 (that is to say, offences affecting life);
- (vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);
- (vii) Sections 392 to 399 both inclusive, and section 402 (that is to say, offences of robbery and dacoity);
- (viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.
- (ix) sections 431 to 439, both inclusive (that is to say, offences of mischief against property);
- (x) sections 449 and 450 (that is to say, offence of house-trespass);
- (xi) sections 456 to 460, both inclusive (that is to say, offences of lurking house-trespass); and
- (xii) sections 489 A to 489 E, both inclusive (that is to say, offences relating to currency notes and bank notes);

Shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

(2) For the purposes of this section, the term 'offence' includes any act committed at any place out of India which would constitute an offence if committed in India.

41 When police may arrest without warrant. - (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person

- (a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or
- (b) who has in his possession without lawful excuse, the burden of proving

which excuse shall lie on such person, any implement of house-breaking; or

(c) Who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who being a released convict, commits a breach of any rule, made under sub-section(5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there-from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

2. Any officer-in-charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in section 109 or section 110.

43. Arrest by private person and procedure on such arrest-(1) Any private person may arrest or cause to be arrested any person, who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police-station.

(2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provision of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

45. Protection of members of the Armed Forces from arrest.

(1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.

(2) The State Government may, by notification, direct that the provisions of sub-section (1) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and there upon the provisions of that sub-section shall apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

46. Arrest how made.- (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

47. Search of place entered by person sought to be arrested.-

(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for

withdrawing, and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

48. Pursuit of offenders into other jurisdictions - A police officer may for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India,

49. No unnecessary restraint - The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

50. Person arrested to be informed of grounds of arrest and of right to bail. - (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrest without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

51. Search of arrested person - (1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

Whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted in bail, or is unable to furnish bail, the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him and where any article is seized from the arrested person, a receipt showing the article taken in possession by the police officer shall be given to such person.

(2) Wherever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

52. Power to seize offensive weapons - The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

7. Person arrested not to be detained more than twenty four hours.- No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the cases is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the- time necessary for the journey from the place of arrest to the Magistrate's Court.

58. Police to report apprehensions Officers in charge of police stations shall report to the District Magistrate, or if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

60. Power, on escape, to pursue and re-take (1) If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India.

(2) The provisions of section 47 shall apply to arrest under sub section (1) although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

61. Forms of Summons - Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such court, or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court.

62. Summons how served (1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf. by an officer of the Court issuing it or other public servant.

(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons,

(3) Every person or whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

66. Service on Government Servant - (1) Where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed, and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

9.1. Summons to produce document or other thing - (1) Whenever any Court or any officer in charge of a police station considers that the Production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or Officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed -

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872, or the Bankers' Books Evidence Act, 1891, or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or telegraph authority.

129. Dispersal of assembly by use of civil force - (1) Any Executive Magistrate or officer in-charge of a police station or in the absence of such officer in-charge, any police officer, not below the rank of a sub-inspector, may command any lawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) If, upon being so commanded, any such assembly does not disperse or if, without being so commanded it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or police officer referred to in sub-section (1), may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

130. Use of armed forces to disperse assembly - (1) If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Executive Magistrate of the highest rank who is present may cause it to be dispersed by the armed forces.

(2) Such Magistrate may require any officer in command of any group of person belonging to the armed forces to disperse the assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(3) Every such officer of the armed forces shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

131. Power of certain armed force officers to disperse assembly - When the public security is manifestly endangered by any such assembly and no Executive Magistrate can be communicated with, any commissioned or gazetted officer of the armed forces may disperse such assembly with the help of the armed forces under his command, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with an Executive Magistrate, he shall do so, and shall thence forward obey the instructions of the Magistrate, as to whether he shall or shall not continue such action.

132. Protection against prosecution for acts done under preceding sections

(1) No prosecution against any person for any act purporting to be done under sections 129, section 130 or section 131 shall be instituted, in any Criminal Court, except,

(a) with the sanction of the Central Government where such person is an officer or member of the armed forces:

(b) with the sanction of the State Government in any other case.

(2) (a) no Executive Magistrate or police officer acting under any of the said sections in good faith;

(b) no person doing any act in good faith in compliance with a requisition under section 129 or section 130;

(c) no officer of the armed forces acting under section 131 in good faith;

(d) no member of the armed forces doing any act in obedience to any order which he was bound to obey shall be deemed to have thereby committed an offence.

