

## MINISTRY OF DEFENCE

### NOTIFICATION

New Delhi, the 27<sup>th</sup> November, 1954

S.R.O. 484. In exercise of the powers conferred by section 191 of the Army Act 1950 (XL VI of 1950), and all other powers enabling in this behalf, and in supersession of the Indian Army Act Rules, and the Army Act, 1950 published with the notifications of the Government of India in the late Army Department No. 911, dated 3<sup>rd</sup> November, 1911, and the Ministry of Defence No. S.R.O, 125 dated 22<sup>nd</sup> July 1950, respectively, the Central Government hereby makes the following rules, namely:-

### THE ARMY RULES, 1954

#### CHAPTER I

#### PRELIMINARY

1. **Short title.** These rules may be called the Army Rules, 1954.
2. **Definition.** In these rules, unless the context otherwise requires, -
  - (a) "the Act" means the Army Act, 1950 (XL VI of 1950);
  - (b) "Appendix" means an appendix set forth in these rules;
  - (c) "Field Officer" includes an officer, not being a general officer, of any rank (including brevet rank) above the rank of Captain;

(Authority: SRO 188 of 4 Jun 1979)

(d) “proper military authority”, when used in relation to any power, duty, act or matter, such military authority as, in pursuance of these rules or the regulations made under the Act or the usages of the service, exercises or performs that power or duty or is concerned with the act or matter;

(di) “reckonable commissioned service” means service from the date of permanent commission, or the date of seniority for promotion fixed on grant of the commission including any ante date for seniority granted under the rules in force on grant of commission ;

Provided that periods of service forfeited by sentence of court-martial by summary award under the Act and periods of absence without leave, shall be excluded but periods during which furlough rates of pay are drawn and periods of captivity on prisoners of war rates of pay shall be included.

(Authority: SRO 188 of 4 Jun 1979)

(d) “Section” means a section of the Act.

(e) all words and expressions used in these rules and not defined, but defined in the Act shall have the same meanings as in the Act.

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

**4. Forms in Appendices.**

(1) The forms set forth in the appendices to these rules, with such variations as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if used, shall be sufficient, but a deviation from such forms shall not, by reason only of such deviation, render invalid any change, warrant, order, proceedings or any other document relevant to these rules.

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

(3) The directions in the notes to, and the instructions in, the forms shall be duly complied with in all cases to which they relate, but any omission to comply with any such directions in the notes or instructions shall not, merely by reason of such omission, render any act or thing invalid.

**5. Exercise of power vested in holder of military office.** Any power or jurisdiction given to, and any act or thing to be done by; to or before any person holding any military office for the purpose of these rules may be exercised by, or done by, to, or before any other person for the time being authorized in that behalf according to the custom of the service.

**6. Cases unprovided for.** In regard to any matter not specifically provided for in these rules, it shall be lawful for the competent authority to do such thing or take such action as appears to it to be just and proper.

## CHAPTER II

### ENROLMENT AND ATTESTATION

**7. Enrolling officer.** The following persons shall be the “enrolling officers” for the purpose of section 13, namely :-

(a) all recruiting and assistant recruiting officers including officers of the Indian Navy or of the Air Force, who may be appointed as such,

(b) the officer commanding a regiment, battalion or training or regimental centre, and

(c) any extra assistant recruiting officer or other person who may be appointed as an “enrolling officer” by the Adjutant General.

## NOTES

1. For forms of enrolment see Appendix I. Enrolling officer must himself sign the form.
  
2. For "Corps" see AA. S. 3(i) and AR 187(1). Every person enrolled under the AA must belong to some corps or department from which he can ordinarily be transferred in accordance with the conditions of his enrolment (if they provide for such transfer) or with his own consent; but see AR 10 and notes thereto. He can be transferred with or without his consent from one portion of his corps or department to another.
  
3. Direct enrolment into the reserve of a corps can be effected either by the officer commanding the reserve centre or by the ordinary enrolling officers of the corps of which the reserve forms part.

**8. Persons to be attested.** All combatants, and other enrolled persons who may be selected to hold non-commissioned or acting non-commissioned rank shall, when reported fit for duty, be attested in the manner provided in section 17.

## NOTE

See AA. S. 16 and notes thereto.

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

(1) Every person required to be attested under section 16 shall make and subscribe an oath or affirmation in one of the following forms or in such other form to the same purport as the attesting officer ascertains to be in accordance with the religion of the person to be attested, or otherwise binding on his conscience.

### Form of Oath

I, ..... do swear in the name in the name of GOD that I will bear true faith and allegiance to the Constitution of India as by the law established and that I will, as in duty bound, honesty and faithfully serve in the regular Army of the union of India and go wherever ordered by land, sea or air, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

### Form of Affirmation

I, .....do solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the regular Army of the Union of India and go wherever ordered by land, sea or air, and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life.

(2) The aforesaid oath or affirmation shall, whenever practicable, be administered by the commanding officer of the person to be attested (or in the presence of such officer by a person empowered by him in this behalf) in the manner provided in section 17. If it is not administered, it may be administered by a magistrate or a recruiting officer or an assistant recruiting officer commanding the station.

### NOTES

1. AR 9(2) prescribes the persons, in addition to the commanding officers who can attest enrolled persons.
2. See AA. ss. 16 and 17 and notes thereto.

3. The following is a translation into Hindi of the above oath and affirmation:-

“Shapath Patra”

“Main ..... Parmatma ki Shapath lekar pratigya karta hum ki main qanundwara nishchit kie hue Bharat ke Vidhan ka sachche man se wafadar rahunga, aur main apne kartavya ke anusar Bharat ki Regular Army (Sthayi Sena) men imandari aur sachche jeaga, mein khushi se jaunga. Main, Bharat ke Rashtrapati ki aur us officer ki jo mere upper niyukt kia jae, sab agyaon ki manunga aur unka palan karunga : chahe is men mujhe apna Jiwan bhi balidan karna pare”.

“Pratigya Patra”

“Main .....drith pratigya karta hum kih main qanum dwara nischit kie hue Bharat ke Vidhan ka sachche man se wafadar rahunaga, aur main apne kartavya ke anusar Bharat ki regular Army ( Sthayi Sena) men imandari aur sachche man se sewa karunga. aur kahin mujhe prithi, samundar ya hawa ke raste bheja,jaega, main khushi se jaunga. Main Bharat ke Rashtrapati ki aur us officer ke jo mere upar niyukt kia jae, sab agyaon ko manunga aur unka palan karunga; chahe is men mujhe apna jiwana bhi balidan karna pare”.

4. In the case of Sikhs/Muslims the oath will be with “Main ..... Sri Guru Granth Sahib/Pak Khudai Taala” etc.

**10. Transfer from one corps or department to another.** Where the Central Government by any general or special order published in the official Gazette so directs, any person enrolled under this Act may, notwithstanding anything to the contrary contained in the conditions of service for which he is enrolled, be transferred to any corps or department by order of an authority exercising powers not less than those of an officer commanding a division.

NOTES

1. See note 2 to AR 7.

2. Enrolment is in the nature of a contract signed by the enrolled person wherein the terms and conditions of his service are specified. By this contract the enrolled person undertakes to serve continuously for a specified period in the particular corps or department in which he is enrolled. Ordinarily he can, therefore, be transferred from the corps in which he is enrolled to another corps, if the conditions of enrolment so permit. Under this rule, an enrolled person may be transferred to any corps or department by order of an authority exercising powers not less than of an officer commanding a division if the Central Government has so directed by any general or special order.

### **CHAPTER III**

#### **DISMISSAL, DISCHARGE, ETC.**

##### **11. Discharge not to be delayed.**

(1) Every person enrolled under the Army Act shall, as soon as he becomes entitled under the conditions of his enrolment to be discharged, be so discharged with all convenient speed :

Provided that no person shall be entitled to such discharge, if the Central Government has, by notification suspended the said entitlement to discharge for the whole or a part of the regular Army.

2. The discharge of a person, validly sanctioned by a competent authority, may, with the consent of the discharged person, be cancelled by an authority superior to the authority who sanctioned the discharge either without any conditions or subject to such conditions as such discharged person accepts.

#### **NOTES**

1. See notes 2 and 3 to AA. s. 22. For the prescribed authorities competent to authorize discharge see AR 13 and table annexed thereto.

2. The discharge of a person who is under the conditions of his enrolment entitled to be discharged must be authorized by the competent authority and completed with all convenient speed by the proper authorities. See ARs 13 and 18. Until the person's discharge is completed, he remains subject to AA but any undue delay in carrying out the discharge would give him good ground for complaint.

## **12. Discharge Certificate.**

(1) A certificate required to be furnished under the provisions of section 23 is hereinafter called a "discharge certificate".

(2) A discharge certificate may be furnished either by personal delivery thereof by or on behalf of the commanding officer to the person dismissed, removed, discharged or released, or by the same to such person by registered post.

### NOTES

1. See AA. s. 23 and note thereto.

2. The proper form to use is IAFY 1964, but any certificate which complies with AA. s. 23 would be legally sufficient. See also Regs Army, Paras 169 and 170.

3. An officer not being an enrolled person is not furnished with a discharge certificate.

4. When a discharge certificate is sent by post, it should be registered.



**13. Authorities empowered to authorize discharge.**

(1) Each of the authorities specified in column 3 of the Table below shall be the competent authority to discharge service person subject to the Act specified in column 1 thereof on the grounds specified in column 2.

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

(2A) Where the central Government or the Chief of the Army Staff decides that any persons subject to the Act should be discharged from service, either unconditionally or on the fulfillment of certain specified conditions, then, notwithstanding anything contained in this rule, the Commanding Officer shall also be the competent authority to discharge from service such person or any person belonging to such class in accordance with the said decision.

(3) In the table “commanding officer” means the officer commanding the corps or department to which the person to be discharged belongs except that to the case of junior commissioned officer and warrant officer of the Special Medical Section of the Army Medical Corps, the “commanding officer” means the Director of the Medical Services, Army, and in the case of junior commissioned officer and warrant officers of Remounts, Veterinary and Farms Corps, the “Commanding officer” means the Director Remounts, Veterinary and Farms.

TABLE

Category	Grounds of discharge	Competent authority to authorize discharge	Manner of discharge
1	2	3	4



<p>Warrant Officer</p>	<p>II. (i) (a) On completion of the period of service or tenure specified in the Regulations for this rank or appointment, or on reaching the age limit, whichever is earlier, unless retained on the active list for a further specified period with the sanction of the Brigade/Sub Area Commander or on becoming eligible to release under the Regulations.</p> <p>(b) At his own request on the transfer to the pension establishment.</p>	<p>(b) In the case of JCOs, not covered by (a), serving in the Army or Command the General Officer Commanding-in-Chief of that Army or command if not below the rank of Lieutenant General.</p> <p>(c) In any other case the Chief of the Army Staff.</p> <p>Commanding Officer</p>	<p>cause against the order of discharge.</p>
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<p>have been attested</p>	<p>III. (ii) On completion of a period of army service only, there being non vacancy in the Reserve.</p> <p>III. (iii) Having been Commanding Officer. Found medically unfit for further service.</p> <p>III. (iv) At his own request before fulfilling the conditions of his enrolment.</p>	<p>(in the case of persons unwilling to extend their Army Service).</p> <p>Commanding officer</p> <p>Commanding Officer</p> <p>Brigade/Sub Area Commander</p>	<p>Application to person enrolled for both Army service and Reserve. (A person who has the right to extend his Army Service and wishes to exercise that right cannot be discharge under this head).</p> <p>To be carried out only on the recommendation of an invaliding Board.</p> <p>The Commanding officer will exercise the power only when he is satisfied as to the desirability of sanctioning application and the strength of the unit will not thereby be unduly reduced.</p>
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## NOTES

1. A CO who considers it desirable to retain on the active list a JCO or WO who is desirous of continuing to serve beyond the date on which he would ordinarily be retired, should forward an application to that effect six months before that date. In all other cases discharge should be carried out in accordance with the provisions of ARs 11 and 12. For definition of CO see AA. s. 3 (v).

2. When compulsory discharge of a JCO or WO or OR is sought on grounds of misconduct, the authority competent to sanction the same should satisfy itself that trial by court-martial of such a person is inexpedient or impracticable for reason other than probable failure to establish the charges, and that further retention in service of the individual is undesirable.

In all cases of discharge under items 1 (III), II (iii) or III(v) competent authority sanctioning the same must, if the circumstances of the case permit, give the person concerned an opportunity to show cause against the order of discharge.

3. The discharge certificate for a person discharged under item I(iii) will specify the particular cause of discharge: -

e.g., On resignation of his commission.

On transfer to the pension establishment for a specified reason.

Compulsory, with gratuity.

Service no longer required.

4. The discharge certificate for a person discharged under item II (iii) will specify the particular cause of discharge -

e.g., On resignation of his warrant.

On transfer to the pension establishment for a specified reason.

Compulsory, with gratuity.

Service no longer required.

5. The discharge certificate for a person discharged under items III (v) and IV will specify the particular cause of discharge -

e.g., Irregular enrolment.

Compulsory transfer to pension establishment, or discharge with gratuity, for a special reason.

At his own request before fulfilling the conditions of his enrolment.

Services no longer required.

On completion of army service only, there being no vacancy in the Reserve (in the case of persons willing to extend their army service). Having reached the stage at which discharge may be enforced (in the case of persons of the rank of havildar, or equivalent rank, otherwise that at their own request).

6. See AR 18 for date from which discharge takes effect.
7. In no case discharge can be made retrospective, AR 18(3), nor can a valid discharge be cancelled without the person's consent (AR 11 (2)).



**13-A. Termination of service of an officer by the Central Government on his failure to qualify at an examination or course.**

(1) When an officer does not appear at or, having appeared fails to qualify, at the retention examination or promotion examination or any other basic course or examination within the time or extended time specified in respect of that examination or course, the Chief of the Army Staff shall call upon the officer to show cause why he should not be compulsory retired or removed from the service.

(2) In the event of the explanation being considered by the Chief of the Army Staff to be unsatisfactory, the matter shall be submitted to the Central Government for orders, together with the Officer's explanation and the recommendation of the Chief of the Army Staff as to whether the officer should be -

(a) called upon to retire; or

(b) called upon to resign.

(3) The Central Government, after considering the explanation, if any, of the officer and the recommendation of the Chief of the Army Staff, may call upon the officer to retire or resign, and in his refusing to do so, the officer may be compulsory retired or removed from the service on pension or gratuity, if any, admissible to him.

**14. Termination of service by the Central Government on account of misconduct.**

(1) When it is proposed to terminate the service of an officer under Section 19 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub-rule (2) against such action :-

Provided that this sub-rule shall not apply:-

(a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court; or

(b) where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an officer's misconduct, the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer by a court-martial is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence.

Provided that the Chief of the Army Staff may withhold from disclosure any such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

In the event of explanation of the officer being considered unsatisfactory by the Chief of the Army Staff, or when so directed by the Central Government, the case shall be submitted to the Central Government, with the officer's defence and the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4).

(3) Where, upon the conviction of an officer by a criminal court, the Central Government or the Chief of the Army Staff considers that the conduct of the officer which has led to his conviction renders his further retention in service undesirable, a certified copy of the judgment of the criminal court convicting him shall be submitted to the Central Government with the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4).

(4) When submitting a case to the Central Government under the provisions of sub-rule (2) or sub-rule (3), the Chief of the Army Staff shall make his recommendation whether the officer's service should be terminated and if so, whether the officer should be:

- (a) dismissed from the service; or
- (b) removed from the service; or
- (c) compulsorily retired from the service.

(5) The Central Government after considering the reports and the officer's defence, if any, or the judgment of the criminal court, as the case may be, and the recommendation of the Chief of the Army Staff, may -

- (a) dismiss or remove the officer with or without pension or gratuity; or
- (b) compulsorily retire him from the service with pension and gratuity, if any, admissible to him.

#### NOTES

1. See AA. ss. 18 and 19 and notes thereto.
2. Action is to be initiated under this rule when the services of an officer are to be terminated on grounds of misconduct. The Central Government or the COAS should be satisfied, before initiating action, that the trial of the officer by court-martial is inexpedient or impracticable for reasons other than probable failure to establish the charge against him, and that his further retention in service is undesirable.

3. For the date from which dismissal or removal takes effect, see AR 18 and notes thereto.

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

5. Dismissal under this rule is not a punishment as under AA. s. 71. It merely amounts to termination of an officer's commission/service without his consent. Removal is a less grievous form of dismissal.

6. No show cause notice is required to be given to an officer under this rule if his dismissal/removal is sought on grounds of misconduct for which he has already been convicted by a Criminal Court. Whereas an officer convicted by a court-martial for misconduct, must be given the show cause notice except when the Central Government considers it inexpedient or impracticable to do so as stipulated in proviso (b) to sub-rule (1).

**15. Termination of Service by the Central Government on grounds other than misconduct.**

(1) When the Chief of the Army Staff is satisfied that an officer is unfit to be retained in the service due to inefficiency, or physical disability, the officer -

(a) shall be so informed.

(b) shall be furnished with the particulars of all matters adverse to him, and

(c) shall be called upon to urge any reasons he may wish to put forward in favour of his retention in the service;

Provided that clauses (a), (b) and (c) shall not apply if the Central Government is satisfied that for reasons, to be recorded by it in writing, it is not expedient or reasonable practicable to comply with the provisions thereof :

Provided further that the Chief of the Army Staff may not furnish to the officer any matter adverse to him, if in his opinion, it is not in the interest of the security of the State to do so.

(2) In the event of the explanation being considered by the Chief of the Army Staff unsatisfactory, the matter shall be submitted to the Central Government for orders, together with the officer's explanation and the recommendation of the Chief of the Army Staff as to whether the officer should be -

(a) called upon to retire; or

(b) called upon to resign.

(3) The central Government after considering the reports, the explanation, if any, of the officer and the recommendation of the Chief of the Army Staff, may call upon the officer to retire or resign, and on his refusing to do so, the officer may be compulsorily retired or removed from the service on pension or gratuity, if any admissible to him.

#### NOTES

1. See notes to AR 14.

2. It would appear that action is to be initiated under this rule when it is intended to terminate the service of an officer on grounds of inefficiency only. When it is intended to terminate his services on grounds of physical disability, action should be initiated under AR 15-A and not under this rule.

3. For the date from which the termination of services becomes effective, see AR 18 and notes thereto.

4. Services under this rule cannot be terminated with retrospective effect, nor can such termination be cancelled with the officer's consent.

**15-A. Release on medical grounds.**

(1) An officer who is found by a Medical Board to be permanently unfit for any form of military service may be released from the service in accordance with the procedure laid down in this rule.

(2) The President of the Medical Board shall, immediately after the Medical Board has come to the conclusion that the officer is permanently unfit for any form of military service, issue, a notice specifying the nature of the disease or disability he is suffering from and the finding of the Medical Board and also intimating him that in view of the finding he may be released from the service; every such notice shall also specify that the officer may, within fifteen days of the date of receipt of the notice, prefer a petition against the finding of the Medical Board to the Chief of the Army Staff through the President of the Medical Board:

Provided that where in the opinion of the medical board the officer is suffering from a mental disease and it is either unsafe to communicate the nature of the disease or disability to the officer or the officer is unfit to look after his interests, the nature of the disease or disability shall be communicated to the officer's next-of-kin who shall have the like right to petition.

(3) If no petition is preferred within the time specified in sub-rule (2), the officer may be released from the service by an order to that effect by the Chief of the Army Staff.

(4) If a petition is preferred within the time specified in sub-rule (2), it shall be forwarded to the Central Government together with the records thereof and the recommendation of the Chief of the Army Staff. The Central Government may, after considering the petition and the recommendation of the Chief of the Army Staff, pass such order as it deems fit.

NOTES

1. Action is to be initiated under this rule when the release of an officer is to be initiated on medical grounds or because of physical disability and he is found to be permanently unfit for any form of military service.

2. The COAS would be competent to order the release of an officer under this rule, if no petition is preferred within the time specified in sub-rule (2), either by the officer or his next of kin. Where such a petition is preferred, within the stipulated time, the Central Government alone would be competent to order the release.

**16. Release.** A person subject to the Act may be released from the service in accordance with the Release Regulations for the Army or in accordance with any other regulations, instructions or orders made in that behalf.

#### NOTES

See Release Regulations.

#### **16-A. Retirement of Officers.**

(1) Officers shall be retired from service under the orders of the Central Government, or the authorities specified in sub-rule (2), with effect from the afternoon of the last date of the month in which they -

(a) attain the age limits specified in sub-rule 5; or

(b) complete the tenures of appointment specified in sub-rule 5(f) (ii) and (g) (ii) and sub-rule (6), whichever is earlier.

(2) The authorities referred to in sub-rule (1) shall be :

(a) the Director General Armed Forces Medical Services in respect of Officers of the Army Medical Corps, Army Dental Corps and Military Nursing Service ;

(b) the Additional Director General, Remount and Veterinary Corps in respect of Officers of that Corps below the rank of Colonel;

(c) the Deputy Director General of Military Farms in respect of officers of the Military Farms below the rank of Colonel;

(d) the Military Secretary, Army Headquarters in respect of all other officers.

(3) The orders shall specify the dates from which retirement shall be effective and subject to the provisions of sub-rule (4), the Officer shall be relieved of his duties on that date.

(4) An Officer who has attained the age of retirement or has become due for such retirement on completion of his tenure, may be retained in the service for a further period by the Central Government, if the exigencies of the service so requires.