(3) In this section and in the proceeding sections of this Chapter

(a) the expression "armed forces" means the military, naval and air forces, operating as land forces and includes any other Armed Forces, of the Union so operating;

(b) "Officer", in relation to the armed forces, means a person commissioned, gazetted or in pay as an officer of the armed forces and includes a junior commissioned officer, a warrant officer, a petty officer, a non-commissioned officer, and a non-gazetted officer;

(c) "member", in relation to the armed forces means a person in the armed forces other than an officer.

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence (1) No Court shall take cognizance -

(a) (i) of any offence punishable under section 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in

writing of the public servant concerned or of some other public servant to whom he is administratively sub ordinate:

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860) namely, sections 193 to 196 (both inclusive), 199,200,205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been, committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit or attempt to commit, or, the abetment of, any offence specified in sub-clause (i) or sub—clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) When a complaint has been made by a public servant clause (a) of sub—section (1) any authority to which he is administratively sub ordinate may order the withdrawal of the complaint and send a copy of such order to the court, and upon its receipt by the Court, no further proceedings shall be taken on the complaint.

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court means a Civil, Revenue or Criminal Court and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that act to be a Court for the purpose of this section.

4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be sub-ordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decree no appeal ordinarily lies, to the principal court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situated:

Provided that -

(a) where appeals lies to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

196. Prosecution for offences against the State and for criminal conspiracy to commit such offence -. (i) No Court shall take cognizance of –

(a) any offence punishable under Chapter VI or under section 153—A section 295 A or sub-section (1) of section 505 of the Indian Penal Code, or

(b) a criminal conspiracy to commit such offence or

(c) any such abetment, as is described in section 108-A of the Indian Penal Code except with the previous sanction of the Central Government or of the State Government.

(IA) No Court shall take cognizance of -

(a) any offence punishable under section 153 B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code, or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120-B of the Indian Penal Code, other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction under sub-section (1) or sub-section (IA) and the District Magistrate may, before according sanction under sub-section (IA) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155.

220. Trial for more than one offence (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub s. (2) section 212 or in sub-section (1) of section 219. is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code.

221. Where it is doubtful what offence has been committed (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any, of such offences, and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

(2) If, in such case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1) he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

222. When offence proved included in offence charged - (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he is not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

340. Procedure in cases mentioned in section 195 (1) - When, upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court, or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such Court may, after such preliminary inquiry, if any, as it thinks necessary.

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate., and,

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for, the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed.

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section "Court" has the same meaning as in section 195.

341. Appeal - (1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, under section 340, shall be final, and shall not be subject to revision.

343. Procedure of Magistrate taking cognizance - (1) A Magistrate to whom a complaint is made under section 340 or section 341 shall notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

(a) Where it is brought to the notice of such Magistrate, or if any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.

345. Procedure certain cases of contempt - (1) When any such offence as is described in section 175 section 178, section 179, section 180, or section 228 of the Indian penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody, and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

346. Procedure where Court considers that case should not be dealt with under section 345 - (1) If the Court in any case considers that a person accused of any of the offences referred to in section 345 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him. or such Court is for any other reason of opinion that the case should not be disposed of under section 345, such Court, after recording the facts constituting the offence and the statement of the accused as herein before provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section shall proceed to deal with, as far as may be, as if it were instituted on a police report.

475. Delivery to commanding officers of persons liable to be tried by Court-martial - (1) The Central Government may make rules, consistent with this Code and the Army Act, 1950, the Navy Act, 1957, and the Air Force Act, 1950 and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air-force law, or such other law, shall be tried by a Court to which this Code applies, or by a Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs or to the commanding officer of the nearest military, naval or air-force station, as the case may be, for the purpose of being tried by a Court-martial.

Explanation - In this section -

(a) "Unit" includes a regiment, corps,, ship, detachment, group, battalion or company.

(b) "Court-martial" includes any tribunal with the powers similar to those of a Court-martial constituted under the relevant law applicable to the Armed Forces of the Union.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavour to apprehend and secure any person accused of such offence.

(3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situated within the State be brought before a Court martial for trial or to be examined touching any

matter pending before the Court-martial.