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

(a) of Armoured Corps, Infantry, Artillery, Engineers and Signals :

Upto and including the rank of Major - 50 years

Lieutenant Colonel (Time Scale) - 51 years

Lieutenant Colonel (Selection) - 52 years

Colonel - 52 years

Brigadier - 54 years



Major General - 56 years

Lieutenant General - 58 years

General - 60 years

(b) of Army Service Corps (excluding Food Inspection Organisation), Army Ordnance Corps, Electrical and Mechanical Engineers, Pioneer Corps and Intelligence Corps :

Upto and including the rank of Colonel - 52 years

Brigadier - 54 years

Major General - 56 years

Lieutenant General - 58 years

(c) of Food Inspection Organisation :

Upto and including the rank of Lieutenant Colonel (Time Scale) - 52 years

Lieutenant Colonel (Selection) - 55 years

(d) of Judge Advocate General's Department, Army Education Corps, Military Farms, Special List Officers(Quartermaster, Technical Record Officers and Army Physical Training Corps (Master-at-Arms):-

Upto and including the rank of Colonel	- 55 years
Brigadier	- 56 years
Major General	- 57 years
Lieutenant General	- 58 years

(d)(i) of Remount and Veterinary Corps :

Upto and including the rank of Lt Col	- 55 years
Colonel	- 57 years
Brigadier	- 58 years

(d)(ii) **Tenure of appointment.** The tenure of Addl DG RVS in the Remount and Veterinary Corps will be four years irrespective of the rank or ranks in which held and whether the rank held is acting or substantive. The officer holding the appt of Addl DG RVS of the Remount and Veterinary Corps will retire on attaining the age of superannuation specified above or on completion of the tenure of 4 years whichever is earlier.

(e) of Army Medical Corps, Army Dental Corps and Military Nursing Service :

Upto and including the rank of Lieutenant Colonel	- 55 years
Colonel	- 57 years
Brigadier	- 58 years

Major General - 59 years

Lieutenant General - 60 years

All officers of Army Medical Corps - 55 years  
(Non Technical)

(f) (i) permanently seconded to Defence Research and Development Organisation :

Upto and including the rank of Major General - 57 years

Or equivalent

Lieutenant General - 58 years

Provided that officers upto the rank of Major General or equivalent shall be given two reviews; one at the age of 52 years and the other at the age of 55 years, carried out well in advance by the Defence Research and Development Organisation Selection Board per its own laid criteria, to determine the suitability for continuation beyond that age unless the officer volunteers for retirement. The officers found unsuitable for continuation in either of reviews shall retire on attaining the age of 52 years or 55 years, as the case may be.

(ii) the tenure in the substantive rank of Lieutenant General shall be four years.

(g) (i) permanently seconded to Directorate General Quality Assurance :

Upto and including the rank of Major General of - 57 years

Or equivalent

Lieutenant General

- 58 years

Provided that officers upto the rank of Major General or equivalent shall be given two reviews; one at the age of 52 years and the other at the age of 55 years, carried out well in advance by the Inspection Selection Board per its own laid criteria, to determine the suitability for continuation beyond that age. The officers found unsuitable for continuation in either of reviews shall retire on attaining the age of 52 years or 55 years, as the case may be.

(ii) the tenure in the rank of Lieutenant General shall be four years.

(h) of Engineers permanently seconded to Survey of India as under the civil rules applicable to them from time to time.

(6) The following shall be the tenures of appointment for the purpose of retirement :

(a) The tenure in the rank of a General shall be a maximum of 3 years.

(b) Army Medical Corps Officers holding the rank of Lieutenant General shall be serve in the rank for one tenure of 4 years :

Provided an officer holding the appointment of Director General Medical Services (Army) or Director General Medical Services (Navy) or Director General Medical Services (Air) or Commandant Armed Forces Medical College or Commandant Army Medical Corps School and Centre Lucknow or Additional Director General Armed Forces Medical Services in the rank of Lieutenant General shall, in the event of his being appointed as Director General Armed Forces Medical Services, shall serve for a combined tenure of 5 years.

(c) The tenure of Army Dental Corps Officers of the rank of Major General shall be of 4 years.

**Explanation I** - For the purpose of this rule,

(a) "Lieutenant Colonel" means a Lieutenant Colonel by selection and includes a Lieutenant Colonel by time scale in the Army Medical Corps, Army Dental Corps and Veterinary Cadre of Remount and Veterinary Corps;

(b) "rank" means a substantive rank.

**Explanation II** - For the purpose of this rule,

(a) Age of retirement as specified in sub-rule (5) shall apply to permanent commissioned officers in the respective substantive rank.

(b) Stipulated age of retirement in the rank of Lieutenant General/Major General in Army Education Corps, Intelligence Corps, Remount and Veterinary Corps, Judge Advocate General's Department, Pioneer Corps, Military Farms and Special List Officers Cadre will be applicable only when these ranks are sanctioned in the Corps, Department or Cadre, as the case may be.

(c) Officers of the Intelligence Corps, Judge Advocate General's Department, Army Education Corps, Remount and Veterinary Corps and Military Farms who had opted to be governed by the age of retirement prevalent prior to the issue of Government of India, Ministry of Defence, letter Nos A/49453/AG/PS2(a)/3770-S/D (AG) dated 26 Jul 1984 and A/49453/AG/PS2(a)/Minor Corps-S/D (AG) dated 26 Jul 1985, as applicable shall continue to be so governed.

(Authority : SRO 17E dt 6 Dec 93).

NOTES

(a) A substantive Lieutenant Colonel (Time Scale) belonging to the Defence Research and Development and Production and Inspection Organisation, Army Medical Corps (Non-Technical), Remount Cadre of Remount and Veterinary Corps and Military Farms, promoted to the rank on completion of 24 years reckonable commissioned service and held against the appointment tenable in the rank of Major will be retained in service that rank upto 3 years or upto the age of compulsory retirement or upto completion of 27 years commissioned service (rendered as Permanent Commissioned Officer including the period of ante-date of full pay commissioned service of non-regular officers reckoned for purpose of seniority and promotion on grant of Permanent Commission), whichever is the earliest.

(b) Provision contained in Item (a) above shall also continue to apply to such of the officers of Army Service Corps (including Food Inspection Organisation), Army Ordnance Corps, Electrical and Mechanical Engineers, Pioneer Corps, Intelligence Corps, Army Education Corps and Judge Advocate General's Department as were granted the rank of Lieutenant Colonel (Time Scale) prior to the 1<sup>st</sup> December, 1976 and are held against the appointment tenable in this rank of Major and are adversely affected by the application of the age limits prescribed for retirement for this rank. In the operation of the said provision, the age of compulsory retirement in their case shall be taken as applicable to the rank of Major of their respective Service.

(c) (1) Officers who are not approved for retention in service beyond the minimum age of retirement or the minimum period of service specified to earn full pension, if that occurs after attaining the minimum age of retirement, shall be retired.

(2) Case for retention in service beyond the minimum age of retirement or the minimum period of qualifying service (reckonable commissioned service in the case of Defence Research and Development and Production and Inspecting Organisation and Army Medical Corps) required to earn full pension shall be assessed by the appropriate Selection Board sufficiently in advance of the attainment of that age or

completion of that period. Retention in service shall be subject to the following conditions, namely :-

(i) an officer shall not be in a medical classification lower than Grade 1 'S' factor and 2 in any one of the other SHAPE factors in the case of Army Medical Corps and Army Dental Corps, and S1 H1 A1 P1 E1 or S1 H2 A1 P1 E1 or S1 H1 A1 P1 E2 in the case of Defence Research and Development and Production and Inspection Organisation. In other cases, an officer shall be in an acceptable Medical Classification. Colonels of the Remount and Veterinary Corps and Military Farms in Medical Classification lower than S1 H1 A1 P1 E1 or S1 H2 A1 P1 E1 or S1 H1 A1 P1 E2 may also be retained in service provided that :-

(A) such retention would be in public interest;

(B) an officer of the Armoured Corps, Artillery, Engineers, capable of performing the normal active service duties of the rank in which he is being retained;

(C) any defect, disability or disease from which the officer is suffering is not likely to be aggravated by service conditions;

(ii) the officer's efficiency for his rank shall be of a sufficiently high standard in the cases of Armoured Corps, Artillery, Engineers, Signals, Infantry, Army Service Corps (excluding Food Inspection Organisation). Army Ordnance Corps, Electrical and Mechanical Engineers and Pioneer Corps, and of a specially high standard in the case of others;

(iii) an officer found fit for further promotion but not so promoted for want of vacancies in the higher rank shall be preferred;

(iv) an officer shall not block (seriously block in the case of Armoured Corps, Artillery, Engineers, Signals, Infantry, Army Service Corps (excluding Food Inspection Organisation). Army Ordnance Corps, Electrical and Mechanical Engineers and Pioneers Corps) the promotion prospects of deserving officers;

(v) an officer of the Armoured Corps, Artillery, Engineers, Signals, Infantry, Army Service Corps (excluding Food Inspection Organisation), Army Ordnance Corps, Electrical and Mechanical Engineers and Pioneer Corps, whose performance or medical fitness deteriorates during the period of his retention in service shall be retired from service.

**16-B. Retirement of an officer at his own request.**

(1) The retirement of an officer at his own request before he becomes liable to retirement under rule 16A shall require the sanction of the Central Government.

(2) An officer whose request to retire is granted may, before he is retired apply to the Central Government may, at its discretion, grant such withdrawal of his application.

**16-C. Resignation of Commission.**

(1) An officer shall have no right to resign his commission but may submit an application to the Central Government to resign his commission. He shall not be relieved of his duties until the Central Government has accepted his resignation.

(2) An officer whose application to resign his commission has been accepted may, before his is relieved of his duties, apply to the Central Government for withdrawal of the said application. The Central Government may, at its discretion, grant withdrawal of his application.

(Authority : SRO 188 of 4

Jun 1979)

**17. Dismissal or removal by Chief of the Army Staff and by other officers.** Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court martial, no person shall be dismissed or removed under sub-section (1) or sub-section (3), of section 20, unless he has been informed of the particulars of the



cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service.

Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may, after certifying to that effect, order the dismissal or removal without complying with the procedure set out in his rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.

#### NOTES

1. A show cause notice is required to be given under this rule to the individual whose dismissal or removal from service is contemplated, except when the authority competent to order such dismissal or removal considers it inexpedient or impracticable to give such notice as stipulated in the proviso to the rule.

Show cause notice will not be necessary when the dismissal or removal is sought on grounds of misconduct for which the person has already been convicted by a criminal court or court-martial.

2. When a dismissal or removal of a person is sought on grounds of misconduct for which he has not been convicted by a criminal court or a court-martial, the authority competent to order such dismissal or removal should satisfy itself that trial by court-martial of such a person is inexpedient or impracticable for reasons other than probable failure to establish the charge, and that further retention in service of the individual is undesirable.

3. All cases of dismissal/removal under this rule where the prescribed procedure has not been followed are to be reported to the Central Government.

**18. Date from which retirement, resignation, removal, release, discharge or dismissal otherwise than by sentence or court-martial takes effect.**

(1) The dismissal of an officer under Section 19 or the retirement, resignation, release or removal of such officer shall take effect from the date specified in that behalf in the notification of such dismissal, retirement or removal in the official Gazette.

(2) The dismissal of a person subject to the Act, other than an officer whose dismissal otherwise than by sentence of a court-martial is duly authorised or the discharge of a person so subject whose discharge, if duly authorised, shall be carried out by the commanding officer of such person with all convenient speed. The authority competent to authorize such dismissal or discharge may, when authorising the dismissal or discharge, specify any future date from which it shall take effect:

Provided that if no such date is specified the dismissal or discharge shall take effect from the date on which it was duly authorised or from the date on which the person dismissed or discharged, ceased to perform military duty, whichever is the later date.

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

#### NOTES

1. See ARs 11 and 12 and notes thereto. As cashiering and dismissal awarded by court-martial, see AR 168 and notes thereto.

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

3. The competent authority cannot make the dismissal or discharge retrospective. Moreover, he must if he desires to specify a date, specify it at the time he authorises the dismissal or discharge. There is no legal objection to the "future date" being specified in suitable cases, e.g., "date of disembarkation"; but whenever possible a precise date should be specified. For dismissal or discharge when out of India, see AAs. 24 and notes thereto.

4. If the dismissal or discharge of a person is found to be illegal, e.g., if it was not authorised by a competent authority, that person will be entitled to pay from the date of his illegal discharge although he performed no military duty. Also see AR 11(2).

## CHAPTER IV

### RESTRICTIONS OF FUNDAMENTAL RIGHTS

**19. Unauthorised organisation.** No person subject to the Act shall, without the express sanction of the Central Government -

(i) take official cognizance of, or assist or take any active part in, any society, institution or organisation, not recognised as part of the Armed Forces of the Union; unless it be of a recreational or religious nature in which case prior sanction of the superior officer shall be obtained;

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

### NOTES

1. See Army Act Section 21 and notes thereto.

2. The fundamental right to form associations or unions enjoyed by every citizen under Art. 19(1)(c) of the Constitution is abrogated in its application to members of the regular Army under this rule. Similarly under ARs 20 and 21 the fundamental rights of freedom of speech and expression and assembly enjoyed by every citizen under Art. 19(1)(a) and (b) are abrogated in their application to members of the regular Army. The aforesaid rights have been so abrogated because of the nature of duties performed by the members of the regular Army and for the maintenance of discipline among them.

3. Contravention of any of the ARs 19 to 21 would be punishable under AA. s. 63.

**20. Political and non-military activities.**

(1) No person subject to the Act shall attend, address, or take part in any meeting or demonstration held for a party or any political purposes, or belong to or join or subscribe in the aid of, any political association or movement.

(2) No person subject to the Act shall issue an address to electors or in any other manner publicly announce himself or allow himself to be publicly announced as a candidate or as a prospective candidate for election to Parliament, the legislature of a State or a local authority, or any public body or act as a member of a candidate's election committee, or in any way actively promote or prosecute a candidate's interests.

NOTES

See notes to AA. s. 21 and AR 19.

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

(i) publish in any form whatever or communicate directly or indirectly to the Press any matter in relation to a political question or on a service subject or containing any service information, or publish or cause to be published any book or letter or article or other document on such question or matter or containing such information without the prior sanction of the Central Government, or any officer specified by the Central Government in this behalf; or

(ii) deliver a lecture or wireless address, on a matter relating to a political question or on a service subject or containing any information or views on any service subject without the prior sanction of the Central Government or any officer specified by the Central Government in this behalf.

**Explanation.** For the purpose of this rule, the expression "service information" and "service subject" include information or subject, as the case may be, concerning the forces, the defence or the external relation of the Union.

## NOTES

See notes to AA. s. 21 and AR 19.

## CHAPTER V

### INVESTIGATION OF CHARGES AND TRIAL BY COURT-MARTIAL

#### SECTION I – INVESTIGATION OF CHARGES AND REMAND FOR TRIAL

#### **22. Hearing of charge.**

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

Provided that where the charge against the accused arises as a result of investigation by a court of inquiry, wherein the provisions of rule 180 have been complied with in respect of that accused, the commanding officer may dispense with the procedure in sub-rule (1).

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

Provided that the commanding officer shall not dismiss a charge which he is debarred to try under sub-section (2) of section 120 without reference to superior authority as specified therein.

(3) After compliance of sub-rule (1), if the commanding officer is of opinion that the charge ought to be proceeded with, he shall within a reasonable time-

(a) dispose of the case under section 80 in accordance with the manner and form in Appendix III ; or

(b) refer the case to the proper superior military authority; or

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

(d) if the accused is below the rank of warrant officer, order his trial by summary court-martial:

Provided that the commanding officer shall not order trial by a summary court-martial without a reference to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender unless –

(a) the offence is one which he can try by a summary court-martial without any reference to that officer; or

(b) he considers that there is grave reason for immediate action and such reference cannot be made without detriment to discipline.

(4) Where the evidence taken in accordance with sub-rule (3) of this rule discloses an offence other than the offence which was the subject of the investigation, the commanding officer may frame suitable charge(s) on the basis of the evidence so taken as well as the investigation of the original charge.

**Explanation** : Where an officer, other than the commanding officer, proposes to proceed against an accused under Sec 80 of the Act, the provisions of sub-rules (1) to (3) of this rule shall, in so far as they are applicable, may be complied with by such officer.

SRO No 258 dt 27 Nov 2002

#### NOTES

1. For procedure in the case of an officer, see AR 25.
  
2. Under AA. s. 135 police and other civilian witnesses may be summoned to attend before a CO if it is considered desirable to compel their attendance by the service of a summons. Witnesses cannot be sworn or affirmed.
  
3. As to procedure where a criminal court and court-martial have each jurisdiction in respect of a civil offence, see AA.ss. 125 and 126 and notes thereto and AR 197-A. See also Regs Army para 418.
  
4. Every offence which a person subject to AA can commit, is an offence under the said Act, because it is either a military offence specified in the Act or a civil offence under AA. s. 69.

In deciding whether a charge under AA.s. 63 should be proceeded with, the CO must consider whether the alleged offence is prejudicial to good order and military discipline; if in his opinion, it is not, the charge must be dismissed. He must also consider whether having regard to the limitation of time prescribed by AA.s.122, the accused is liable to be proceeded against.

5. The CO must dismiss the charge if there is no evidence of any offence under the AA having been committed or if the accused has been previously acquitted or convicted of the alleged offence by any court, military or civil, or has been summarily dealt with under sections 80, 83, 84 or 85 or the charge has previously been dismissed AA.s. 121 and AR 53(1)(a). He may dismiss it, if he considers that the evidence is doubtful or the case is trivial, or, in the exercise of the discretion, for any reason, e.g., the good character of the accused.

6. No particular time is fixed within which a CO must dispose of a case, so that he can always carefully consider a difficult case but as a rule he should decide immediately, and should never delay or more than a day, unless further evidence is required.

7. To make an entry against a person without punishment is a summary disposal and not a dismissal of the case.

9. Except as provided in AR 25 a summary of evidence is to be made in every case where it is intended to remand the accused for trial by a GCM or DCM or where the accused is an officer, JCO or WO, for summary disposal of the charge under AA. ss. 83, 84 or 85. In the case of SCM, a summary of evidence need not be made, if it is intended to try the accused forthwith without reference to superior authority either because the charge admits of this or because of such grave necessity as is referred to in proviso (b) to AR 22(3). The offences which a CO must (except in case of grave necessity falling under the above proviso) refer to superior authority before ordering trial by SCM are detailed in AA.s. 120(2). All other offences can be tried by SCM without such reference.

10. The summary of evidence, or a true copy thereof, should accompany the application for a GCM, DCM or summary disposal by a superior authority, or for sanction to hold a SCM when such sanction is necessary.

11. A person subject to AA has no right to elect to be tried by court-martial, except as provided in AA.s. 84(a).

12. A CO disposes of a case summarily by awarding one of the punishments specified under AA.s.80 and which he can award. A term of imprisonment or detention awarded by a CO should be awarded in days and will commence to run from the day of award. In law (in the absence of any special provision), there is no division of a day, and therefore, however late in the day a prisoner is committed, his term of imprisonment or detention is considered to have commenced at the first minute of that day that is, the first minute after midnight. The sentence will therefore, begin on the first minute of the day of award and end at sunset of the day it expires.



13. The award is considered final when the accused has been removed from the presence of the CO. The CO can at any time diminish the punishment before its completion, though he cannot add to it.

14. For “proper superior military authority” see ARs 2 and 3.

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

(1) Where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs.

(2) The accused may put in cross-examination such question as he thinks fit to any witness, and the questions together with the answers thereto shall be added to the evidence recorded.

(3) The evidence of each witness after it has been recorded as provided in the rule when taken down, shall be read over to him, and shall be signed by him, or if he cannot write his name shall be attested by the mark and witnessed as a token of the correctness of the evidence recorded. After all the evidence against the accused has been recorded, the accused will be asked; “Do you wish to make any statement? You are obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence”. Any statement thereupon made by the accused shall be taken down and read over to him, but he will not be cross-examined upon it. The accused may then call his witnesses, including if he so desires, any witnesses as to character.

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

(5) If a person cannot be compelled to attend as a witness, or if owing to the exigencies of service or any other grounds (including the expense and loss of time involved), the

attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him in writing, be readily procured, a written statement of his evidence purporting to be signed by him may be read to the accused and included in the summary of evidence.

(6) Any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused. The summons shall be in the form provided in Appendix III.

#### NOTES

1. The adjourned hearing for the purpose of reducing the evidence to writing should if possible be held on the same day as the investigation. The CO may direct another officer to take down the evidence, but an officer who has given material evidence at the investigation must not be appointed for this purpose. He should be an officer of some experience and with a good knowledge of the vernacular. The adjutant or the accused's squadron or company commander, should usually be detailed (see note to AR 43). The record of evidence under this rule is called 'the summary of evidence'. The summary of evidence can be ordered only by the CO of the accused. See AR 23 (3)(c). When it is recorded under the orders of an officer other than the accused's CO, summary disposal of a charge under AA. ss. 83, 84 or 85 or the trial of the offender by GCM or DCM, on the basis of such a summary of evidence may render the proceedings invalid.

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

3. The accused cannot claim to be represented by counsel at the taking of summary of evidence.

4. The evidence (so far as it is relevant and admissible) of every witness who gave evidence before the CO must be taken down unless good reason renders it not reasonably practicable to call him. The evidence of witnesses who did not appear before the CO may also be taken for either prosecution or defence, so long as it appears to be relevant. In reducing the evidence to writing immaterial statements may be omitted and all hearsay and irrelevant matter should be excluded.

5. The accused must be allowed to put 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-examination any witness the fact should accordingly be stated.

6. The formal caution provided for in sub-rule (3) must be given as soon as the evidence for the prosecution is closed. If it is necessary to take additional summary, the accused must again be formally cautioned before he makes any further statement. The fact that he was duly cautioned should be recorded in the summary. It is advisable to have an independent witness present when the accused is cautioned and when he makes the statement. Such independent witness apart from the officer recording the summary, would also be competent to prove the statement of the accused at the trial subsequently if necessary.