**THE CRIMINAL COURTS AND COURT-MARTIAL
(ADJUSTMENT OF JURISDICTION) RULES-1978**

(Published vide SO 488 dated 09 Feb 78)*

1. These rules may be called the Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1978.

2. In these rules, unless the context otherwise requires:

(a) "Commanding Officer"

(i) in relation to a person subject to military law, means the Officer Commanding the unit to which such person belongs or is attached;

(ii) in relation to a person subject to naval law, means the Commanding officer of the ship or naval establishment or unit to which such person belongs or is attached; and

(iii) in relation to a person subject to air force law, means the officer for the time being in command of the unit to which such person belongs or is attached;

(iv) in relation to a person subject to the coast guard law, means the Commanding Officer of the coast guard ship or establishment or unit to which such person belongs or is attached;

(b) "competent air force authority" means the Chief of the Air Staff , the air or other officer commanding any Command, Group, Wing or Station in which the accused person is serving, or where such person is serving in a field area, the Officer Commanding the forces or the air force in the field;

(c) "competent military authority" means the Chief of the Army Staff or Officer Commanding the army, army corps, division, area, sub-area or independent brigade in which the accused person is serving, and, except in cases falling under section 69 the Army Act 1950 (46 of 1950) in which death has resulted, the officer commanding the brigade of sub-area or station in which the accused person is serving;

(d) "competent naval authority" means the Chief of the Naval Staff or the Flag Officer Commanding-in-Chief, Western Naval Command, Bombay or the Flag Officer Commanding-in-Chief, Eastern Naval Command Vishakhapatnam or the Flag Officer Commanding, Southern Naval Area, Cochin or the Flag Officer Commanding, Western Fleet, Flag Officer Commanding, Eastern Fleet or Senior Naval Officer where the accused person is serving;

As amended vide SO 4010 dated 24 Nov 86. See Gazette of India, 1986 Pt. II, S.3 Sub Sec (ii) dated 06 Dec. 86.

(e) "competent coast guard authority" means the Director General or Inspector General or Deputy Inspector General within whose command the accused person is serving.

3. Where a person subject to military, naval, air force or coast guard law, or any other law relating to the Armed Forces of the Union for the time being in force is brought before a Magistrate and charged with an offence for which he is also liable to be tried by a Court-Martial or coast guard court, such Magistrate shall not proceed to try such person or to commit the case to the Court of Session, unless:

(a) he is moved thereto by a competent military, naval air force or coast guard authority, or

(b) he is of opinion, for reasons to be recorded, that he should so proceed or to commit without being moved thereto by such authority.

4. Before proceeding under clause (b) of rule 3, the Magistrate shall give a written notice to the Commanding Officer or the competent military, naval, air force or coast guard authority, as the case may be, of the accused and until the expiry of a period of fifteen days from the date of service of the notice he shall not;

(a) convict or acquit the accused under section 252, sub-section(1)and (2) of section 255 sub-section (1) of section 256 or section 257 of the Code of Criminal Procedure, 1973 (2 of 1974), or hear him in his defence under section 254 of the said Code; or

(b) Frame in writing a charge against the accused under section 240 or sub-section (1) of section 246 of the said Code; or

(c) make an order committing the accused for trial to the Court Session under section 209 of the said Code; or

(d) make over the case for inquiry or trial under section 192 of the said Code.

5. Where a magistrate has been moved by the competent military, naval, air force or coast guard authority, as the case may be, under clause (a) of rule 3 and such authority, subsequently. as the case may be, under clause (a) of rule 3 and such authority, subsequently gives notice to such Magistrate that, in the opinion of such authority, the accused should be tried by a Court-Martial or coast guard court, such Magistrate if he has not taken any action or made any order under rule 4 before receiving the notice shall stay the proceedings and. if the accused is in his power or under his control, shall deliver him together with the statement referred to in sub-section (1) of section 475 of the said Code to the officer specified in the said sub-section.

6. Where within the period of fifteen days mentioned in rule 4, or any time thereafter but before the Magistrate takes any action or makes any order referred to in that rule, the Commanding Officer of the accused or the competent military, naval, air force or coast guard authority, as the case may be gives notice to the Magistrate that in the opinion of such officer or authority, the accused should be tried by a court-martial or coast guard court the Magistrate shall stay the proceedings, and if the accused is in his power or under his control shall deliver him together with the statement referred to in sub-section (I) of section 475 of the said Code to the Officer specified in the said sub-section.

7. (1) when an accused has been delivered by the Magistrate under rule 5 or 6, the commanding officer of the accused or the competent military, naval or air force or coast guard authority as the case may be, shall, as soon as may be, inform the Magistrate whether the accused has been tried by a court-martial or coast guard court or other effectual proceedings have been taken or ordered to be taken against him.