7. The statement of an accused person can only be given in evidence at the trial if it is voluntary. If it was made voluntarily, the mere fact that the caution was not given will not prevent it being used as evidence, but in no case must he be authoritatively called on to account for his proceedings, or required to make any statement, or cross-questions will not be admissible in evidence against him.

8. The accused may call witnesses on his behalf, and their evidence will be taken down and included in the summary; but he is not bound to call a witness because such witness gave evidence before the CO.

9. The certificate referred to in sub-rule (5) can conveniently be written below the signature of the absent witness on his written statement or abstract of evidence.

10. In many cases, the provisions of sub-rule (5) will effect a saving of time and expense, e.g., where a civilian witness is required to prove some fact not really in dispute. Such witness must, however, attend in person at the trial.

11. If it is found necessary to call at the trial some witness for the prosecution whose evidence is not included in the summary, an abstract of the evidence to be given by him should be supplied to the accused as early as possible. See AR 135 and notes thereto.

12. For the issue of summons see AA.s. 135. For form of summons see Appendix III Part III.

13. For power to dispense with sub-rules (1) to (5) see AR 36.

14. For memoranda for the guidance of officers taking down a summary of evidence, see pages 436 to 439.

**24. Remand of accused.**

(1) The evidence and statement (if any) taken down in writing in pursuance of rule 23 (hereinafter referred to as the "summary of evidence"), shall be considered by the commanding officer, who thereupon shall either -

(a) remand the accused for trial by a court-martial: or

(b) refer to case to the proper superior military authority; or

(c) if he thinks it desirable, re-hear the case and either dismiss the charge or dispose of it summarily.

(2) If the accused is remanded for trial by a court-martial, the commanding officer shall without unnecessary delay either assemble a summary court martial (after referring to the officer empowered to convene a district court-martial or on active service a summary general court-martial when such reference is necessary or apply to the proper military authority to convene a court-martial, as the case may require.

**NOTES**

1. For memoranda for the guidance of COs see pages 433 to 434.

2. For power to dispense with this rule, see AR 36.

3. The evidence in the summary may not correspond with that given at the original investigation and the case may appear in a new aspect. The CO may, therefore, decide to re-hear the case, and, if he thinks fit, dispose of summarily or try it by SCM, if he has jurisdiction to do so. He can dismiss the case on re-hearing it.

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

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

6. The delay in assembling a SCM should be avoided. The accused should be warned for trial at least 96 hours before hand, except on active service when he should be so warned at least 24 hours before the trial commences, See AR 34 and notes thereto.

**25.** Omitted vide SRO 17.E dated 6.12.93.

**26. Summary disposal of charges against Officer, Junior Commissioned Officer or Warrant Officer.**

(1) Where an officer, a junior commissioned officer or a warrant officer is remanded for the disposal of a charge against him by an authority empowered under section 83, 84 or 85 to deal summarily with that charge, the summary of evidence shall be delivered to him, free of charge, with a copy of the charge as soon as practicable after its preparation and in any case not less than twenty four hours before the disposal.

(2) Where the authority empowered under section 83, 84 or 85 decides to deal summarily with a charge against an officer, junior commissioned officer or warrant officer, he shall unless he dismisses the charge, or unless the accused has consented in writing to dispense with the attendance of the witnesses, hear the evidence in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call any witnesses and make a statement in his defence.

(3) The proceedings shall be recorded as far as practicable in accordance with the form in Appendix IV and in every case in which punishment is awarded, the proceedings together with the conduct sheet, summary of evidence and written consent to dispense with the attendance of witnesses (if any) of the accused, shall be forwarded through the proper channel to the superior military authority as defined in section 88.

#### NOTES

1. The accused should be warned for trial at least 24 hours before his summary trial.
2. An authority can dispose of the case summarily not only if asked to do so, but also if he is asked to convene a court-martial for the trial of the offender. Even if he is asked to deal summarily with a case he can, if he thinks it desirable, convene a court-martial. If on perusal of the summary (or abstract) of evidence and other documents, he thinks fit, he can at once, without bringing the accused before him order dismissal of the charge, or order a court-martial, or he can decide to hear the evidence with a view to dealing summarily with the case. After hearing the evidence the authority can still dismiss the case or order a court-martial or he can deal summarily with it but if he proposes to award a punishment of forfeiture of seniority or service for promotion, the accused has a right to claim trial by court-martial. See AA.s. 84.
3. Form 1 in Appendix IV Part I is to be used when the accused has given his consent in writing to dispense with attendance of witness at the trial.
4. The oral statement of the accused made in reply to question 4 I Form 1 or 2, will be recorded or a gist thereof prepared and attached. If the accused submits a written statement, it would be attached to the proceedings.

5. Question numbers, 5 in form 1 or Question number 6 in form 2 is to be put to an officer, JCO or WO, if the authority proposes to award a punishment other than reprimand, severe reprimand or stoppages.

6. See notes to form 1 and 2 regarding their disposal. After disposal of a charge if the finding is that of guilty, the form accompanied by the conduct sheet (IAFF-3013), in duplicate, summary or abstract of evidence, statement of the accused and written consent of the accused is to be forwarded through the usual channels to the Headquarters of the command concerned, who will show them to the DJAG of the command. In the case of punishments awarded by GOC-in-C of a command, these documents will be forwarded to the AG's Branch (PS-1) at Army Headquarters. When the finding is that of not guilty, only the finding will be communicated to Headquarters command concerned in the case of JCOs & WOs, and to Army Headquarters in the case of officers.

7. In the case of JCOs and WOs, the form together with the summary of evidence, statement of the accused and written consent of the accused is required to be returned to the unit for attachment to his Regimental conduct sheet (IAFF-3013).

8. Form 2 in Appendix IV Part I is to be used when the accused does not consent to dispense with attendance of witness at his summary trial.

9. A statutory review of summary trial proceedings is provided. See AA.s. 86 to 88.

10. Civilian witnesses cannot be summoned to attend summary trials under AA.ss. 83, 84 or 85.

**27. Delay reports.**

(1) In every case where a person subject to the Act, who is not on active service, is in military custody for a period longer than eight days without a court-martial for his trial having been ordered to assemble, or without a punishment having been awarded him under section 80, the commanding officer shall make a report in the form specified in Appendix III to the officer empowered to convene a general or a district court-martial for the trial of such person. Such report shall be made to the authority mentioned in this rule at intervals of every eight days until a court-martial is ordered to assemble, or a punishment is awarded under section 80, or such person is released from custody as the case may be.

(2) A copy of every such report made on or after the forty-eighth day of such custody shall be sent by the commanding officer direct to the Deputy Judge Advocate General of the command in which such person is held in custody.

(3) (i) Detention in military custody beyond two months of a person subject to the Act, who is not on active service and in whose case a court-martial for trial has not been ordered to assemble, shall require the sanction of the Chief of the Army Staff, or any officer authorised by him in this behalf with the approval of the Central Government, who may sanction further detention for a specific period, which he may extend from time to time, subject to a total period of detention of three months.

(ii) Any such detention beyond a period of three months shall require the approval of the Central Government.

ORDER

AUTHORISATION TO SANCTION DETENTION IN MILITARY CUSTODY



OF PERSONS SUBJECT TO THE ARMY ACT BEYOND TWO MONTHS

UNDER ARMY RULE 27(3)

In pursuance of clause (i) of sub rule 27 of the Army Rules, 1954 and in supersession of

order dated 12<sup>th</sup> September, 1983 issued in this behalf, the Chief of Army Staff, with the approval of the Central Government, hereby authorizes the General Officer Commanding-in-Chief of the commands to sanction in military custody beyond two months of a person subject to the Army Act, 1950, including an officer or a Junior Commissioned Officer, who is not on active service and in whose case a Court Martial for trial has not been ordered to assemble.

Signed at New Delhi on this Seventeenth day of December 1987.

(Sd/- x x x

(K Sundarji)

General

Chief of the Army

Staff

NOTES

1. See AA.ss. 102 and 103 and notes thereto.
2. For active service, see AA.ss.3(i) & 9.
3. For military custody, see AA.s.3(xiii).

Arrest whether open or close amounts to military custody.

4. Detention in custody beyond 2 months of a person who is not on active service and in whose case a court-martial is not ordered to assemble, requires the sanction of the sanction of the Central Government.

5. Once a court-martial has been ordered to assemble, e.g., a convening order is issued, the sanction of the COAS or the Central Government will not be necessary. The requirement of the rule for obtaining sanction should not be circumvented by issue of a convening order far in advance of the date of trial.

6. If necessary an accused person may be released from arrest without prejudice to his re-arrest, if trial cannot be convened within 2 or 3 months. If his detention beyond a period of two or three months is considered necessary, steps should be taken to obtain the sanction well in advance. An accused person should not be kept in such detention in anticipation of a sanction. Detaining an accused in custody beyond two or three months without a sanction, makes such detention illegal and a post-facto sanction obtained would not render such detention legal.

7. Under AR 33(6), an accused person has a right to address a petition to the DJAG or AJAG of the command concerned if he is kept in custody longer than 48 days without being brought to trial or is not given full liberty for preparing his defence.

8. Unnecessary detention in custody of an accused without bringing him to trial amounts to an offence under AA.s. 50(a).

### **Framing Charges**

**28. Charge-sheet and charge.**

- (1) A charge-sheet shall contain the whole issue or issues to be tried by a court-martial at one time.
- (2) A charge means a accusation contained in a charge-sheet that a person subject to the Act has been guilty of an offence.
- (3) A charge-sheet may contain one charge or several charges.

#### NOTES

1. The charge-sheet is usually prepared by the CO or adjutant of the accused's unit; but in the case of a trial by GCM or DCM, AR 37 makes the convening officer equally responsible for its correctness. It must be signed by the officer in actual command of the unit to which the accused belongs. If the accused is attached to another unit, the charge-sheet must be signed by the CO of the unit to which he is so attached. The order for the trial must be endorsed at the foot of the charge-sheet cannot be endorsed for trial by a staff officer as such.
2. For submission of certain charges to DJAG or AJAG of the command concerned before trial, see Regs Army para 458.
3. There may be several charge-sheets (see AR 79), but the court can only deal with one charge-sheet at a time. When there are two or more charge-sheet, they must be consecutively numbered.
4. The "charge" referred to in this rule is the formal written charge upon which the accused is to be tried as distinct from the charge or complaint mentioned in AA.s. 101 and ARs 22, 23 and 25, which give rise to the preliminary investigation.
5. All charges, includes the alternative charges, must be consecutively numbered. As to insertion of charges in separate charge-sheets see AR 79 and notes thereto.

6. An alternative charge should not be preferred, where a special finding is possible under AA.s. 139 e.g., on a charge of desertion there is no need to prefer a charge of absence without leave as an alternative. See AA.s. 139(a).

**29. Commencement of charge-sheet.** Every charge-sheet shall begin with the name and description of the person charged, and state his number, rank, name and the corps or department (if any) to which he belongs. When the accused person does not belong to the regular Army, the charge-sheet shall show by the description of him, or directly by an express averment, that he is subject to the Act in respect of the offence charged.

#### NOTES

1. The name or description of a person charged is immaterial so long as the identity is established. See also notes to ARs 32(1), 50(1) and 113. As an officer, JCO, WO or person enrolled in the regular Army is always subject to AA, a statement in the description of the accused that he belongs to a corps of the regular Army will be sufficient to aver and evidence of his so belonging will be sufficient to prove that he is subject to AA, without expressly adding the words.

2. If the accused is subject to AA under specified conditions e.g., an enrolled person of the Territorial Army, the description must contain an averment as to how he is subject of AA. See specimen charge-sheet 'Description of the accused' serials 6 to 8 at page 357 for persons who are subject of AA under specified conditions. See AA.s. 2(1) clauses (d) to (i).

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

No ..... Sepoy (Lance Naik) ..... Regiment

4. For army ranks see Regs Army para 131.

**30. Contents of charge.**

- (1) Each charge shall state one offence only, and in no case shall an offence be described in the alternative in the same charge.
  
- (2) Each charge shall be divided into two parts -
  - (a) statement of the offence; and
  
  - (b) statement of the particulars of the act, neglect or omission constituting the offence.
  
- (3) The offence shall be stated, if not a civil offence, as nearly as practicable, in the words of the Act, and if a civil offence, in such words as sufficiently describe in technical words.
  
- (4) The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect or omission is intended to be proved against him as constituting the offence.
  
- (5) The particulars in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as are so referred to shall be deemed to form part of the first mentioned charge as well as of the other charge.
  
- (6) Where it is intended to prove any facts in respect of which any deduction from pay and allowances can be awarded as a consequence of the offence charged, the particulars shall state those facts and the sum of the loss or damage it is intended to charge.

#### NOTES

1. For forms of charges and preliminary note as to their use, see pages 357 to 360. See also memoranda for guidance of courts-martial at page 430.

2. The convening officer or in the case of trial by SCM, the CO should seek the advice of DJAG or AJAG of the command concerned in any case where doubt exists as to the manner in which the charge should be framed. Charges for trial by GCsM and for indecency, fraud, theft (except ordinary theft) and civil offences (except simple assaults) should be referred to DJAG or AJAG concerned before trial; See Regs Army para 458.

3. A single charge disclosing two separate offences would be bad for duplicity e.g., a charge under AA.s. 40 for using threatening language and insubordinate language to his superior officer or a charge under AA.s. 52 for committing theft of Government property and dishonestly retaining Government property. But the use of the word "and" in the statement of offence is permissible where the charge discloses only one offence e.g., and charge under AA.s. 54(b) for losing by neglect arms, equipment and clothing the property of the Government because an accused is not charged with two offences, but with a single offence which is constituted by his having lost by neglect the various articles specified in the charge.

4. The rule against duplicity is also applicable to the particulars of the charge e.g., in a charge under AA.s. 36(d) an averment that the accused left his post without orders from his superior officer and remained absent for a specified period, is not permissible as the particulars disclose two separate offences. Similarly in a charge under AA.s. 44, it is not permissible to aver two false answers to two separate questions set forth in the enrolment form or in a charge under AA.s. 40(e) to aver two separate instances of use of insubordinate language.

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

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

7. The statement of particulars must support the statement of the offence; e.g., if the statement of an offence laid under AA.s.52(a) alleged that the accused committed theft in

respect of property of the Government, particulars stating that the accused dishonestly received, or was in unauthorized possession of, the property would not support the statement of the offence and the charge would be a bad charge, and the fact that the accused pleaded guilty to it would not affect the matter. But a merely technical difference, e.g., where the word assault is used in the statement of offence and the particulars disclose the use of criminal force, would not invalidate the charge, if the statement of offence and the particulars taken together supply the court and the accused with sufficient information of the nature of the offence which the court is to try and the accused to meet.

8. Where the statement of offence discloses an offence under AA and one or more essential elements of that offence are omitted from the particulars e.g., the word “dishonestly” in a charge 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.

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

10. The exact or approximate date of the offence should be averred in the particulars. Such averment would prima-facie show whether or not the trial in respect of the offence is time barred. See AA.s. 122(1) and the notes thereto. If for reasons of security it is considered undesirable to disclose the place of offence, the words “at field” may be averred in the particulars instead of the actual place of offence.

11. When civil offences are tried by court-martial under AA.s. 69, although technical terms need not be used in the charge, the essence of the civil offence must be expressed.

12. The statement of particulars should state shortly in ordinary language what the accused is alleged to have done. All the ingredients necessary to constitute the offence should be specified, e.g., if the charge is under AA.s. 41(2) for disobeying a lawful command, the particulars must state the command, rank and name of the superior officer who gave the command, and the fact that the accused disobeyed it. Whether a state of mind e.g.,

intention or knowledge, is an essential ingredient of an offence, such state of mind should be averred in the particulars.

13. Vague statement must be avoided, e.g., in a charge for using insubordinate language to his superior officer or for making a false statement to his CO, it is not sufficient to state that the accused used insubordinate language or made a false statement well knowing the statement to be false; the words alleged to have been spoken or written must be set out in the particulars. Similarly in a charge under AA.s. 42(e) it is not sufficient to state that the accused neglected to obey battalion orders by doing a particular act; the order it is alleged the accused neglected to obey must be set out in the particulars. See specimen charge No ..... on page.....

14. When particulars in one charge are framed wholly or partially by reference to the particulars in another charge and the accused is convicted of the former but acquitted of the latter, the conviction when recorded should specify the place and date mention in the former charge.

15. Stoppages cannot be awarded under AA.s. 71(1) unless particulars contain a specific averment regarding the value of the loss or damage caused and proved in evidence.

**31. Signature on charge-sheet.** The charge-sheet shall be signed by the commanding officer of the accused and shall contain the place and date of such signature.

#### NOTES

1. See note 1 to AR 28. The charge-sheet must be signed by the CO of the accused. It cannot be signed by any other officer for him.

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

3. The charge-sheet should contain the place and date of signature. If for reasons of security it is inadvisable to disclose the place of signature, it may be shown as "field". The



date of signature is of assistance in ascertaining whether or not provision of AR 34 regarding warning of the accused for trial, have been complied with.

**32. Validity of charge-sheet.**

(1) A charge-sheet shall not be invalid merely by reasons of the fact that it contains any mistake in the name or description of the person charged, provided that he does not object to the charge-sheet during the trial, and that no substantial injustice has been done to the person charged.

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

**NOTES**

1. Although the trial of an offender is not invalid on account of mistake in the name of the accused, such mistakes are dangerous, in so far as they may lead to mistakes of substance. Where, however, a person has been enrolled and is commonly known under an assumed name, he may be described by that name. The court has power to amend the charge by correcting any mistake in the name or description of an accused person, under AR 50 or 113.

2. Sub-rule (2) must not be relied upon as an excuse for carelessness in the preparation of charge-sheets. This sub-rule enables a court-martial, or any authority dealing with the case summarily under AA.s. 80, 83, 84 or 85, to presume matters which, though not stated in the charge are necessary to support its validity, and can reasonably be implied from it.

**Preparation for defence by accused person**

**33. Rights of accused to prepare defence.**

(1) Correspondence between the accused and his legal advisers shall not be liable to be censored. The accused shall inform his commanding officer of the names of such advisers and shall also inform him of any distinctive marks that such correspondence will bear.

(2) An accused person shall have the right to interview any witnesses whom he may wish to call in his defence. The provision of rule 137 shall apply to procuring the attendance of such witnesses.

(3) If the accused so desires, the commanding officer of the accused shall take such steps as the circumstances of the case permit to obtain a written statement from a witness whom the accused may wish to call in his defence. The statement shall be obtained in a closed envelope which shall be given to the accused person unopened.

(4) If the accused person gives to his commanding officer the name of any person whom he wishes to call in his defence, no person shall interview such witness with reference to the charges against the accused except in the presence of the accused, unless the accused agrees to dispense with his presence in writing. Similarly if the accused wishes to interview a witness whom the prosecutor intends to call, the interview shall be in the presence of an officer detailed by the commanding officer of the accused person.

(5) The commanding officer of the accused person or the officer responsible for his custody shall take adequate precautions so that no conversation which the accused person may have with his legal advisers or witnesses is liable to be overheard.

6. The accused person shall have the right to address an application to the Deputy or Assistant Judge Advocate General of the command within which he for the time being is, if he is kept under arrest longer than forty-eight days without being brought to trial or is not given full liberty for preparing his defence.

7. As soon as practicable after an accused has been remanded for trial by a general or district court-martial, and in any case not less than ninety-six hours or on active service twenty-four hours before his trial, an officer shall give to him free of charge a copy of the summary of evidence, and explain to him his rights under these rules as to preparing his defence and being assisted or represented at the trial, and shall ask him to state in writing

whether or not he wishes to have an officer assigned by the convening officer to represent him at the trial, if a suitable officer should be available. The convening officer shall be informed whether or not the accused so elects.

## NOTES

1. For power to dispense with this rule see AR 36.
2. The freest communication which is consistent with the necessities of discipline and with the same custody of the accused should be allowed. Failure to give the accused full opportunity of preparing his defence, and free communication with others for the purpose, may invalidate the proceedings. The accused, however, or the defending officer is not entitled to interview witnesses for the prosecution, without special authority. When so authorized, the accused or the defending officer should interview witnesses for the prosecution in the presence of an officer deputed by the CO. An accused is not bound to call as a witness everyone with whom he communicates as a possible witness on his behalf.
3. Neither the accused nor his defending officer or counsel should be permitted to interview for the purpose of general examination or interrogation any witness who has already given evidence for the prosecution at the taking of the summary of evidence, or whose evidence is included in the abstract of evidence as a witness for the prosecution unless the prosecution have, before the trial, definitely decided not to call such witness for the prosecution. If the accused or his defending officer or counsel desire to put any specific question or questions to such a witness for the prosecution with a view to ascertaining some specific fact or facts which it may be of assistance in the preparation of the defence to know, the Convening officer should permit such question or questions to be put subject to any safeguard such as the presence of a representative of the prosecution as the Convening Officer may think fit. The converse holds good as regards interviews by the prosecution of witness for the defence.
4. As to defending officer and friend of the accused see AR 95; and as to counsel at GCsM and DCsM, see ARs 96 to 101. As to the right of the accused to consult the JA on any question of law or procedure, see AR 105.

### **34. Warning of accused for trial.**

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

The interval between his being so informed and his arraignment shall not be less than ninety-six hours or where the accused person is on active service less than twenty-four hours.

(2) The officer at the time of so informing the accused shall give him a copy of the charge sheet and shall, if necessary, read and explain to him the charges brought against him. If the accused desires to have it in a language which he understands, a translation thereof shall also be given to him.

(3) The officer shall also deliver to the accused a list of the names, rank and corps (if any) , of the officers who are to form the court, and where officers in waiting are named, also of those officers in courts-martial other than summary courts-martial.

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

#### NOTES

1. For power to dispense with this rule see AR 36.

2. The duty of complying with the provisions of this rule will usually devolve upon the CO in the case of summary and the prosecutor in the case of other courts-martial, who should, in any case, satisfy himself before the trial that it has been properly performed. Even if this rule is dispensed with under AR 36, the accused must have information of the charge, and opportunity of calling his witnesses.

3. As to arraignment, see AR 48 and notes thereto.

4. The duty of procuring attendance of witnesses at GCM and DCM devolves, under AR 137(1) upon the CO or convening officer or, after assembly of the court, the presiding officer. The duty of procuring attendance of witnesses at SCM devolves under AR 137(2) upon the CO.

5. The request on an accused person for witnesses to be called on his behalf should only be refused if it is quite clear that their evidence would be immaterial, or if their attendance cannot be secured within a reasonable time. If the request is refused, the refusal and reasons for it should be communicated to the court, who will deal with the matter under sub-rule (4) and AR 138. If an essential witness is absent, the court should always adjourn for the purposes of enabling him to attend or of procuring his examination on commission.

6. For form of summons to witnesses, see Appendix III, Part III.

7. A copy and translation of the charge-sheet must always be given, unless that rule has been dispensed with under AR 36. Even where it is so dispensed with, the charges must be clearly explained to the accused, as otherwise he may not have proper opportunity to prepare his defence. If the accused objects to the charge he will have an opportunity of making his objection when called on to plead (AR 49).

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

### **35. Joint trial of several accused persons.**

(1) Any number of accused persons may be charged jointly and tried together for an offence averred to have been committed by them collectively.

(2) Any number of accused persons although not charged jointly, may be tried together for an offence averred to have been committed by one or more of them and to have been abetted by the other or others.

(3) Where the accused are so charged under sub-rules (1) and (2), any one or more of them may at the same time be charged with and tried for any offence averred to have been committed individually or collectively, provided that all the said offences are based on the same facts, or form or are part of a series of offences of the same or similar character.

(4) In the cases mentioned above, notice of the intention to try the accused persons together shall be given to each of the accused at the time of his being informed of the charges, and any accused person may claim, either by notice to the authority convening the court or, when arraigned before the court, by notice to the court, that he or some other accused be tried separately on one or more of the charges included in the charge-sheet, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him, will be material to his defence, or that otherwise he would be prejudiced or embarrassed in his defence. The convening authority or court, if satisfied that the evidence will be material or that the accused may be prejudiced or embarrassed in his defence as aforesaid, and if the nature of the charge admits of this shall allow the claim, and such accused person, or, as the case may be, the other accused person or persons whose separate trial has been claimed, shall be tried separately. Where nay such claim has been made and disallowed by the authority convening the court, or by the court, the disallowance of such claim will not be a ground for refusing confirmation of the finding or sentence unless, in the opinion of the confirming authority, substantial miscarriage of justice has occurred by reason of the disallowance of such claim.

#### NOTES

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

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

3. As to swearing the court to try several accused persons, see AR 89 and notes, and as to form of proceedings in the case of a joint trial, see para. 28 of memoranda on page 436.

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

5. To admit of a joint charge and trial, the accused must have acted together with the common purpose of committing the offence charged.

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

**36. Suspension of rules on the ground of military exigencies or the necessities of discipline.**

Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies, or the necessities of discipline render it impossible or inexpedient to observe any of the rules 23, 24, 33 and 34 and sub-rule (2) of rule 95, he may, by order under his hand, make a declaration to that effect specifying the nature of such exigencies or necessities, and thereupon the trial or other proceedings shall be as valid as if the rule mentioned in such declaration had not been contained herein; and such declaration may be made with respect of any or all of the rules aforesaid in the case of the same court-martial:

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

NOTES

1. For form of declaration see page 404.

2. The power conferred by this rule should rarely be exercised except on active service and then only if absolutely necessary. Occasionally it may be necessary to resort to it in the case of embarkation or on the line of march, or possibly in an extreme case where necessities of discipline require speedy trial and punishment.

3. In exercising the powers conferred by this rule, it is not necessary to dispense with all the provisions mentioned, e.g., it may be expedient to comply with the relevant provisions of AR 23 but not with AR 33.
4. If AR 23 is suspended, steps must be taken to inform the accused before hand of the nature of the charge, the names of the witnesses and the effect of their evidence, and the court must take care that the accused is not prejudiced by reason of the suspension, as, for instance, by not having received a summary of evidence.
5. The power of dispensing with AR 33 is only intended to be exercised where it is necessary to try a person before he can communicate with a witness or friend at a distance. The said rule should never be dispensed with except in extreme cases and even then the accused must be allowed free communication with any witness or friend on the spot.
6. Rule 34(3) should always be complied with the sub-rules (1) and (2) of the said rule, if not complied with within the time therein mentioned, should be complied with as long as possible before the court assembles.
7. The accused will not have full opportunity of making his defence unless he receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses evidence; or to acquaint himself with the charge, or requests the postponement of cross-examination of a witness, the court should grant the request, and may adjourn for the purpose. A refusal to do so might be held to be non-compliance with the proviso to the rule and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the accused is not prejudiced, by being taken by surprise, either by the charge or the evidence or witnesses.
8. When any of the provisions of ARs 33 or 34 have not been complied with, the accused has a right to ask for an adjournment if he has been prejudiced by such non-defence; see AR 56 (1) and (2).

## SECTION 2 – GENERAL AND DISTRICT COURTS-MARTIAL



## Convening the Court

### 37. Convening of General and District Court-Martial.

(1) An officer before convening a general or district court-martial shall first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Act, and that the evidence justified a trial on those charges, and if not so satisfied, shall order the release of the accused, or refer the case to superior authority.

(2) He shall also satisfy himself that the case is a proper one to be tried by the kind of court-martial which he proposes to convene.

(3) The officer convening a court-martial shall appoint or detail the officers to form the court and, may also appoint or detail such waiting officers as he thinks expedient. He may also, where he considers the services of an interpreter to be necessary, appoint or detail an interpreter to the court.

(4) The officer convening a court-martial shall furnish to the senior member of the court with the original charge-sheet on which the accused is to be tried and, where no judge-advocate has been appointed, also with a copy of the summary of evidence and the order for the assembly of the court-martial. He shall also send, to all the other members, copies of the charge sheet and to the judge-advocate when one has been appointed, a copy of the charge sheet and a copy of the summary of evidence.

## NOTES

1. With respect of the duties of the convening officer, see paras 10 to 13 of memoranda at page 440 to 441. The convening officer must ensure that he holds the necessary court-martial warrant empowering him to convene the description of court martial that he considers appropriate. A court martial convened by an officer who is not empowered to do so will lack jurisdiction.

2. Where the convening officer finds it impracticable to follow the ordinary rules as to appointing members from different corps (AR 40(1)), or as to the rank of members (AR 40(2)), he should state his opinion in the convening order.

3. The declaration as to military exigencies dispensing with certain rules (AR 36), should be in a separate order. For form of declaration see page 398.

4. Under AA.s. 117(1) a court-martial which, after commencement of the trial, is reduced below the legal minimum, is dissolved. If, therefore, the trial is likely to be prolonged, the number of members detailed to serve should be in excess of the legal minimum required. Additional members should also be detailed to serve in doubtful or complicated cases.

5. It will usually be desirable, in the case of both GCM and DCM to add two or more waiting members, in order to fill the places of officers retiring on challenge or unable to attend owing to illness, etc.

6. In almost every case an interpreter in the language of the accused person will be necessary and should be detailed; see AR 91 and note.

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

8. The object of sub-rule (4) is to enable the presiding officer and members of the court-martial to have an idea of the charge/charges on which the accused is to be arraigned. If any amendment to the charge(s) is considered necessary by the presiding officer, he should communicate his views to the convening officer before the trial begins. Only when a JA is not appointed, a copy of the summary or abstract of evidence and convening order is to be sent to the presiding officer. A copy of the summary of evidence or abstract of evidence sent to the presiding officer should have the portions of evidence which being inadmissible or irrelevant, are not being led at the trial, completely expurgated. The JA is responsible to inform the convening officer of any informality or defect in the charge or in the constitution of the court; see AR 105(3).

9. The summary or abstract of evidence must be read in court if the accused pleads guilty, and may be used for determining the sentence. (AR 54(3)). It may be used at the trial for the purpose of showing that a witness had previously made a particular statement, or is giving evidence which differs from that given by him when the summary was taken. Any statement of the accused contained in the summary may be read to the court as evidence at the close of the prosecution case, but before reading such statement formal proof should be given that it was made voluntarily; see AR 23 (3). Except in the above instances, the summary cannot be used as evidence.

10. During the trial the presiding officer should compare the evidence given by each witness with his statement contained in the summary of evidence and, if there is any material variation, should question him thereon.

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

12. Where the accused pleads guilty, the summary of evidence is to be annexed to the proceedings (AR 54(3) and form of proceedings at page 404). If the accused pleads "not guilty", the summary should be enclosed with the proceedings when sent to the confirming officers, but it should only be annexed to the proceedings if it has been used in evidence.

13. As to an "abstract of evidence", see AR 25(2).

**38. Adjournment for insufficient number of officers.**

(1) If, before the accused is arraigned, the full number of officers detailed are not available to serve, by reason of no-eligibility, disqualification, challenge or otherwise, and if there are not a sufficient number of officers in waiting to take the place of those unable to serve, the court shall ordinarily adjourn for purpose of fresh members being appointed, but if the court is of opinion that in the interest of justice, and for the good of the service, it is inexpedient so to adjourn, it may, if not reduced in number below the legal minimum, proceed, after recording their reasons for so doing.

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

#### NOTES

1. A GCM for which, say, seven members have been detailed, should not ordinarily begin the trial with less than seven. It may be assumed that the convening officer, in detailing seven members when five would have legally sufficed, had in view the possible prolongation of the trial or the desirability, in the circumstances of the case, of submitting the issues to be decided to the arbitration of a larger tribunal. But under this rule, the court may proceed, unless reduced below the legal minimum (see notes to AR 37).

2. No court can be formed if the number of officers is, from whatever cause, below the legal minimum, nor can the proceedings even, if properly commenced, be continued. In either case a report of the circumstances must be made to the convening officer by the senior officer present. For legal minimum, see AA.s. 113 and 114.

3. After the trial has once begun, fresh members cannot be appointed in any circumstances. See AA.s. 117 (1). The trial is said to have commenced with the accused is arraigned.

### **39. Ineligibility and disqualification of officers for court-martial.**

(1) An officer is not eligible for serving on a court-martial if he is not subject to the Act.

(2) An officer is disqualified for serving on a general or district court-martial if he -

(a) is an officer who convened the court; or

(b) is the prosecutor or a witness for the prosecution; or

(c) investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the squadron, battery, company, or other commander, who made preliminary inquiry into the case, or was a member of a previous court-martial which tried the accused in respect of the same offence; or

(d) is the commanding officer of the accused, or the corps to which the accused belongs; or

(e) has a personal interest in the case.

(3) The provost-martial or assistant provost-marshal is disqualified from serving on a general court-martial or district court-martial.

#### NOTES

1. The term "eligible" is used with reference to an officer being subject to AA and of the necessary standing; that is to say, it refers to the status of the officer, and involves no personal considerations.

2. The term "disqualified" is used with reference to the personal qualification of an officer. Except so far as is provided by AR 40, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial.

3. The term "personal interest" will extend to even a remote or very small interest, e.g., in a charge relating to the theft of a sum of money, however small, belonging to an officers' mess, or a club, every officer of that mess or club has a personal interest, and is therefore disqualified. A merely technical interest has been held to disqualify a person from holding a judicial position, e.g., a person who holds, as trustee or otherwise on behalf of others money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that money.

4. An officer should not be detailed to sit on any court-martial until regarded by his CO as competent authority to perform so important a duty.

**40. Composition of General Court-martial.**

(1) A general court-martial shall be composed, as far as seems to the convening officer practicable, of officers of different corps or departments, and in no case exclusive of officers of the corps or department to which the accused belongs.

(2) The members of a court-martial for the trial of an officer shall be of a rank not lower than that of the officer unless, in the opinion of the convening officer, officers of such rank are not (having due regard to the exigencies of the public service, available. Such opinion shall be recorded in the convening order.

(3) In no case shall an officer below the rank of captain be a member of a court-martial for the trial of a field officer.

**NOTES**

1. There is no similar restriction as to the composition of district courts martial, which may, therefore, when necessary, be composed wholly of officers, of the corps or department to which the accused belongs; but where possible they should not be so composed.

2. The expression of the convening officers opinion justifying a departure from general rule should be inserted in the convening order.

**Procedure at Trial – Constitution of Court**

**41. Inquiry by court as to legal constitution.**

(1) On the court-assembling, the order convening the court shall be laid before it together with the charge sheet and the summary of evidence or a true copy thereof, and also the ranks, names, and corps of the officers appointed to serve on the court; and the court shall satisfy itself that it is legally constituted; that is to say -

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

(b) that the court consists of a number of officers, not less than the minimum required by law and, save as mentioned in rule 38, not less than the number detailed;

(c) that each of the officers so assembled is eligible and not disqualified for serving on that court-martial; and

(d) that in the case of general court-martial, the officers are of the required rank.

(2) The court shall, further, if it is a general or district court-martial to which a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed and is not disqualified for sitting on that court-martial.

(3) The court, if not satisfied with regard to the compliance with the aforesaid provisions shall report its opinion to the convening authority, and may adjourn for that purpose.

#### NOTES

1. The inquires necessitated by this and the following rule should be conducted in closed court. The court is not "open" at this stage, and the accused has not yet been brought before it.

2. The convening order, charge-sheet and the summary or abstract of evidence are to be placed before the court.

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

4. It is essential that the court should ascertain, as far as it lies in its power, that it has jurisdiction. For form of convening order see page 397.

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

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

7. For legal minimum and for rank of members of the court, see AA.ss. 113 and 114 and AR 40. (Also see Regs Army para 459).

8. For eligibility and disqualification, see AA.ss 113 and 114 and AR 39.

9. When a court of inquiry has been held respecting a matter upon which a charge against the accused is founded, the presiding officer should insert and sign the certificate shown in the note on page 399.

10. For the appointment of JA, see AA.s 129 and AR 103. For disqualification of JA, see AR 102.

#### **42. Inquiry by court as to amenability of accused and validity of charge.**

(1) If the court is satisfied that the requirement of rule 41 have been complied with, it shall further satisfy itself in respect of each charge about to be brought before it-

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



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

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

#### NOTES

1. The enquiry by the court under this and the preceding rule should be in closed court.
2. For amenability to military law, i.e. to the AA, see AA.s. 2 and notes thereto.
2. As to validity of charge, see ARs 28 to 32.

#### **Procedure at Trial – Challenge and Swearing**

**43. Appearance of prosecutor and accused.** When the court has satisfied itself that the provisions of rules 41 and 42 have been complied with, it shall cause the accused to be brought before the court and the prosecutor, who must be a person subject to the Act, shall take his due place in the court.

#### NOTES

1. The duty of appointing the prosecutor devolves on the convening officer who ordinarily selects the adjutant of the accused persons unit; but the convening officer should not appoint himself to be the prosecutor. The prosecutor cannot confirm the finding and sentence of a court-martial. Se AR 74. In trials by GCM and in complicated cases a prosecutor should be specially selected for his experience and knowledge of military law, and should be, as far as possible, relieved from ordinary military duty, so that he may be enabled fully to master the case. In ordinary cases one of the officers mentioned in AR 39 (2) may suitably be detailed to act as prosecutor.

2. As to duties of the prosecutor, see ARs 56 and 59 and 77 and memoranda at page 437.

3. As to counsel, see ARs 96 to 101.

**44. Proceedings for challenges of members of court.** The order convening the court and the names of the presiding officer and the members of the court shall then be read over to the accused and he shall be asked, as required by section 130, whether he has any objection to being tried by any officer sitting on the court. Any such objection shall be disposed of in accordance with the provisions of the aforesaid section :

Provided that –

(a) the accused shall state the names of all the officers constituting the court in respect of whom he has objection, before any objection is disposed of,

(b) the accused may call any person to give evidence in support of his objection and such person may be questioned by the accused and by the court.

(c) if more than one officer is objected to, the objection to each officer shall be disposed of separately, and the objection in respect of the officers of the lowest in rank shall be disposed of first; and on an objection to an officer, the remaining officers of the court shall, in the absence of the challenged officer, vote on the disposal of such objection, notwithstanding that objections have also been made to any of those officers.

(d) when an objection in respect of an officer is allowed, that officer shall forthwith retire, and take no further part in the proceedings.

(e) when an officer so retires or is not available to serve owing to any cause, which the court may deem to be sufficient, and there are any officers in waiting detailed as such, the presiding officer shall appoint one of such officers to fill the vacancy. If there is no officer in waiting available, the court shall proceed as required by rule 38.

(f) the eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy shall be ascertained by the court, as in the case of other officers appointed to serve on the court.

#### NOTES

1. See AA.s. 130 and notes thereto.
2. Each member should answer to his name as it is called, so that the accused can identify each member who is to try him.
3. The accused must make each objection separately: he cannot object to the court collectively, except upon a plea to the jurisdiction, under AR 51. If the accused persists in objection to the court collectively, the court should treat the objection as made to all the members individually, and the procedure provided by this rule should be strictly followed. In practice an objection to a member may be equivalent to a plea to the jurisdiction, as for example when on the trial of a field officer one of the members is objected to because he is below the rank of Captain. In such case the objection should be dealt with under this rule, although it might more properly have been raised under AR 51.
4. The accused has no right to object to the prosecutor or JA.
5. An officer objected to on the ground of personal enmity, prejudice, or malice or for having formed and expressed an opinion on the case, should, unless the objection is obviously groundless, request and be permitted to retire. An officer successfully objected to on the ground of personal interest is disqualified from serving as a member. See AR 39 (2)(e).
6. The court may be closed to consider each objection.
7. The witnesses called by the accused in support of his plea cannot be examined on oath or affirmation since the court is not yet sworn or affirmed, but provision of AR 141 will substantially apply.

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

9. Clause (e) prescribes the manner of filling 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 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 (AA.s. 128) and will then proceed to fill the vacancy in the court in the manner indicated above.

10. If there is no officer in waiting available and the court is reduced in number below the legal minimum , it must adjourn for the purpose of appointment of fresh members; and though not so reduced, it should ordinarily adjourn unless it is of opinion that, in the interests of justice and for the good of the service, it is not expedient to do so. (AR 38)

11. It is desirable to ascertain before the accused brought before the court whether a waiting member is eligible and qualified to serve if called upon. An objection to a waiting member called upon to serve will be dealt with immediately, if he is junior to any other officers who have been objected to; if he is not, the objection to junior officers will first be disposed of and he will have to vote on such objections.

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

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

Form of oath

"I ..... Swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection and if any doubt shall arise, then, according to my conscience, the best of my understanding and the custom of war in the like cases; and I do further swear that I will not on any account at any time, whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial in due course of law".

#### Form of Affirmation

"I ..... do solemnly, sincerely and truly declare and affirm that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding and the custom of war in the like case; and I do further solemnly, sincerely and truly declare and affirm that I will not, on any account at any time, whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless required to give evidence thereof by a court of justice or a court-martial in due course of law".

#### NOTES

1. Christians and Sikhs are generally sworn, the former of 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. As to the person to administer the oath or affirmation, see AR 47.
3. As to swearing the court to try several persons, see AR 89.
4. A person taking the oath will hold the book (New Testament, Old Testament or Granth) in his uplifted hand and will say or repeat the oath after the person administering it. The oath must be administered and taken with solemnity. It is not necessary to kiss the book. Members may be sworn separately or collectively.

5. If a person desires to be sworn in the Scottish form, no question as to his religious belief is to be asked nor is he required to hold or kiss the Bible while being sworn. He will be sworn standing and holding up his right hand, and the oath will commence in these terms "I swear by Almighty God as I shall answer to God at the Great Day of Judgment .....

6. Affirmations are repeated by the person making affirmation after the person administering it.

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

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

**46. Swearing or affirming of judge-advocate and other officers.** After the members of the court are all sworn or have made affirmation, an oath or affirmation shall be administered to the following persons or such of them as are present at the court-martial, in such of the following forms as shall be appropriate, or in such other form to the same purport as the court ascertains to be according to the religion or otherwise binding on the conscience of the person to be sworn or affirmed:-

(A) JUDGE ADVOCATE

Form of Oath

"I ..... Swear by Almighty God that I will to the best of my ability carry out the duties of Judge Advocate in accordance with the Army Act, and the rules made thereunder and without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever, disclose or discover the vote or opinion on any matter of any particular members of this court-martial, unless required to give evidence thereof by a court of justice or, a court-martial in the due course of law".

#### Form of Affirmation

"I ..... do solemnly, sincerely and truly declare and affirm that I will to the best of my ability carry out the duties of Judge Advocate in accordance with the Army Act and the rules made thereunder and without partiality, favour or affection, and I do further solemnly, sincerely and truly declare and affirm that I will not on any account at any time, whatsoever, disclose or discover the cote 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 ..... swear by Almighty God that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless required to give evidence thereof by a court of justice or a court-martial, in due course of law".

#### Form of Affirmation

"I ..... do solemnly, sincerely and truly declare and affirm that I will not on any account, 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) SHORT HAND WRITER

Form of oath

"I ..... SWEAR BY Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as I may be required, and will, when required, and will, when required, deliver to the court a true transcript of the same".

Form of Affirmation

"I, ..... do solemnly, sincerely and truly declare and affirm that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as I may be required, and will, when required deliver to the court a true transcript of the same".