(2) when the Magistrate has been informed under sub-rule (1) that the accused has not been tried or other effectual proceedings have not been taken or ordered to be taken against him, the Magistrate shall report the circumstances to the State Government which may, in consultation with the Central Government, take appropriate steps to ensure that the accused person is dealt with in accordance with law.

8. Notwithstanding anything in the foregoing rules, where

it comes to the notice of a Magistrate that a person subject to military, naval, air force or coast guard law or any other law relating to the Armed Forces of the Union for the time being in force has committed an offence, proceedings in respect of which ought to be instituted before him and that the presence of such person cannot be procured except through military, naval, air force or coast guard authorities, the Magistrate may by a written notice require the commanding officer of such person either to deliver such person to a Magistrate to be named in the said notice for being proceeded against according to law, or to stay the proceedings against such person before the court-martial or coast guard court if since instituted and to make a reference to the Central Government for determination as to the court before which proceedings should be instituted.

9. Where a person subject to military, naval, air force or coast guard law, or any other law relating to the Armed Forces of the Union for the time being in force has committed an offence which in the opinion of competent military, naval, air force or coast guard authority, as the case may be ought to be tried by a Magistrate in accordance with the civil law in force or where the Central Government has, on a reference mentioned in rule 8, decided that proceedings against such person should be instituted before a Magistrate, the commanding officer of such person shall after giving a written notice to the Magistrate concerned, deliver such person under proper escort to that Magistrate.

(THE) ARMED FORCES (SPECIAL POWERS) ORDINANCE, 1942.

(ORDINANCE NO. XLI OF 1982)

(15th August, 1942)

An Ordinance to confer certain special powers upon certain officers of the armed forces.

WHEREAS an emergency has arisen which makes it necessary to confer certain special powers upon certain officers of the armed forces

Now therefore, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor-General is pleased to make and promulgate the following Ordinance :-

1. Short title, extent and commencement.- (1) This Ordinance may be called THE ARMED FORCES (SPECIAL POWERS) ORDINANCE, 1942.

(2) it extends to the whole of India.

(3) It shall come into force at once.

2. Power to certain officers of the armed forces to order use of force in certain circumstances :- (1) Any officer not below the rank of Captain in (the Indian) Military Forces and any officer holding equivalent rank either in (the Indian) Naval or Air Forces may, if in his opinion it is necessary for the proper performance of his duty so to do, by general or special order in writing require any personnel under his command to use such force as may be necessary, even to the causing of death, against any person who-

(a) fails to halt when challenged by a sentry, or

(b) does, attempts to do, or appears to be about to do, any such act as would endanger or damage any property of any description whatsoever which it is the duty of such officer to protect;

and it shall be lawful for such personnel, when so ordered. to use such force against such person.

(2) The use of force against any person in obedience to an order under sub-section (1) shall include the power to arrest and take into custody such person, and the use of such force as may be necessary, even to the causing of death, in order to effect such arrest.

3. Arrested persons to be made over to appropriate Authority :- Any person arrested and taken into custody under this Ordinance shall, as soon as practicable be made over, together with a report of the circumstances occasioning the arrest, to the officer in charge of the nearest police station, or where the said person is a person subject to military law, to the appropriate military officer.

4. Protection to persons acting under this Ordinance - No prosecution, suit or other legal proceedings for any order purporting to be made under this ordinance or for any act purporting to be done in obedience to any such order shall be instituted in any Court except with the previous sanction of the Central Government, and notwithstanding anything contained in any other law for the time being in force, no person purporting in good faith to make such an order or to do any act in obedience thereto shall, whatever consequences ensue, be liable therefore.

1. Published in the Gazette of India, Extraordinary, dated 15th August, 1942.

2. This Ordinance is applied to the Darjeeling District with effect from 15.10.42, see Bengal Government Notification No. 20215-P dated 8-10-1942 sections 2-4 applied to members of the Armed Reserves, Special Emergency Forces, Vizianagram and Pallavaram and the Malabar Special Police, see Madras Government Notification No. 226-Home, dated 29:1-1943.

3. This Ordinance has been extended to--

(a) the new provinces and merged States by Act LIX of 1949, S.3(1-1-1950):

(b) the States of Manipur, Tripura and Vindhya Pradesh by Act XXX of 1950, S.3 (16-4-1950).

(c) the Union territories of Dadra and Nagar Havelli & Pondicherry by Regn. VI of 1965 (1-7-1965) & Regn VII of 1963 (1-10-1963).