(D) INTERPRETER

Form of oath

"I ..... Swear by Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial".

Form of Affirmation

"I ..... do solemnly, sincerely and truly declare and affirm that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial".



## NOTES

1. Notes to AR 45 apply, mutatis mutandis, to this rule.
2. The form of oath and affirmation for a witness are set out in AR 140.
3. The accused has a right of objection to the shorthand writer or interpreter, who may be sworn/affirmed at any time during the trial (AR 90); he has not right of objection to the JA or to the officers under instruction.

**47. Persons to administer oaths and affirmations.** All oaths and affirmations shall be administered by the Judge Advocate (if any), a member of the court, or some other person empowered by the Court to administer such oath or affirmation.

## NOTES

1. Oaths and affirmations may be administered by any of the persons mentioned in this rule. Their being of the same religion as the person affirmed or sworn is immaterial.
2. It will be convenient for the JA to administer the oath or affirmation to the presiding officer and members, or if there is no JA, for the presiding officer to first administer the oath and affirmation to the members and then be himself sworn or affirmed by one of them. The oath or affirmation to the JA may be administered by the presiding officer.

## Prosecution, Defence and Summing-up

**48. Arraignment of accused.**

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

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

#### NOTES

1. The accused should be arraigned by the presiding officer or JA (if any).

2. "Arraignment" consists of (a) calling upon the accused by his number (if any), Rank, Name and Description as given in the charge-sheet and asking him "Is that your number, rank, name and unit (or description)"; (b) reading the charge to him; and (c) asking him whether he is guilty or not guilty.

3. Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and until after the finding tried upon the first charge-sheet, before arraignment upon the second or subsequent charge-sheet; see AR 79.

4. The charge-sheet, containing the charges as settled by the convening officer, will be in the possession of the presiding officer (AR 34(4)), who will lay the charge-sheet before the court immediately before arraignment, and the charge-sheet will then be annexed to the proceedings.

5. The plea of the accused must be taken on all the charges in a charge-sheet. This applies to alternative charges if the accused has been arraigned upon them, but see AR 52 (3).

**49. Objection by accused to charge.** The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Act, or is not in accordance with these rules. The court after hearing any submission which may be made by the prosecutor or by or on behalf of the accused, shall consider the objection in closed court and shall either disallow it and proceed with the trial, or allow it and adjourn to report to the convening authority or, if it is in doubt, it may adjourn to consult the convening authority.

## NOTES

1. A charge laid under AA.s. 54 (b) for losing by neglect the property of a comrade would not disclose an offence under that section of the Act.
2. As to framing of charges see ARs 28 to 32.
3. As to joint charges see AR 35 and notes thereto.
4. For procedure where it appears that the accused is, by reason of insanity, unfit to stand his trial, see AR 145.

### **50. Amendment of charge.**

(1) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.

(2) If, on the trial of any charge, it appears to the court at any time before it has begun to examine the witnesses, that in the interest of justice any addition to, omission from, or alteration in the charge is required, it may report its opinion to the convening authority, and may, adjourn and the convening authority may either direct the new trial to be commenced, or amend the charge, and order the trial to proceed with such amended charge after due notice to the accused.

## 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 AR 42 and 49.

3. The witnesses referred to in sub-rule (2) are the ones on the substance of the charge and not those who are called as to objections to the members, or with respect to a special plea to the jurisdiction, under AR 51.

4. If the addition, omission, or alteration can be met by means of a special finding under AR 62 (4) (as, for instance, by omitting from the finding some of the articles alleged to have been stolen or lost by neglect, or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended; but if the date is material or if any addition requires to be made to the particulars of the charge, it will be safer for the court to adjourn and apply for the amendment. If the charge appears not to disclose an offence under the AA, the court must adjourn; see AR 49.

#### **51. Special plea to the jurisdiction.**

(1) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court, and if he does so, and the court consider that anything stated in such plea shows that the court has no jurisdiction it shall receive any evidence offered in support, together with any evidence officered by the prosecutor in disproof or qualification thereof, and any address by or on behalf of the accused and reply by the prosecutor in reference thereto.

(2) If the court overrules the special plea, it shall proceed with the trial.

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

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

## NOTES

1. A plea to the general jurisdiction, that is, to the right of the court generally to try the accused on any charge at all, is here kept distinct from any plea which relates only to the particular charge on which the accused is brought before the court. Under the former he may plead, for example, that the court is improperly constituted in respect of the members, or that he is not amenable to the court, either as not being subject to AA or not subject to that description of the court; as for instance in the case of a JCO being brought for trial before a DCM.

2. A plea relating to the particular charge, and raising the defence of previous conviction or acquittal by a court-martial or criminal court, summary punishment by the CO, pardon of the offence or its condonation by the deliberate act of some superior authority or of the lapse of more than three years since the date of the offence (AA.s. 122) will be raised byway of plea in bar of trial, under AR 53.

3. Evidence must be taken on oath or affirmation.

4. The confirmation of the finding, after a plea to the jurisdiction has been overruled, will have the effect of confirming the decision of the court in overruling the plea. If, however, the confirming officer is of opinion that the plea is valid and should have been allowed, he must refuse to confirm the finding of the court and another court may legally be convened.

5. If the court allows the plea, the decision of the court cannot be over-ruled, but another court may legally be convened.

6. If a special plea to the jurisdiction is raised, e.g., on the ground that the accused is not subject to AA, and the court is in doubt as to the validity of the plea, it may record a special decision to that effect, and state that it has nevertheless decided to proceed with the trial. This procedure, in effect, transfers the decision as to the validity of the plea to the confirming officer, who should act as if the plea has been over-ruled.

**52. General plea of "guilty" or "not guilty".**

(1) If no special plea to the general jurisdiction of the court is offered, or if such plea being offered, is over-ruled, or is dealt with by a special decision under sub-rule (4) of rule 51, the accused person's plea "Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other a plea of "Not guilty") shall be recorded on each charge.

(2) If an accused person pleads, "Guilty", the plea shall be recorded as the finding of the court; but before it is recorded, the presiding officer or judge advocate, on behalf of the court, shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead "Not guilty".

(2.A) Where an accused pleads Guilty, such plea and the factum of compliance of sub-rule (2) of this rule, shall be recorded by the court in the following manner:-

Before recording the plea of Guilty of the accused, the court explained to the accused the meaning of the charge(s) to which he had pleaded Guilty and ascertained that the accused had understood the nature of the charge(s) to which he had pleaded Guilty. The court also informed the accused the general effect of the plea and the difference in procedure, which will be followed consequent to the said plea. The court having satisfied itself that the accused understands the charge(s) and the effect of his plea of Guilty, accepts and records the same. The provisions of rule 52 (2) are thus complied with.

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

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

## NOTES

1. If the accused pleads in some language not understood by the court, or inarticulately, he will not have pleaded intelligibly, and the plea of "Not guilty" will be entered.
2. Sub-rule (2) is qualified by sub-rule (4).
3. The object of sub-rule (2) is to prevent the accused from pleading guilty under a misapprehension; e.g., a man charged with willfully injuring government property may, under a misapprehension, plead guilty because the property has been actually injured, though not willfully; 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".
4. A Plea of "Guilty" is to be taken to the extent to which it is pleaded. Thus a sepoy arraigned upon a charge of losing by neglect a number of articles, who pleads guilty in respect of some of those articles only, must be taken to have offered a "qualified" plea of guilty. The court may accept such a qualified plea of guilty, if it is satisfied of the justice of such course and if the concurrence of the convening officer is signified by the prosecutor, and come to a special finding under AR 62 (4) and (5), subject to the exceptions in relation to the articles to which he has not pleaded guilty, see AR 62 (9).
5. If the accused pleads guilty, a statement that the requirements of AR 52 (2) have been complied with must be recorded.
6. It must be recollected that there is nothing untrue in a person pleading not guilty even though he committed the offence, as the plea merely amounts to claim, which he is entitled to make, that the charge against him shall be formally proved. Indeed; where the accused, while admitting the offence, wishes to show that it was committed under circumstances of great provocation and does not deserve severe punishment, he must plead

not guilty if he wishes to prove the existence of such provocation out of the mouths of witnesses for the prosecution, who would not be called to give evidence if he pleaded guilty; (see AR 54(7) as to the power of the court.

7. As to procedure where it appears at a later stage of the proceeding that the plea of guilty was offered under a misapprehension, see AR 54(5).

8. If the prosecutor adopts the procedure provided by sub-rule (3), the accused will not be entitled to a verdict on the alternative charges, as he will not have been arraigned upon them. The convening officer must take care that the most serious of two or more alternative charges are placed first in the charge-sheet. As to the procedure to be followed in other cases where there are alternative charges, see AR 54(1).

9. Sub-rule (4) is intended to ensure that a person charged with an offence for which death penalty can be awarded shall not be convicted without a full trial.

### **53. Plea in bar.**

(1) The accused, at the time of his general plea of "Guilty" or "Not Guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that :-

(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 80, 83, 84 and 85, as the case may be, for the offence, or that a charge in respect of the offence has been dismissed as provided in sub-rule (2) of rule 22; or

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

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

(2) If he offers such plea in bar, the court shall record it as well as his general plea, and if it considers that any fact or facts stated by him are sufficient to support the plea in bar, it



shall receive any evidence offered, and hear any address made by or on behalf of the accused and the prosecutor in reference to the plea.

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

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

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

#### NOTES

1. AA provides that a man shall not be liable to trial for an offence of which he has been convicted or acquitted by a court-martial or by a criminal court, or for which he has been dealt with summarily (AA.s. 121), or which was committed more than three years before the date of his trial, unless the offence was mutiny, desertion or fraudulent enrolment. Mutiny or desertion on active service, may be tried at any time. Desertion at other times or fraudulent enrolment is not to be tried, if the offender, not being an officer, has served for 3 years subsequently in an exemplary manner in any portion of regular Army (AA.s. 122).

2. The accused may also offer a plea in bar on the ground that a charge in respect of the offence has been dismissed as provided in AR 22(2), i.e., that he has been acquitted or the offence has been condoned, by his CO.

3. It has long been recognised as a custom of the service that a military offence can be condoned. For the purpose of barring a trial condonation means such conduct of the part of a competent authority having power to determine that the charge should not be proceeded with – as is inconsistent with subsequently trying the offender, and as would make it

inequitable to do so; it must be a deliberate and intentional act, done with full knowledge of all material facts. If, with full knowledge of the facts, competent authority removes an officer, or allows him to resign, he should not afterwards be tried by court-martial for his offence. The fact that after trial, but before confirmation, the accused has been employed in active operation does not effect the legal validity of the sentence, but affords ground for pardon.

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

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

**54. Procedure after plea of "Guilty".**

(1) Upon the record of the plea of "Guilty", if there are other charges in the same charge-sheet to which the plea is "Not Guilty", the trial shall first proceed with respect to the latter charges, and after the finding on those charges, shall proceed with the charges on which a plea of "Guilty" has been entered, but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge or may subject to sub-rule (2), instead of trying him, record a finding of "Guilty" upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not Guilty" upon all the other alternative charges.

(2) Where alternative charges are preferred and the accused pleads "Not Guilty" to the charge which alleges the more serious offence and "Guilty" to the other, the court shall try him as if he had pleaded "Not Guilty" to all the charges.

(3) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall receive any statement which the accused desires to make in reference to the charge, and shall read the summary of evidence and annex it to the proceedings, or if there is no such summary shall take and record sufficient evidence to enable it to determine the sentence and the confirming officer to know all the circumstances connected with the offence. This evidence shall be taken in the manner provided in these rules in the case of plea of "Not Guilty".

(4) After evidence has been so taken, or the summary of evidence has been read, as the case may be, the accused may make a statement in mitigation of punishment, and may call witnesses as to his defence.

(5) If from the statement of the accused or from the summary of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty", the court shall alter the record and enter a plea of "Not Guilty", and proceed with the trial accordingly.

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

(7) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be provided, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

#### NOTES

1. An accused person cannot be found guilty upon more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily cannotes guilt upon the alternative charges or charges, See AR 62(7).

2. Where two alternative charges are preferred and the accused pleads "Not Guilty" to the charge which alleges the more serious offence and "Guilty" to the other, the court should try him as provided by sub-rule (2), as if he has pleaded "Not Guilty" to both charges. Having regard to AR 52 (3), the most serious of two or more alternative charges should always be placed first in a charge-sheet.

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

4. The accused will always be asked, in case of a plea of "Guilty", whether he desires to all witness to character.

5. The statement referred to in sub-rule (5) includes a statement made by the accused under sub-rule (3) in reference to the charge, as well as a statement made in mitigation under sub-rule (4).

6. The following examples are given of cases in which a plea of "Guilty" should be altered to a plea of "Not Guilty" under sub-rule (5):-

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

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

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

(d) Naik D is charged with disobeying a lawful command given by Naik E, his superior officer, and makes no statement with reference to the charge. He calls a witness as to character, who states incidentally that Naik E is junior to Naik D. In this case the action of the court in altering the plea of the accused would be founded upon the words "or otherwise" in sub-rule (5).

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

8. If the court fails to act under the provisions of sub-rule (5), the confirming officer should refuse confirmation and can order a new trial. If he confirms, the finding will be set aside.

9. Where the accused alleges provocation for the offence, it may be desirable to record a plea of "Not guilty"; see note 6 to AR 52.

10. In any case where the court is empowered to come to a special finding under the provisions of AA.s. 139 or AR 62 (4) and (5), the court may accept a qualified plea of guilty in respect of an offence; see AR 62 (9).

11. Although under sub-rule (7) the permission of the court is required to enable the accused to call witnesses in extenuation of the offence, and consequent mitigation of punishment, such permission should always be given.

12. For procedure in case of joint trials where one accused pleads guilty and the other not guilty, see note 4 to AR 35.

**55. Withdrawal of plea of "Not Guilty" subject to compliance with sub-rules (2) and (4) of Rule 52.** The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not Guilty", and plead "Guilty" and in such case the court will at once, subject to a compliance with sub-rules (2) and (4) of rule 52, record a plea and finding of "Guilty" and shall, so far as is necessary, proceed in manner directed by rule 54.

#### NOTE

If the accused proposes to withdraw his plea of not guilty, the court must inform him of the general effect of his withdrawal, and of the difference in the procedure, in the same manner as if he pleaded guilty under AR 52.

**56. Plea of "Not Guilty", application for adjournment, and case for the prosecution.** After the plea of "Not Guilty" to any charge is recorded, the trial shall proceed as follows, that is to say:-

(1) the court shall ask the accused whether he wishes to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that he has been prejudiced thereby or on the

ground that he has not had sufficient opportunity for preparing his defence, and shall record his answer;

(2) if the accused shall make any such application, the court shall hear any statement of evidence which he may desire to adduce in support thereof, and any statement of the prosecutor or evidence in answer thereto; and if it shall appear to the court that the accused has been prejudiced by a non-compliance with any of such rules relating to procedure or that he has not had sufficient opportunity of preparing his defence, it may grant such adjournment as may appear to it in the circumstances to be proper;

(3) the prosecutor may, if he desires, and shall, if so required by the court make an opening address, and shall state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in the support of it without entering into any unnecessary detail;

(4) the evidence for the prosecution shall be taken;

(5) If it should be necessary for the prosecutor to give evidence for the prosecution on the facts of the case, he shall give it after the delivery of his address (if any), and must be sworn or affirmed, as the case may be, and give his evidence in detail; and

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

#### NOTES

1. As to the rights of the accused to prepare his defence, see AR 33 and notes thereto. As to warning of accused for trial see AR 34 and notes thereto.

2. For adjournment see AR 82. The court must adjourn if it appears to it that the accused is likely to be prejudiced by non-compliance with any of the rules

relating to procedure before trial or that he did not have sufficient time to prepare his defence.

3. As to the duties of the prosecutor see AR 77, and notes, and memoranda on page 437.

4. In case of complexity the prosecutor should always make an opening address, so that the members of the court may be enabled to understand the general nature of the allegations. He must be careful to refrain from making any assertions which he does not propose to substantiate by evidence. The address of the prosecutor may be in writing in such a case it should be read by him and handed to the court for attachment to the proceedings. If the address is made orally see AR 92 (4).

5. For General provisions as to witnesses and evidence, see ARs 134 to 143. The evidence will be taken by question and answer, or the witness may be asked to tell his own story, question being subsequently asked to make good any omission (see AR 92(2)). It is the duty of the prosecutor to conduct the examination of the witnesses for the prosecution and to see that all facts essential to constitute the offence are proved; e.g., on a charge laid under AA.s. 56(a) for making a false accusation against Havildar A it must be proved:-

(a) that the accused made the accusation in question against Havildar A.

(b) that it was false.

(c) that the accused made it knowing it to be false.

The prosecutor must be careful, in examining his witnesses, to avoid putting leading or suggestive question,

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 originals by the court and certified under the hand or the presiding officer to be true copies; see note 3 to AR 67.

7. For the duties of the presiding officer, see AR 76.

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

9. The prosecutor should never give evidence for the prosecution, unless it be evidence of a merely formal nature, or for the purpose of producing documents which are in his possession. In exceptional cases, however (e.g., active service), no prosecutor may be available except an officer who is a material witness as to the facts for the prosecution. In such a case the prosecutor must give his evidence before any other witness for the prosecution, and must not, after delivering an address, be allowed to answer generally as to the truth of the statements contained in such address.

10. When counsel appears on behalf of the prosecutor, sub-rule (5) and (6) of this rule do not apply.

11. As to questions by the court see ARs 142 and 143.

**57. Plea of no case.**

(1) At the close of the case for the prosecution, the accused may offer a plea that the evidence given on behalf of the prosecution, in respect of any one or more charges, has not established a prima-facie case against him and that he would not, therefore, be called upon to make his defence to that charge or charges.

(2) Where the accused taken such a plea, the prosecutor may address the court in answer thereto and the accused may reply.



(3) The court shall consider the plea in closed court and shall not allow the plea unless satisfied that:-

(a) the prosecution has not established a prime-facie case on the charge or charge or charges as laid; and

(b) it is not open to it on the evidence adduced to make a special finding either under section 139 or sub-rule (4) of rule 62.

(4) If the court allows the plea, it shall record a finding of “Not Guilty” on the charge or charges, to which the plea relates, and shall announce the finding forthwith in open court as subject to confirmation.

(5) If the court over rules the plea, it shall proceed with the trial.

(6) If the court has any doubt as to the validity of the plea, it may refer the matter to the convening authority, and adjourn for that purpose.

(7) The court may, of its own motion, after the close of the case for the prosecution, and after hearing the prosecutor find the accused “Not Guilty” of the charge, and announce the finding forthwith in open court as subject to confirmation.

8. The court shall record brief reasons while arriving at the finding on the plea, in accordance with sub-rule (1) of rule 62.

## **58. Examination of the accused and defence witnesses.**

(1) (a) In every trial, for the purpose of enabling the accused personally to explain any circumstances appearing in evidence against him, the court or the Judge Advocate –

(i) may at any stage, without previously warning the accused, put such questions to him as considers necessary;

(ii) shall, after the close of the case for the prosecution and before he is called on for his defence, question him generally on the case.

(b) No oath shall be administered to the accused when he is examined under clause (a).

(c) The accused shall not render himself liable to punishment by refusing to answer questions referred in clause (a) above, or by giving answers to them which he knows not to be true.

(2) After the close of the case for the prosecution, the presiding officer or the judge advocate, if any, shall explain to the accused that he may make an unsworn statement, orally or in writing, giving his account of the subject of the charge (s) against him or if he wishes, he may give evidence as a witnesses, on oath or affirmation, in disproof of the charges (s) against him or any person charged together with him at the same trial :

Provided that:-

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

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

(c) If he gives evidence on oath or affirmation, he shall be examined as first witness for defence and shall be liable to be cross-examined by the prosecutor and to be questioned by the court.

(3) The accused may then call his witnesses including, if he so desires, any witnesses as to character. If the accused intends to call witnesses as to the facts of the case other than himself, he may make an opening address before the evidence for defence is given.

## NOTES

1. The question as to the calling of witnesses will be put by the JA, or if there is none, by the presiding officer.
2. The statement referred to in sub-rule (2) (a) cannot be made on oath or affirmation.
3. The presiding officer or the JA may question the accused for the purpose of enabling him (accused) to explain any circumstances appearing in his statement or in the evidence against him. Such question may be put even though the accused has made no statement. The questions and the accused's answer there should, as far as possible, be recorded verbatim.
4. The questions should not be put in the way of cross-examination or for testing his defences 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.
5. The accused has the privilege of making statements which are unsupported by evidence. Any statement of the facts, though not on oath, upon which the accused relies for his defence, must be taken into consideration by the court, who may draw its inferences from it; see note 4 of AR 61. 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.
6. 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.
7. The facts that the accused has stated that he does not intend to call any witnesses to the facts of the case does not prevent him from doing so before the evidence for the defence is completed if, for example, unexpected witnesses become available.

8. As to calling and recalling witnesses in reply see AR 143.

9. It is the duty of counsel for the defence or defending officer (if any) to conduct the examination of the witnesses for the defence.

10. As to counsel and defending officer, see ARs 95 to 101.

11. The utmost liberty consistent with the interests of parties not before the court and with the dignity of the court itself should be allowed to accused in making his defence (see AR 77(3), and the court should, if necessary adjourn to allow him time for the preparation.

12. The prosecutor's address may be in writing, and in such a case it should be read by the prosecutor and handed to the court for attachment to the proceedings. If the address is made orally; see AR 92(4).

13. Counsel for the defence may not state as a fact any matter which has not been proved in evidence (AR 100) and the same restriction is placed upon a defending officer (AR 95(3)).

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

15. For procedure when two or more persons are tried together, see AR 78.

**59. Closing Address.** After the examination of the witnesses, the prosecutor may make a closing address and the accused or his counsel or the defending officer, as the case may be, shall be entitled to reply:

Provided that where any point of law is raised by the accused, the prosecutor may, with the permission of the court.

#### NOTES

1. The notes to the preceding rule should be referred to generally.
2. Counsel (AR 100) and defending officer (AR 95(3)) are not permitted, in an opening address to state as facts matters which they do not intend to prove in evidence.
3. As to order of addresses in joint trials, see AR 78.

#### **60. Summing up by the judge-advocate.**

- (1) The judge-advocate (if any) shall sum up in open court the evidence and advise the court upon the law relating to the case.
- (2) After the summing up of the judge-advocate, no other address shall be allowed.

#### NOTES

1. A summing up by the JA is obligatory under sub-rule (1). It may be given orally or in writing; see AR 144; but in practice it should invariably be in writing.

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

2. For the powers and duties of JA, see 105 and notes thereto.

## Finding and sentence

### 61. Consideration of finding.

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

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

### NOTES

1. For sitting in closed court see AR 80.

2. 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. If, for example, the charge is laid under AA.s. 41 (2), he will ask the members to discuss the bearing of the evidence upon the following questions:

(a) was a command given? (b) was it a lawful command : (c) was it given by the superior officer of the accused? (d) was it disobeyed by the accused? (e) did the accused know that the person giving the order was his superior officer?

Similarly, where the charge laid is under AA.s. 63, the questions to be considered should be:

(a) have the facts alleged in the particulars of the charge been proved in evidence? if they have,

(b) do such facts amount to an act (or omission) prejudicial to good order and military discipline?

3. If the court is doubtful whether the actual offence charged is proved or whether the particulars of the charge have been satisfactorily established in evidence, they must consider their powers of making a special finding, either under AA.s. 139 or under AR 62 (4).

4. The members of courts-martial must remember that (a) it is a fundamental 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 AR 45 for form of oath/affirmation for members. It should be remembered that the accused cannot give evidence on oath, and therefore any statement made by him must be carefully considered. Though not given an oath and subject to the fact of cross-examination, it will often be of value, particularly if

it is in any respect corroborated by evidence from other sources (see note 4 to AR 58).

5. At any time before the finding has been arrived at the court may be reopened to enable a witness to be called or recalled and examined by it through the presiding officer or JA : see AR 143(4).

6. As to form and record of finding, see AR 62.

7. The opinion of members must be given orally. As to taking opinions see AR 87 and notes thereto.

## **62. Form, record and announcement of finding.**

(1) The finding on every charge upon which the accused is arraigned shall be recorded and, except as provided in these rules, shall be recorded as finding of 'Guilty' or of 'Not Guilty'. After recording the finding on each charge, the court shall give brief reasons in support thereof. The judge advocate or, if there is none, the presiding officer shall record or cause to be recorded such brief reasons in the proceedings. The above record shall be signed and dated by the presiding officer and the judge advocate, if any.

(2) Where the court is of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty of the charge as laid, the court shall acquit the accused of that charge.

(3) If the court doubts as regards any charge whether the facts proved show the accused to be guilty or not of the offence charged or of any offence of which he might under the Act legally be found guilty on the charge as laid, it may, before recording a finding on that charge, refer to the confirming authority for an opinion, setting out the facts which it finds to be proved, and may if necessary, adjourn for that purpose.

(4) Where the court is of the 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 difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not Guilty", record a special finding.

(5) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

(6) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "Not Guilty" on that charge.

(7) The court shall not find the accused guilty on more than one of two or more charges laid down in the alternative, even if conviction upon the charge necessarily connotes guilty upon the alternative charge or charges.

(8) If the court thinks that the facts proved constitute one of the offences stated in two or more of the alternative charges, but doubts which of those offences the facts do at law constitute, it may, before recording a finding on those charges, refer to the confirming authority for an opinion, setting out the facts which it finds to be proved and stating that it doubts whether those facts constitute in the law the offence stated in such one or other of the charges and may, if necessary, adjourn for that purpose.

(9) In any case where the court is empowered by section 139 to find the accused guilty of an offence other than the charge, or guilty of committing an offence in circumstances



involving a less degree of punishment, or where it could, after hearing the evidence, have made a special finding of guilty subject to exceptions or variations in accordance with sub-rules (4) and (5) it may, if it is satisfied of the justice of such course, and if the concurrence of the convening officer is signified by the prosecutor, accept and record a plea of guilty of such other offences or of the offence as having been committed in circumstances involving such less degree of punishment or of the offence charged subject to such exceptions or variations:

Provided that failure to obtain the concurrence of the convening officer as aforesaid shall not invalidate the proceedings when confirmed notwithstanding such failure.

(10) The finding on each charge shall be announced forthwith in open court as subject to confirmation.

#### NOTES

1. Sub-rule (1) is applicable to all charges including alternative charges, except in those cases which fall within AR 52(3).

2. In the case of an acquittal on every charge, the presiding officer must date and sign the proceedings. The JA, if any, must also sign; see AR 63.

3. Where a person is charged with dishonestly receiving property, knowing it to be stolen, and the facts show that, although the property was in fact stolen, the accused was unaware that it was stolen property, the court acquit as provided by sub-rule (2), as the accused would not have committed the offence charged.

4. For special findings in respect of the statement of offence, see AA.s 139.

5. Before referring to the confirming authority as provided under sub-rule (3), the court must have arrived at a decision as to the facts which it finds to be proved and the opinion of the confirming authority will be sought as to whether, upon the facts so found to be proved, the accused can legally be found guilty. The court cannot refer to the confirming authority for any opinion as to the facts, as to which it is the sole judge. The reasons for the

reference should be recorded. The opinion of the confirming officer should be read upon re-assembly of the court and attached to the proceedings.

6. The special finding referred to in sub-rule (4) relates only to the particulars of the charge, and not to the statement of the offence, as to which see AA.s. 139 and notes. Before recording a special finding under this sub-rule, the court must be satisfied that the facts which it finds to be proved, subject to certain exceptions and variations, amount to the substance of the charge; otherwise they must acquit; e.g.,

(a) On a charge against a sepoy for losing by neglect a great coat and a waist belt, the court may properly find the accused "guilty" of the charge except that he did not lose a "waist belt", but it cannot legally find him "guilty of the charge except that he made away with and did not lose the articles in question".

(b) An immaterial variation of date may be made by special finding, but in 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 (Havildar A) by striking him with his fist in the face, the court could properly except the words "in the face", but it cannot make a special finding substituting Havildar B for Havildar A.

(d) On a charge of dishonestly misappropriating Rs. 100, a special finding that the sum misappropriated was Rs. 50 would be permissible; but a special finding omitting from the particulars the word "dishonestly" would be tantamount to an acquittal.

7. For general procedure in respect of sub-rule (8) see not 5 above.

8. Sub-rule (9) provides that where the court is empowered to come to a special finding under the provisions of AA.s. 139 or AR 62 sub-rule (4) and (5), it may accept a qualified plea of guilty, if it is satisfied of the justice of such course and the concurrence of the convening officer is signified by the prosecutor and record a special finding. For example, if an accused charged with desertion pleads guilty to absence without leave, or if an accused charged with losing by neglect a number of articles pleads guilty in respect of

some of those articles only, the court may accept such qualified plea and record a special finding accordingly.

**63. Procedure on acquittal.** If the finding on all the charges is "Not Guilty", the presiding officer shall date and sign the finding and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge-advocate (if any) shall be at once transmitted for confirmation.

#### NOTE

Even the finding of "not guilty" by a GCM, DCM or SGCM requires confirmation and is not valid until so confirmed; See AA.s. 153.

**64. Procedure on conviction.**

(1) If the finding on any charge is "Guilty" then, for the guidance of the court in determining its sentence, and of the confirming authority in considering the sentence, the court, before deliberating on its sentence, shall, whenever possible, take evidence of and record the general character, age, service, rank and any recognized acts of gallantry or distinguished conduct of the accused, any previous convictions of the accused either by a court-martial or a criminal court, any previous punishments awarded to him by an officer exercising authority under Section 80, 83, 84 or 85, as the case may be, the length of time has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled.

(2) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books respecting the accused and identifying the accused as the person referred to in that summary.

(3) The accused may cross-examine any such witness, and may call witnesses to rebut such evidence; and if the accused so requests, the regimental books, or a duly certified copy of the material entries therein, shall be produced; and if the accused alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if it finds it is not in accordance there-with, shall cause the summary to be corrected.

(4) When all the evidence on the above matters has been given, the accused may address the court thereon and in mitigation of punishment.

#### NOTES

1. See AA.s. 144 and notes thereto.
2. The court will always take evidence as to character, unless the circumstances render it impracticable to do so, in which case it will record upon the proceedings the reasons for such impracticability.
3. Evidence upon the matters referred to in this rule should not be given by a member of the court.
4. The court cannot take oral evidence that the accused is of bad character; this should be proved in the manner shown in sub-rule (2) ; but oral evidence of good character is always permissible. If the accused calls witnesses as to his good character, they may be cross-examined by the prosecutor with a view to testing their veracity and thereby indirectly bringing out evidence of bad character. Witnesses as to character can also be called during the hearing of the case for the defence and before the finding.
5. The court will also consider the length of time during which the accused has been in confinement awaiting trial upon the present charge or charges.
6. If by reason of the nature of the service of the accused, the finding of the court renders him liable to any exceptional punishment in addition to that to be awarded by the sentence of the court, the prosecutor should call the attention of the court to the fact, and the court should enquire into the nature and amount of such additional punishment.
7. For definition of "Military reward" , see AA.s. 3(xiv).

8. Previous conviction of the accused will be proved by the production of a verbatim extract from the regimental books (IAFD-905) duly completed by the officer-in-charge of these books (see note 10 below and AA.s. 142(3) and (4)). The term 'regimental books' includes departmental books of the same nature as those maintained by corps, e.g., sheet roll of a court-martial book, but does not include departmental business books. If there is any reason to doubt the correctness of the entry in the regimental books of a civil conviction, such conviction may be proved by an extract certified by person having the custody of the records of the court in which the accused was convicted.

9. The witness producing the extract from the regimental books and the statement as to age, service, rank, etc., of the accused should be the adjutant or some other officer, and there is no objection to the prosecutor giving such evidence (see note to AR 56). He must be sworn as any other witness and may be cross-examined by the accused and questioned by the court.

10. The copy of the material entries in the regimental book must be certified by the officer having custody of the original book (AA.s. 142 (4)); custody includes temporary custody for the purpose of the trial.

**65. Sentence.** The court shall award a single sentence in respect of all the offences of which the accused is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.

1. This rule applies whether the charge on which the offender has been tried are contained in one or several charge-sheets.

2. As to postponement of sentence where several persons are tried separately for offences arising out of the same transaction; see AR 89(4).

3. The sentence must be a sentence authorized by the AA (see AA.s. 71 to 76) e.g., a court-martial cannot award a sentence of confinement to lines, or sentence an offender to restore stolen property. But a court-martial may under AA.s. 151(1) make a separate order for the disposal of property. Such an order should be recorded below the signature of the presiding officer to the sentence and should be separately dated and signed by the presiding officer.

4. For procedure in voting upon the sentence, see AR 87 and notes thereto.

5. The object of the 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 also upon a charge under AA.s. 54(a) for making away with arms and equipment, a sentence of death in respect of the first charge will be valid, although a sentence of 10 years imprisonment is the maximum sentence which could have been awarded upon the second charge.

6. Sentences , unless for one or more years exactly, should if for one month or upwards, be recorded in months. Sentences consisting of partly of months and partly of days should be recorded in months and days. A month means a calendar month.

7. Even if the accused is considered by the medical officer, who examines him before trial unfit to undergo rigorous imprisonment, the court can sentence him to it as it is the duty of the medical officer of the prison, or place of military custody, to decide what severity of labour he can undergo. Sentences of simple imprisonment are inexpedient and inconvenient of execution.

#### **66. Recommendation to mercy.**

(1) If the court makes a recommendation to mercy, it shall give its reasons for its recommendation.

(2) The number of opinions by which the recommendation to mercy mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

NOTES

1. A recommendation to mercy will be appended to the sentence; it forms part of the proceedings of the court.

2. In view of the discretion of the court in the matter of awarding sentence, a recommendation to mercy will be exceptional. It will usually be made only when the court, though unwilling to pass a lenient sentence least the offence should be considered as venial one, thinks that, owing to the offender's character or other exceptional circumstances, he should not suffer the full penalty which the offence would ordinarily demand. As a rule the court will be able to adjust the sentence according to what, in its judgement, the offender should suffer having regard to the attendant circumstances. It is indisputable that offences are more effectually prevented by certainty than by severity of punishment.

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

4. Recommendation to mercy is a matter which the court has to decide under AR 87(1).

**67. Announcement of sentence and signing and transmission of proceedings.**

(1) The sentence together with any recommendation to mercy and the reasons for any such recommendation will be announced forthwith in open court. The sentence will be announced as subject to confirmation.

(2) Upon the court awarding the sentence, the presiding officer shall date and sign the sentence and such signature shall authenticate the whole of the proceedings and the proceedings upon being signed by the Judge-Advocate (if any), shall at once be transmitted for confirmation.

## NOTES

1. It is essential that the date of the sentence should be inserted as under AA.s. 167 a term of imprisonment is reckoned to commence on the day on which the sentence and proceedings were signed by the presiding officer. When, however, the presiding officer after recording the finding and sentence, omits to either sign or date the proceedings, he can, even after confirmation, sign them and date his signature as of the true date of the decision. The proceedings must not be signed by the members of the court other than the presiding officer.
2. The signature authenticates the whole of the proceedings, including the documentary evidence produced at the trial.
3. When an original document is produced in evidence, it will rarely be necessary to annex it to the proceedings. A certified copy should be produced to the court, together with the original, the former being attached to the proceedings, and the later returned to its proper custodian. Documents, the actual appearance of which is material to the case (e.g., alleged forgeries), shall always be attached in original.

### Confirmation and Revision

#### **68. Revision.**

- (1) Where the finding is sent back for revision under section 160, the court shall re-assemble in open court, the revision order shall be read, and if the court is directed to take fresh evidence, such evidence shall also be taken in open court.
- (2) Except where the court is directed to take fresh evidence, no fresh evidence shall be adduced.
- (3) The court may, on a request from the prosecutor, in the interest of justice, allow a witness to be called or re-called for the purpose of rebutting any material statement made by a witness for the defence during revision.



(4) After the revision order has been read in open court, whether the revision is of finding or sentence and the evidence, if any, in accordance with sub-rule (1), (2) and (3) has been taken, the prosecutor and the accused shall be given a further opportunity to address the court in the order as laid down in rule 59. If necessary, the judge-advocate, if any, may sum up the (additional) evidence and advise the court upon the law relating to the case. The court shall then deliberate on its finding or the sentence, as the case may be, in closed court.

(5) Where the finding is sent back for revision and the court does not adhere to its former finding, it shall revoke the finding and sentence, and record the new finding, in the manner laid down in rule 62, and if such new finding involves a sentence, pass sentence afresh, after complying with rule 64.

6. Where the sentence alone is sent back for revision, the court shall not revise the finding.

7. After the revision, the presiding officer shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate, if any, shall at once be transmitted for confirmation.

#### NOTES

1. Under the military law in force, a finding of acquittal can be revised and the accused found guilty and sentenced, a sentence can be increased on revision, the fresh evidence can (if so ordered) be taken on revision.

2. A court cannot be re-assembled more than once for revision, whether of finding or of sentence.

3. The object of revision will generally be to cure defects in the finding or sentence, or both. The confirming officer, however, by partial confirmation or by exercising his powers under AR 72(1) or 73 can often correct mistakes made by the court, and thus obviate the inconvenience of re-assembling the court for revision.

4. If the sentence originally awarded by the court is wholly illegal, e.g., a sentence of rigorous imprisonment awarded to a WO by a DCM, or a sentence of reduction to ranks awarded to a lance-naik, or a sentence of confinement to lines awarded to a sepoy, it is null (see note 2 to AR 73), and the court, on revision, may award any legal sentence; in such a case the confirming officer cannot pass a valid sentence; but see AA.s. 163 for alteration of sentence after confirmation.

5. Where a special finding should have been recorded under AA.s. 139 or AR 62(4), the finding should be sent back for revision. A confirming officer cannot substitute a special finding on any charge for the court's finding; but see AA.s. 163 for substitution or a finding after confirmation.

6. If a court brings in a finding of "not guilty" against the weight of evidence, the court may be re-assembled and the confirming officer may give his views on the evidence, directing the attention of the court to any special points which it appears to have failed to appreciate.

7. A finding of insanity may also be sent back for revision.

8. A confirming officer cannot send back part of a finding or sentence: if he thinks that a part only requires revision, he must return the whole, pointing out the part which, in his opinion, requires revision.

9. The court should be re-assembled as soon as practicable. If the court upon re-assembly is reduced, by death or otherwise, below the legal minimum [see AA.s. 160(2) and (3)], it cannot proceed with the revision, and the proceedings must be returned to the confirming authority. In such cases, as no revision has taken place, the original finding and sentence will stand and will be dealt with by the confirming authority.

10. Under AA.s. 167, the term of imprisonment commences on the date of the original sentence. Also see notes to AA.s. 167.

11. Where the finding is sent back for revision and the court adheres to the finding, it can nevertheless revise the sentence.

12. If the revised finding is an acquittal or a finding of insanity, no sentence is involved. If a court, on revision, revokes its original finding on any charge, the original sentence, if any, automatically falls to the ground, and, if the revised finding entails a sentence, the court must pass sentence afresh; if the court omits to do so, the accused is not legally under any sentence and the confirming officer may return the proceedings with directions to the court to complete the revision and pass sentence. This will not be a second revision, which is prohibited by AA.s. 160(1).

13. If the original finding was acquittal and the revised finding is "Guilty", the court will (whether ordered to take fresh evidence or not) proceed as directed by AR 64. The evidence referred to in sub-rule (1) is evidence of the facts relating to the charge, and must not be taken on revision unless specially ordered AA.s. 160(1).

**69. Review of court-martial proceedings.** The proceedings of a general court-martial shall be submitted by the judge-advocate at the trial for review to the deputy or assistant judge-advocate general of the command who shall then forward it to the confirming officer. The proceedings of a district court-martial shall be sent by the presiding officer or the judge-advocate direct to the confirming officer who must, in all cases, where the sentence is dismissal or above, seek advice of the deputy or assistant judge-advocate general of the command before confirmation.

#### NOTE

This rule provides for a statutory review of all GCM proceedings and of DCM proceedings where the sentence awarded is dismissal or above.

**70. Confirmation.** Upon receiving the proceedings of a general or district court-martial, the confirming authority may confirm or refuse confirmation, or, reserve confirmation for superior authority, and the confirmation, non-confirmation, or reservation shall be entered in and form part of the proceedings.

## NOTES

1. See AA.ss. 153 to 159 and ARs 72 to 74. As to confirmation of SGCM proceedings, see AA.s. 157 and AR 162.
2. The minute of reservation should be entered in the proceedings.
3. Sentence of death must be reserved for confirmation by the Central Government. See warrants A-2 and A-3 for confirmation of GCM proceedings and AA.s. 156 and notes thereto.
4. Confirmation is complete when proceedings are promulgated to the accused.

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

## NOTES

1. For the date from which a sentence of cashiering or dismissal takes effect, see AR 168.
2. In the absence of any direction by the confirming authority, the usual custom of the service as to promulgation will be followed, but a written notice to the offender of the charge, etc., will be sufficient promulgation under this rule. Also see Regs Army para 472.
3. As to committal to a civil prison or to military custody of persons sentenced to imprisonment, see AA.s. 169; as to action in exceptional cases, see AA.s. 171.

4. For forms of committal warrants, see Appendix IV, Part II to AR.
5. As to the suspension of sentence of imprisonment see AA.ss. 182 to 190.

**72. Mitigation of sentence on partial confirmation.**

(1) Where a sentence has been awarded by a court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all such charges, the authority shall take into consideration the fact of such non-confirmation, and shall, if it seems just mitigate, remit, or commute the punishment awarded according as it seems just, having regard to the offences in the charges in respect of the findings which are confirmed.

(2) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed and any one 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 it seems just, having regard to the offences in the charges which with the findings thereon are not invalid, and the punishment as so modified shall be as valid as if it had been originally awarded only in respect of those offences.

NOTES

1. As to the meaning of the terms mitigation, remission and commutation, see notes to AA.s. 158.

2. Where a sepoy has been convicted of (a) desertion on active service under AA.s. 38(1) and (b) of theft of government property under AA.s. 52 (a), and has been sentenced to rigorous imprisonment for 14 years; and the confirming officer confirms the finding on the second charge but not that on the first which alone justified the sentence of 14 years rigorous imprisonment, he is bound under this rule to remit the sentence at least to rigorous imprisonment for 10 years, which is the maximum sentence under AA.s. 52 (a). If, however, the confirming officer confirms the finding of the first charge and not that on the second, he may mitigate or commute it to some less punishment, if he considers that a sentence of

rigorous imprisonment for 14 years on the first charge alone is, in the circumstances, too severe.

3. Sub-rule (2) gives to the authority prescribed under AA.s. 179 similar powers to do after confirmation that which under sub-rule (1) the confirming officer may do before confirmation. But it will be noted that the prescribed authority is only required to act under sub-rule (2) where any one of the charges, or the finding thereon, is found to be invalid and has been set aside. The prescribed authority derives the ordinary powers of mitigation etc., from AA.s. 179.

4. As to substitution of a valid for an invalid sentence, see AA.s. 163.

**73. Confirmation notwithstanding informality in or excess of punishment.** If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorized by law, the confirming authority may vary the sentence so that the sentence shall not be in excess of the punishment authorised by law; and the confirming authority may confirm the finding and the sentence, as so varied, of the court-martial.

#### NOTES

1. The object of this rule is to prevent the proceedings of 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 officers and members of courts-martial who award sentences which are informal or in excess of their powers. If confirming officers decide to act under this rule, instead of ordering a revision of the sentence, they should call the attention of the members of the court to the informality or irregularity of the sentence.

2. The confirming authority cannot under this rule vary a sentence which is illegal in its character and therefore null e.g., a sentence of imprisonment awarded by a DCM to a WO or a sentence of reduction awarded to a lance-naik or a sentence of confinement to lines awarded to a sepoy. In such cases the court must be reassembled for the purpose of passing a valid sentence.

**74. Member or prosecutor not to confirm proceedings.** A member of a court-martial, or an officer who has acted as a prosecutor at a court-martial, shall not confirm the finding or sentence of that court-martial, and where such member or prosecutor becomes confirming officer, he shall refer the finding the sentence of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of court-martial.

#### NOTES

If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm them.

#### **Proceedings of General and District Court-Martial**

**75. Seating of members.** The members of a court-martial shall take their seats according to their army rank.

**76. Responsibility of presiding officer.**

(1) The presiding officer is responsible for the trial being conducted in proper order, and in accordance with the Act, rules made thereunder and in a manner befitting a court of justice.

(2) It is the duty of the presiding officer to see that justice is administered, that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance, or of his incapacity to examine or cross-examine witnesses, or otherwise.

#### NOTES

1. The court should always have at its disposal the AA, AR, Regs Army and other official books or orders which are necessary for the purpose of its proceedings.

2. The presiding officer should be careful to safeguard the dignity of the court and the solemnity of its proceedings.

3. If any person, other than the accused, interrupts the proceedings, he should ordinarily be excluded from the court. The court has, however, further powers under AR 150 for dealing with persons who interrupt its proceedings. See also AA.s. 152 and notes thereto. The trial of a person cannot proceed in his absence, even though he interrupts the proceedings.

4. If the accused is not represented by counsel or defending officer, the presiding officer should assist him in putting forward his defence, and take care that he is not prejudiced by his inability to put proper questions to the witnesses or bring out clearly the points upon which he relies. If there is a JA, he has a similar duty (AR 105(7)), but the presence of a JA does not relieve the presiding officer of his responsibility under this rule. If a witness gives evidence different from that given by him when the summary of evidence was taken, he should be questioned as to the difference.

5. The presiding officer should always put to the witness any questions which appear to him necessary or desirable for the purpose of eliciting the truth; see AR 143 and notes thereto.

**77. Power of court over address of prosecutor and accused.**

(1) It is the duty of the prosecutor to assist the court in the administration of justice, to be have impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused.

(2) The prosecutor may not refer to any matter, not relevant to the charge or charges then before the court and it is the duty of the court to stop him from so doing and also restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.



(3) The court shall allow great latitude to the accused in making his defence; he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purpose of his defence impeach the evidence and the motives of the witnesses and the prosecutor, and charge other persons with blame and even criminality, subject, if he does so, to any liability which he may thereby incur. The court may caution the accused as to the irrelevance of this defence, but shall not, unless in special cases, stop his defence solely on ground of such irrelevance.

## NOTES

1. As to the duties of the prosecutor, see memoranda on page 437. As to the address by the prosecutor, see AR 56, 58, 59 and 78.
2. The prosecutor is an officer whose duty, it is to see that justice is done and not a partisan intent on securing a conviction independently of the justice of the case. He should, therefore, put before the courts facts which show the true character of the offence, and must be careful to prove affirmatively any facts tending to show the innocence of the accused or extenuate his offence, e.g., he should himself produce any available evidence of provocation which might mitigate punishment.
3. It occasionally happens that a sepoy charged with desertion was to the knowledge of the prosecutor, arrested or rendered an involuntary absentee at a date earlier than the termination of his absence as alleged in the particulars of the charge. In such circumstances it is the duty of the prosecutor, although he has not direct evidence to prove the earlier termination of the absence, to tell the court the information which he possesses, and to invite them to act upon such information by recording a special finding under AR 62(4)
4. The prosecutor must not introduce matters of aggravation into the evidence against the accused unless they are relevant to the charge against him. Generally speaking, anything which tends to show that the accused committed the offence charged, or to show the true character of the offence, is relevant.
5. As to the latitude to be given to the accused in making his defence, see notes to AR 58. If the accused charges other persons with blame or criminality, the court should caution him that he may be incurring a liability to be charged subsequently with knowingly making a false accusation. (AA.s.56(a)).

6. The case must be very special indeed to justify the court in stopping the accused in his defence, or in excluding on the ground of irrelevancy, evidence offered by him, or to justify any further proceedings against him on account of his defence.

**78. Procedure on trial of accused persons together.** Where two or more accused persons are tried together and any evidence as to the facts of the case is tendered by any one or more of them, the evidence and address on the part of or on behalf of all the accused persons shall be taken before the prosecutor replies, and the prosecutor shall make one address only in reply as regards all the accused persons.

**79. Separate charge-sheets.**

(1) The convening officer may direct any charges against an accused person to be inserted in different charge-sheets, and when he so directs, the accused shall be arraigned and until after the finding tried, upon each charge-sheet separately, and the procedure in rules 48 to 62, both inclusive, shall, until after finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused.

(2) The trials upon the several charge-sheets shall be in such order as the convening officer directs.

(3) When the court have tried the accused upon all the charge-sheets they shall, in the case of the finding being "Not guilty" on all the charges, proceed as directed by rule 63, and in case of the finding on any one or more of the charges being "Guilty" proceed as directed by rules 54 and 64 to 67, both inclusive, in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.

(4) If the convening officer directs that, in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets the court in such event may, without trying the accused upon any of the subsequent charge-sheets proceed as provided in sub-rule (3).

5. Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and in such case the court, unless they think his claim unreasonable, shall arraign and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.

6. If a plea of "Guilty", to any charge in a charge-sheet has been recorded as the finding of the court, the provisions of sub-rule (3) and (4) of rule 54 shall not be complied with until after the court had arrived at its finding on all the charge-sheets.

#### NOTES

1. Most of the ordinary cases which come before courts-martial are so simple in their facts that an accused person is not likely to be embarrassed by being tried upon several charges at the same time. But if the charges are complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different charges, embarrassment is likely to arise, and in such cases the convening officer should cause the charges to be inserted in separate charge-sheets, numbered consecutively in the order in which he directs them to be tried.

2. It is difficult to lay down for the guidance of convening officers any definite rules as to the placing of the charges in different charges; 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 following by resistance to escort upon re-arrest and gross insubordination to the guard commander after re-committal 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 instance 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 a soldier is charged with desertion and with using criminal force to his superior officer after he had been handed over to the escort, the charges should normally be inserted in separate charge-sheets, unless the facts are simple. But if immediately before the alleged desertion, accused made away with his Army clothing, a charge in respect of the latter offence is relevant to the intent of the accused in leaving his unit and should be inserted in the same charge-sheet as the charge of desertion.

3. Even if the convening officer has directed all charges to be inserted in a single charge-sheet, the accused under sub-rule (5) has the right to apply for separate trial.

4. Where the accused is arraigned on separate charge-sheets, the court must arrive at its finding upon one charge-sheet before the next charge-sheet is proceeded with.

5. Where any evidence given upon the trial of an accused on one charge-sheet is required to be given on the trial of the same accused person on a subsequent charge-sheet, it must be given afresh, but the witness giving such evidence need not be sworn/affirmed again, but he should be reminded of his previous oath/affirmation.

6. Generally speaking, the convening officer will regulate the order for the trial of different charge-sheets according to the date of the respective offences. But where the gravity of the various offences 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.

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 upon the other charge-sheets in order that a more severe sentence may be awarded, if justified.

9. The powers given to the convening officer under sub-rule (4) cannot be exercised by the prosecutor on his own initiative or by the court.

10. The court should always, unless it thinks the claim to be unreasonable, accede to a demand to be tried separately in respect of any particular charge.

11. Under sub-rule (6) where an accused has pleaded guilty to a charge entered in one of several charge-sheets, the summary or abstract of evidence relating thereto and any statement which he may make in reference to the charge or in mitigation of punishment will not be read or recorded until after the finding of the court on all the charge-sheets has been arrived at. But for this provision, the fair trial of the accused upon the other charge-sheets might be prejudiced, especially if he stated, in mitigation of punishment, anything which might point to his guilt on any charge in a charge-sheet which has not yet been tried.

**80. Sitting in closed court.**

(1) A court-martial, where it is so directed by these rules, and may in any other case on any deliberation amongst the members, sit in closed court.

(2) No person shall be present in closed court except the members of the court, the judge-advocate (if nay) and any officers under jurisdiction.

(3) For the purpose of giving effect to the foregoing provisions of this rule, the court-martial may either retire or cause the place where they sit to be cleared of all other persons not entitled to be present.

(4) Except as hereinbefore mentioned all proceedings, including the view of any place, shall be in open court and in the presence of the accused subject to sub-rule (5).

(5) The court shall have the power to exclude from the court any witness who has yet to give evidence or any other person, other than the accused, who interferes with its proceedings.

**80A. Courts Martial to be public.** Subject to rule 80, the place in which a court martial is held for the purpose of trying an offence under the act shall be deemed to be an open court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that, if the court is satisfied that it is necessary or expedient in the public interest or for the ends of justice so to do, the court may at any stage of the trial or any particular case order that the public generally or any portion thereof or any particular person shall not have access to, or be or remain in, the place in which the court is held.

#### NOTES

1. If more convenient, the court may withdraw for deliberations.

2. All the members of the court, and the JA, where one is appointed, must be present in the closed court. The officers under instructions should also be present. If for any reason an officer under instruction is not present to attend the deliberations in closed court, his absence will not affect the validity of such deliberations.

3. All the members of the court, the JA where one is appointed, and the accused must be present at the "view". The prosecutor, and the defence counsel or defending officer should also be present.

4. This rule does not affect the power of the court to exclude any person, other than the accused, who interferes with the proceedings; a power which every court possess for the proper conduct of its proceedings. A court-martial has inherent power to sit “in camera” if necessary for the proper administration of justice. A court-martial may sit “in camera” if evidence of a secret or top secret nature is led at the trial.

**81. Hours of sitting.**

(1) A court-martial may sit at such times and for such period between the hours of six in the morning and six in the afternoon as may be directed by the proper superior military authority, and so far as no such direction extends, as the court from time to time determines but no court shall sit for more than six hours in any one time.

(2) If the court consider it necessary to continue the trial after six in the afternoon or to sit for more than six hours in any one day, it may do so but if it does so should record in the proceedings the reason for so doing.

(3) In case requiring an immediate example or when the convening officer certified under his hand that it is expedient for the public service, trials may be held at any hour.

4. If the court or the convening officer or other superior military authority thinks that military exigencies or the interests of discipline require the court to sit on Sunday or on any other day declared as a holiday in Army or Command Orders, the court may sit accordingly, but otherwise the court shall not sit on any of those days.

**NOTES**

1. Reasons for longer sittings of the court or for sittings outside the hours specified in sub-rule (1) should be recorded in the proceedings.

2. When the court sits on a Sunday or a gazetted holiday, the reasons for so doing should also be recorded in the proceedings.

**82. Continuity of trial and adjournment of court.**

(1) When a court is once assembled and the accused has been arraigned the court shall continue the trial from day to day, in accordance with rule 81, unless it appears to the court that an adjournment is necessary for the ends of justice or that such continuance is impracticable.

(2) A court may adjourn from time to time and from place to place and may, when necessary, view any place.

(3) The senior officer on the spot may also, for military exigencies adjourn or prolong the adjournment of the court.

(4) A court-martial, in the absence of a judge-advocate (if such has been appointed for that court-martial) shall not proceed, and shall adjourn.

(5) If the time to which an adjournment is made is not specified, the adjournment shall be until further orders from the proper military authority; and, if the place to which an adjournment is made is not specified in further orders from the proper military authority.

**NOTES**

1. It is very important that a trial, once begun should proceed without interruption to its conclusion. This rule, therefore, requires the court to sit from day to day unless an adjournment is necessary for the ends of justice.

2. Apart from specific provisions under the AR, an adjournment should be allowed for obtaining the opinion of the confirming authority or of the DJAG/AJAG of the command on any point of law or procedure, for enabling the accused to prepare his defence, the prosecutor to prepare his reply or the JA to prepare his summing-up.



3. The court should not, as a rule, permit an adjournment to enable the prosecutor to call new witnesses, unless the necessity for their presence at the trial could not reasonably have been foreseen. The court should adjourn if it considers that the accused has not had sufficient opportunity for procuring the attendance of any witnesses whom he desires to call, or where it would be unjust to the accused not so to adjourn.

4. The reasons for any adjournment must be entered in the proceedings, and either announced in court in presence of the accused, or communicated to the prosecutor and accused.

5. Prolonged sittings unduly strain the attention of members of the court and may operate unfairly upon the accused, who should never be required to make his defence at the close of a prolonged sitting. See AR 81.

6. Where civilian witnesses are present, the court should, if reasonably possible, complete their evidence before adjourning.

7. Sub-rule (2) meets the case where a "view" is necessary, or where a court-martial is held on the line of march, or where an adjournment to a hospital for the purpose of taking the evidence of a sick witness is rendered necessary.

8. As to "view", see AR 80 and notes thereto.

9. The military exigencies referred to in sub-rule (3) can seldom occur except on active service.

10. As to procedure on death of JA or his inability to attend, see AR 104. Where the absence of the JA is due to temporary cause, the court should adjourn until he is able to attend.

**83. Suspension of trial.**

(1) Where, in consequence of anything arising while the court is sitting, the court is unable by reason of dissolution as specified in section 117, or otherwise, to continue the trial, the presiding officer or, in his absence, the senior member, present, will immediately report the facts to the convening authority.

(2) Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before the award of the sentence, the entire proceedings before the court-martial shall be null and the accused may be tried before another court-martial.

#### NOTES

1. See AA.s.117 and notes thereto.

2. As to substitution of JA, see AR 104.

3. When a court is dissolved under sub-rule (2), every member thereof will be disqualified to sit as a member of the fresh court convened for the trial of the accused; see AR 39(2)(c).

**84 Proceedings on death or illness of accused.** In case of the death of the accused, or of such illness of the accused as renders it impossible to continue the trial, the court shall ascertain the fact of the death or illness by evidence, and record the same and adjourn, and transmit the proceedings to the convening authority.

#### NOTES

1. See AA.s. 117(2). "Impossible to continue" means to continue within a reasonable time having regard to all the circumstances.

2. Oral evidence of the fact of the death or illness will be taken on oath or affirmation. Also, a medical certificate should always, where possible be obtained, stating that the illness of the accused renders his presence in court impracticable, or dangerous to himself or others, and also the time when, in the opinion of the medical officer, the accused will be able to be present.

**85. Death, retirement or absence of presiding officer.** In the case of the death, retirement on challenge or unavoidable absence of the presiding officer, the next senior officer shall take the place of the presiding officer and the trial shall proceed if the court is still composed of not less than the minimum number of officers of which it is required by law to consist.

#### NOTE

1. See AA.s. 117 and notes thereto.

**86. Presence throughout of all members of court.**

(1) A member of a court who has absent while any part of the evidence on the trial of an accused person is taken, shall take no further part in the trial by that court of that person, but the court will not be affected unless it is reduced below the legal minimum.

(2) An officer shall not be added to a court-martial after the accused has been arraigned.

#### NOTES

1. See AA.s. 117 and notes thereto.

2. As to arraignment, see AR and notes thereto.

**87. Taking of opinions of members of court.**

(1) Every member of a court must give his opinion by word of mouth on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal.

(2) The opinion of the members of the court shall be taken in succession, beginning with the member lowest in rank.

NOTES

1. Opinions must be given orally; see AR 61(2). The oath or affirmation taken by members of the court operates, save as therein provided, to prevent the opinions of individual members from being disclosed; see AR 45.

2. AA.s. 132 (1) required all decisions to be passed by an absolute majority, except in the case of a sentence of death passed by a GCM which requires a two-third majority (AA.s. 132 (2)) and a sentence of death passed by SGCM which requires the concurrence of all the members (AA.s. 132(3)). The presiding officer has no second or casting vote in the case of a sentence of death; not where there is an equality of vote of challenge, finding or sentence.

3. In order to obtain an absolute majority in respect of the sentence, every member must vote, even if he had voted for an acquittal on the finding. It is desirable that the nature of the punishment to be awarded should first be considered.

The procedure to be adopted will best be illustrated by the following example:-

At a GCM consisting of seven members, three are in favour of a sentence of imprisonment for life, two in favour of imprisonment, and two in favour of dismissal (without imprisonment). The most lenient punishment will be first put to the vote and will

be rejected by 5 votes to 2. The next most lenient punishment will then be put to the vote, viz., imprisonment. All seven members must vote again and the two members who had previously voted in favour of dismissal will naturally give their votes for imprisonment rather than imprisonment for life. The result will be absolute majority of 4 votes to 3 in favour of imprisonment. The quantum or length of the imprisonment to be awarded will be arrived at in the same manner, the most lenient proposal being put to the vote first.

4. It is improper to strike an average between the various sentences suggested by the members of the court, but it may often happen that, in the course of further discussion, members who had originally made different proposals will arrive at a unanimous decision as to the proper sentence to be awarded.

5. The opinion of each member on the finding must be taken separately upon each charge upon which the accused is arraigned [see AR 61(2)].

6. "lowest in rank" means lowest in the rank in which members take their seats; see AR 75.

**88. Procedure on incidental questions.** If any objection is raised on any matter of law, evidence, or procedure by the prosecutor or by or on behalf of the accused during the trial, the prosecutor or the accused or counsel or the defending officer (as the case may be) shall have a right to answer the same and the person raising the objection shall have a right of reply.

#### NOTE

This rule will apply to such questions as the admissibility of evidence, the propriety of any question or the recalling of a witness. It will also apply to a submission, which may always be made by or on behalf of the accused at the close of the case for the prosecution, that no case has been made out justifying the court in putting the accused upon his defence; see note to AR 57.

**89. Swearing of court to try several accused persons.**

(1) A court may be sworn or affirmed at one time to try any number of accused persons then present before it, whether those persons are to be tried collectively or separately, and each accused person shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

(2) In the case of several accused persons to be tried separately, the court, upon one of those persons objecting to a member, may, according as it thinks fit, proceed to determine that objection or postpone the case of that person and swear or affirm the members of the court for the trial of the others alone.

(3) In the case of several accused persons to be tried separately, the court when sworn or affirmed, shall proceed with one case postponing the other cases, and taking them afterwards in succession.

(4) Where several accused persons are tried separately by the same court upon charges arising out of the same transaction, the court may, if it considers it to be desirable in the interest of justice, postpone consideration of any sentence to be awarded to any one or more of such accused persons until the trials of all such accused persons have been completed.

#### NOTES

1. Notwithstanding that, under this rule, the members of the court, are sworn only once to try the persons before them, they will constitute a separate court for the trial of each case, and the swearing of the court will be mentioned in the proceedings of each case.

2. When, in consequence of an objection raised by one or several persons jointly charged, a new officer serves, the other accused persons, who had previously raised no objection to the members of the court, will have the right to object to the new officer.

3. Where two or more accused persons are tried separately by the same court and the objection of one accused to a member is allowed, that member must still sit as a member of the court for the trial of the accused who did not object to be tried by him.

4. The finding and sentence (except where the court decides to act under sub-rule (4) must be arrived at before the next case is tried.

5. It is very desirable that the court should, where several persons are separately tried and convicted in respect of the same transaction, be in a position to apportion the proper sentences to be awarded to all the accused persons.

6. In as much as a sentence of imprisonment will under AA. s. 167 commence upon the day upon which it is eventually signed, the court, in awarding sentence, should take into consideration in favour of an accused person any postponement of sentence which has been occasioned through the operation of sub-rule (4).

**90. Swearing of interpreter and shorthand writer.**

(1) At any time during the trial an impartial person may, if the court thinks it necessary and shall, if either the prosecutor or the accused requests it on any reasonable ground, be sworn or affirmed to act as interpreter.

(2) An impartial person may at any time of the trial, if the court thinks it desirable, be sworn or affirmed to act as a shorthand writer.

(3) Before a person is sworn or affirmed as an interpreter or shorthand writer the accused shall be informed of the person who is proposed to be sworn or affirmed, and may object to the person as not being impartial or for any reasonable cause; and the court, if it thinks that the objection is reasonable, shall not swear or affirm that persons as interpreter or shorthand writer.

NOTES

1. An interpreter or shorthand writer is usually sworn or affirmed after the commencement of the trial.

2. For the occasions when an interpreter must be employed see AR 91.

3. An interpreter may either be appointed by the convening authority (AR 37(3)) or by the court under this rule. If a member of the court is appointed interpreter, he must take the interpreter's oath or affirmation in addition to the oath/affirmation prescribed for a member of the court in AR 45. A member of JA should not normally act as an interpreter where the trial is likely to be prolonged.

4. For form of oath and affirmation see AR 46.

5. The accused has a right to object to the shorthand writer or the interpreter. When such an objection is raised, the same procedure will be followed as in the case of an objection to a member of the court.

**91. Evidence 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 the evidence shall be interpreted to such officer or counsel does not understand, that evidence shall be interpreted to such officer or person in a language which he knows understand. If an interpreter in such language has been appointed by the convening officer, and duly sworn or affirmed, the evidence shall be interpreted by him. If no such interpreter has been appointed and sworn or affirmed by the court as required by rule 90. When documents are put in for purpose of formal proof, it shall be in the discretion of the court to cause a much to be interpreted as appears necessary.

As the charge-sheet and documentary evidence as to character will be in English, an interpreter in the language of the accused person should be appointed in every case in which the accused does not know enough English to understand these documents. Whoever interprets any evidence must be sworn or affirmed as an interpreter before doing so, See AR 90 and notes thereto.

**92. Record in proceedings of transaction of court-martial.**



(1) At a court-martial the judge-advocate, or, if there is none, the presiding officer shall record, or cause to be recorded in the Hindi or English language, all transactions of the 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 the narrative form in as nearly as possible the words used, but in any case where the prosecutor, the accused person, the judge-advocate, or the court considers it material, the question and answer shall be taken verbatim.

(3) Where an objection has been taken to any question or to the admission of the evidence or to the procedure of the court, such objection shall, if the prosecutor or accused so requests or the court thinks fit, be entered upon the proceedings together with the grounds of the objection and the decision of the court thereon.

(4) Where any address by, or on behalf of, the prosecutor the accused, is not in writing, it shall not be necessary to record the same in the proceedings further or otherwise than the court thinks proper, except that :-

(a) the court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge of the reply made by, or on behalf of, the accused to each charge against him; and

(b) the court shall also record any particular matters in the address by or on behalf of, the prosecutor or the accused which the prosecutor or the accused, as the case may be, may require.

(5) The court shall not enter in the proceedings any comment or anything not before the court, or any report of any fact not forming part of the trial, but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the presiding officer.

NOTES

1. The record, where no shorthand writer is employed, must be taken in a clear and legible hand and should be typed. Interlineations and corrections must be avoided as much as possible; if made they should be initialed by the presiding officer or JA, if any. If desired, a typed copy may be substituted for the original manuscript record; if so substituted it must be checked with the original by the officer responsible for the accuracy of the proceedings. The pages should be numbered and the various sheets fastened together, sheets not used being removed. Sufficient space must be left below these signature of the presiding officer for the decision of the confirming authority. The place and date of the signing of the sentence by the presiding officer must be inserted.

2. No corrections or additions may be made to the proceedings of a court-martial after promulgation. When an obvious oversight has been made in the record, such as the omission of the words, "the presiding officer and members are duly sworn/affirmed". A certificate, signed by the presiding officer, to the effect that they were duly sworn/affirmed should be attached. But see note 1 to AR 67 as to signing and dating the sentence after promulgation.

3. While recording evidence in the narrative form, the material effect of the question and answer will be written down; e.g., where the question is "what did the accused do next"? and the answer is "HE left the room"; the evidence as recorded, would read, "The accused then left the room".

4. Documentary evidence will be read by the presiding office or JA, if any;; it should then be marked with a distinguishing letter or figure and attached to the proceedings. In many cases it will be sufficient to attach copies of documents which must, however, be compared with the originals by the court and certified under the hand of the presiding officer to be true copies (see note 3 to AR 67).

5. If a shorthand writer is employed the evidence is usually taken down verbatim by him. If the evidence of a witness is not given in English, the material effect of question and answer interpreted in English will be recorded.

6. Sub-rule (2) applies to questions and answers given in cross-examination and re-examination as well as in examination-in-chief.

7. The court can make in a separate document any remark it thinks proper on the conduct of any person who appeared before it, or on the manner in which a particular witness has given his evidence, or on the in which the prosecution has been conducted; also, if it thinks the evidence shows that the accused has committed some offence not

charged; e.g., if he is charged with desertion in August, and the evidence shows that he deserted in June, it must acquit him, but may report separately the offence of June.

8. The court can scarcely be too guarded in expressing censure on individuals not before it for trial; indeed, cases justifying such expression will be rare and exceptional.

9. It will usually be desirable to make a separate note at the time of any matter upon which the court intends to make any such comments or report; although it will not be correct to enter such matter in the proceedings.

**93. Custody and inspection of proceedings.** The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or, if there is none, of the presiding officer but may, with proper precaution for their safety, be inspected by the members of the court, the prosecutor and accused, respectively, at all reasonable time before the court is closed to consider the finding.

**94. Transmission of proceedings after finding.** The proceedings shall be at once sent by the person having the custody thereof to such person as may be directed by the order convening the court, or, in default of any such direction, to the confirming officer.

#### NOTES

1. As to custody of the proceedings, see AR 93.
2. For procedure where a member of the court has become confirming authority, see AR 74.
3. The proceedings of court-martial, when dispatched by post, should invariably be sent under registered cover.

#### **Defending Officer, Friend of Accused and Counsel**

**95. Defending Officer and friend of accused.**

(1) At any general or district court-martial, an accused person may be represented by any officer subject to the Act who shall be called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of the accused".

(2) It shall be the duty of the convening officer to ascertain whether an accused person desires to have a defending officer assigned to represent him at his trial and, if he does so desire, the convening officer shall use his best endeavours to ensure that the accused shall be so represented by a suitable officer. If owing to military exigencies, or for any other reason, there shall in the opinion of the convening officer, be no such officer available for the purpose, the convening officer shall give a written notice to the presiding officer of the court-martial, and such notice shall be attached to the proceedings.

(3) The defending officer shall have the same right and duties as ascertain to counsel under these rules and shall be under the like obligations.

(4) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he shall not examine or cross-examine the witnesses or address the court.

#### NOTES

1. Under AR 33 the accused, after he has been ordered to be tried by court-martial is to be allowed free communication with his "friend", defending officer, or legal adviser.

2. As to the duties of the defending officer, see memoranda on page.....

3. Every effort should be made to secure the services of a competent officer as a defending officer, and he should be allowed time and opportunity for properly preparing the defence of the accused.

4. AR 36 empowers dispensing with sub-rule (2) in the event of military exigencies, etc.

5. The defending officer must conduct the case as representing the accused, see AR 97(3), 99 and 100.

**96. Counsel allowed in general and district courts-martial.** In every general and district court-martial, counsel shall be allowed to appear on behalf of the prosecutor as well as the accused; provided the convening officer may declare that it is not expedient to allow the appearance of counsel thereat and such declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial, and may be made subject to such reservation as to cases on active service, or otherwise, as deemed expedient.

#### NOTES

1. For qualifications of counsel, see AR 101 (2).

2. There is no restriction as to the number of counsels engaged in a case. Counsel for the defence, though not bound to such strict impartiality as the prosecutor, must nevertheless recollect that he is assisting in the administration of justice and must not be guilty of any unfairness or want of candour in his conduct of the case. In his address he will have the same liberty as the accused (see AR 77(3)); but he should exercise more restraint in commenting on the acts of persons not before the court.

**97. Requirements for appearance of counsel.**

(1) An accused person intending to be represented by a counsel shall give to his commanding officer or to the convening officer the earliest practicable notice of such intention and, if no sufficient notice has been given, the court may, if it thinks fit, on the application of the prosecutor, adjourn to enable him to obtain a counsel on behalf of the prosecutor at the trial.

(2) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice referred to in sub-rule (1) has been given by the accused,

notice of the direction for counsel to appear shall be given to the accused at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the accused to obtain counsel to assist him at the trial.

(3) The counsel, who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person and in such case that person shall not have the right himself to do any of the aforesaid matters except as regards the statement allowed by clause (a) of sub-rule (2) of rule 58 and clause (b) of rule 59 or except so far as the court permits him so to do.

(4) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness and sub-rule (5) and (6) of rule 56 shall not apply.

#### NOTE

When the convening officer intends to appoint or apply for the services of an officer of the JAG's Department or an officer holding legal qualifications to act as prosecutor, similar notice should be given to the accused to enable him, if he so desires, to obtain counsel to represent him at the trial.

**98. Counsel for prosecution.** The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped or restrained by the court in the manner provided in sub-rule (2) of rule 77.

#### NOTE

Counsel appearing on behalf of the prosecutor should always make an opening address, and should state therein the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary details.

**99. Counsel for accused.** The counsel appearing on behalf of the accused has the like rights, and is under the like obligations as are specified in sub-rule (3) of rule 77 in the case of the accused.

#### NOTE

If the court asks counsel for the accused a question as to any witness or matter, he may decline to answer, but he must not give to the court any answer or information which is misleading.

**100. General rules as to counsel.** Counsel, whether appearing on behalf of the prosecutor or of the accused, shall conform strictly to these rules and to the rules of criminal courts in India relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of a counsel.

#### NOTES

1. Counsel should not state as a fact any matter which is not proved, or which he does not intend to prove in evidence, nor should he state what is his own opinion as to any matter of fact before the court. In a question to a witness he should not assume that facts have been given in evidence which have not been so given, or that particular answers have been given contrary to the fact.

2. Counsel should treat the court and JA with due respect, and should, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.

**101. Qualification of counsel.**

(1) Neither the prosecutor nor the accused has any right to object to any counsel if properly qualified.

(2) Counsel shall be deemed properly qualified if he is a legal practitioner authorised to practise with right of audience in a Court of Sessions in India, or if, he is recognised by the

convening officer in any other country where the trial is held as having in that part, rights and duties similar to those of such legal practitioner in India and as being subject to punishment or disability for a breach of professional rules.

### **Judge-Advocate**

**102. Disqualification of judge-advocate.** An officer who is disqualified for sitting on a court-martial, shall be disqualified for acting as a judge-advocate at the court-martial.

### NOTES

1. As to the appointment of a JA, at a GCM or DCM, see AA.s. 129. Omission to appoint a JA at a GCM will invalidate the proceedings.
2. As to disqualification of a JA, see AR 39(2).
3. A JA should be free of all suspicion of bias or prejudice. He should have had experience of the practice and procedure of courts-martial and knowledge of the general principles of law and of the rules of evidence.

**103. Invalidity in the appointment of judge-advocate.** A court-martial shall not be invalid merely by reasons of any invalidity in the appointment of the judge-advocate officiating thereat, in whatever manner appointed, if a fit person has been appointed and the subsequent approval of the Judge-Advocate General or Deputy Judge-Advocate General obtained, but this rule shall not relieve from responsibility the person who made the invalid appointment.

### NOTE



See notes to AA.s. 129.

**104. Substitute on death, illness or absence of judge-advocate.** If the judge-advocate dies, or from illness or from any cause whatever is unable to attend, the court shall adjourn and the presiding officer shall report the circumstances to the convening authority; and a fit person not disqualified to be judge –advocate may be appointed by that authority, who shall be sworn, or affirmed, and act as judge-advocate for the residue of the trial, or until the judge-advocate returns.

#### NOTES

1. The court will in no circumstances proceed in the absence of a JA who has been duly appointed.
2. This rule permits substitution of a JA in case of his death or illness, by any other fit person not disqualified to be a JA. Such person may be appointed for the residue of the trial or until return of the JA first appointed.
3. For duties of JA see AR 105.
4. See also AA.s. 117(2) and notes thereto.

**105. Powers and duties of judge-advocate.** The powers and duties of a judge-advocate are as follows:-

- (1) The prosecutor and the accused respectively, are, at all times after the judge-advocate is named to act on the court, entitled to his opinion on any question of law relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court.
- (2) At a court-martial, he represents the Judge-Advocate General.

(3) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he shall inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and shall give his advice on any matter before the court.

(4) Any information or advice given to the court, on any matter before the court shall, if he or the court desires, it be entered in the proceedings.

(5) At the conclusion of the case, he shall sum up the evidence and give his opinion upon the legal bearing of the case, before the court proceeds to deliberate upon its finding.

(6) The court, in following the opinion of the judge-advocate on a legal point, may record that it has decided in consequence of that opinion.

(7) The judge-advocate has, equally with the presiding officer, the duty of taking care that the accused does not suffer any disadvantages 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.

(7) In fulfilling his duties, the judge advocate must be careful to maintain an entirely impartial position.

#### NOTES

1. For the documents to be forwarded to JA by the convening officer see AR 37(4).

2. As to summing up, see AR 60 and notes thereto.

3. Upon any point of law or procedure which arises at the trial, the court should be guided by the opinion of the JA, and not disregard it, except for very weighty reasons. The court is responsible for the legality of its decision, but it must consider the grave consequences which may result from its disregard to the advice of the JA on any legal point. If a court-martial, acting without jurisdiction or in excess of jurisdiction, convicts a person

subject to AA, the members of the court may be held liable in damages by a civil court and such liability – or at least the amount of the damages – may depend upon the question whether they exercised a 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.

4. For the duty of presiding officer, see AR 76(2).

5. Permission to call and question witnesses should never be refused unless the court considers that the JA is acting improperly or in such a manner as to obstruct the proceedings. The court should record its reason for refusing permission.

### SECTION 3 – SUMMARY COURTS-MARTIAL

#### **106. Proceedings.**

(1) The officer holding the trial hereinafter called the court, shall record, or cause to be recorded, in the Hindi or English language, the transactions of every summary court-martial.

(2) The evidence shall be taken down in a narrative form in as nearly as possible the words used; but in any case where the court considers it material, the question and answer shall be taken down verbatim.

#### NOTE

See AR 92 and notes thereto which apply mutatis mutandis to this rule.

**107. Evidence when to be translated.** When any evidence is given in a language which the court or the accused does not understand, that evidence shall interpreted to the court or officers or junior commissioned officers attending the proceedings in accordance with sub-section (2) of section 116 or the accused as the case may be in a language which it or he does understand. The court shall, for this purpose, either appoint an interpreter, or shall itself take the oath or affirmation prescribed for an interpreter at a summary court-martial. When documents are put in for the purpose of formal

proof, it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

#### NOTES

1. See note to AR 91.
  
2. Any evidence not understood by the persons attending the trial should also be translated to them.
  
3. The CO should, as a general rule, take the interpreter's oath or affirmation himself, in addition to the oath or affirmation prescribed in AR109 for the court. In the rare cases where the CO does not know the language of the accused he should appoint a competent interpreter. Whoever interprets any evidence must be sworn or affirmed as an interpreter before his doing so; but see AR 149.

**108. Assembly.** When the court, the interpreter (if any), and the officers of junior commissioned officers attending the trial are assembled, the accused shall be brought before the court, and the oaths or affirmation prescribed in rule 109 taken by the persons therein mentioned.

#### NOTE

The accused cannot object to the court or interpreter.

**109. Swearing or affirming of court and interpreter.** (1) The court shall make oath or affirmation in one of the following forms or in such other form to the same purport as may be according to its religion or otherwise binding on its conscience.

Form of Oath

“I ..... swear by Almighty God that I will well and truly try the accused (or accused persons) before the court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding and the custom of war in the like cases”.

#### Form of Affirmation

“I ..... do solemnly, sincerely and truly declare and affirm that I will well and truly try the accused (or accused persons) before the court according to the evidence, and that I will duly administer justice according to the Army Act without partiality, favour or affection; and if any doubt shall arise, then according to my conscience the best of my understanding, and the custom of war in the like cases”.

(2) After which the court, or some person empowered by it, shall administer to the interpreter (if any), an oath or affirmation in one of the following forms, or in such other form to the same purport as the court ascertains to be according to his religion or otherwise binding on his conscience.

#### Form of Oath

“I..... swear by Almighty God that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial.

#### Form of Affirmation

“I ..... solemnly, sincerely and truly declare and affirm that I will faithfully interpret and translate, as I shall be required to do, touching the matter before this court-martial.

(3) After the oaths and affirmations have been administered, all witnesses shall withdraw from the court.

## NOTES

1. See notes to AR 45 and 47 which apply mutatis mutandis to the oaths and affirmations referred to in this rule.

2. The “court” is the officer holding the trial. Two other officers of JCOs or one of either must attend the trial, but they do not form part of the court and are not as such sworn or affirmed; see AA.s. 116 (2).

### **110. Swearing of court to try several accused persons.**

(1) A summary court-martial may be sworn or affirmed at one time to try any number of accused persons then present before it whether those persons are to be tried collectively or separately.

(2) In the case of several accused persons to be tried separately, the court, when sworn or affirmed, shall proceed with one case postponing the other cases and taking them afterwards in succession.

(3) Where several accused persons are tried separately upon charges arising out of the same transaction, the court may, if it considers it to be desirable in the interests of justice, postpone consideration of any sentence to be awarded to any one or more such accused persons until the trials of all such accused persons have been completed.

## NOTE

See notes to AR 89 which apply mutatis mutandis to this rule.

**111. Arrangement of accused.**

(1) After the course and interpreter (if any), are sworn or affirmed as above mentioned, the accused shall be arraigned on the charges against him.

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

**NOTES**

1. As to framing charges, see ARs 28 to 32 and notes thereto. Where under AA.s. 120(2), the sanction of the superior authority is necessary for the trial of a charge by SCM, such sanction should be entered at the foot of the charge-sheet and signed by the superior authority or a staff officer.

2. "Arraignment" consists of (a) calling upon the accused by his number, rank, name and description as given in the charge-sheet and asking him "Is that your number, rank, name and unit (or description)?" (b) reading the charge to him; and (c) asking him whether he is guilty or not guilty.

3. Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and tried upon the first charge-sheet before arraignment upon the second or subsequent charge-sheets; ARs 79 and 126.

4. The charge-sheet, after being read to the accused, will be annexed to the proceedings.

5. The plea of the accused must be taken on all the charges in a charge-sheet. This applies to alternative charges if the accused has been arraigned upon them (see however, AR 115(3)). The plea on each charge should be recorded as "guilty" or "not guilty".

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

#### NOTES

1. A charge lay under AA.s. 54(b) for losing by neglect the property of a comrade would not disclose an offence under that section of the Act.
2. For framing of charges see ARs 28 to 32.
3. For procedure where it appears that the accused is, by reason of insanity, unfit to stand his trial, see AR 145.

**113. Amendment of charge.**

- (1) At any time during the trial if it appears to the court that there is any mistake in the name or description of the accused in the charge-sheet, it may amend the charge-sheet so as to correct that mistake.
- (2) If on the trial of any charge it appears to the court at any time before it has begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, it may amend such charge and may, after due notice to the accused, and with the sanction of the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the accused if the amended charge requires such sanction, proceed with the trial on such amended charge.

#### NOTES

1. See notes to AR 50.



2. See AA.s. 120(2) and notes thereto. If the amended charge is one requiring reference to superior authority and the officer holding the trial considers that there is grave reason for immediate action and that such reference cannot be made without detriment to discipline, he should attach an explanatory memorandum (AR 130) to the proceedings and after giving the accused sufficient notice of the amendments, proceed with the trial.

**114. Special pleas.** If a special plea to the general jurisdiction of the court, or a plea in bar of trial, is offered by the accused, the procedure laid down for general and district courts-martial when disposing of such pleas shall, so far as may be applicable, be followed, but no finding by a summary court-martial on either of such pleas shall require confirmation.

#### NOTE

See AR 51 and 53 and notes thereto.

**115. General plea of "Guilty" or "Not guilty".**

(1) "Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty") shall be recorded on each charge.

(2). If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty.

(2A) Where an accused pleads Guilty, such plea and the factum of compliance of sub-rule (2) of this rule, shall be recorded by the court in the following manner:-

Before recording the plea of Guilty of the accused, the court explained to the accused the meaning of the charge(s) to which he had pleaded Guilty and ascertained that the accused had understood the nature of the charge(s) to which he had pleaded Guilty. The court also informed the accused the general effect of the plea and the difference in procedure, which will be followed consequent to the said plea. The court having satisfied itself that the accused understands the charge(s) and the effect of his plea of Guilty, accepts and records the same. The provisions of rule 115 (2) are thus complied with.

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

#### NOTE

See notes to AR 52 which apply mutatis mutandis to this rule.

#### **116. Procedure after plea of "Guilty"**

(1) Upon the record of the plea of "Guilty", if there are other charges in the same charge-sheet to which the plea is "Not guilty", the trial shall first proceed with respect to the latter charges, and, after the finding of those charges, shall proceed with the charges on which a plea of "Guilty" has been entered; but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding upon any one of the alternative charges to which he has pleaded "Guilty" and a finding or "Not guilty" upon all the other alternative charges.

(2) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges), the court shall read the summary of evidence, and annex it to the proceedings or if there is no such summary, shall take and record sufficient evidence to enable it to determine the sentence, and the reviewing officer to know all the circumstances connected with the offence. The evidence shall be taken in like manner as is directed by these rules in case of a plea of "Not guilty".

(3) After such evidence has been taken, or the summary of evidence has been read, as the case may be, the accused may address the court in reference to the charge and in mitigation of punishment and may call witnesses as to his character.

(4) If from the statement of the accused, or from the summary of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "Guilty", the court shall after the record and enter a plea of "Not guilty", and proceed with the trial accordingly.

(5) If a plea of "Guilty" is recorded and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under sub-rules (2) and (3) shall take place when the findings on the other charges in the same charge-sheet are recorded.

(6) When the accused states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the accused to call witnesses to prove the same.

(7) In any case where the court is empowered by section 139 to find the accused guilty of an offence other than that charged, or guilty of committing an offence in circumstances involving a less degree of punishment, or where it could, after hearing the evidence, have made a special finding of guilty subject to exceptions or variations in accordance with sub-rule (3) of rule 121, it may if it is satisfied of the justice of such course, accept and record a plea of guilty of such other offence, or of the offence as having been committed in circumstances involving such less degree of punishment, or of the offence charged subject to such exceptions or variations.

#### NOTES

1. See notes to AR 54.

2. Sub-rule (7) provides for acceptance by the court of a qualified plea of guilty; see note 9 to AR 62. The court may accept the qualified plea of guilty, if it is satisfied of the justice of such a course.

**117. Withdrawal of plea of “Not guilty”.** The accused may, if he thinks fit, at any time during the trial, withdraw his plea of “Not guilty” and plead “Guilty”, and in such case the court shall at once, subject to a compliance with sub-rule (2) of rule 115, record a plea and finding of “Guilty”, and shall, so far as may be, proceed in the manner provided in rule 116.

**118. Procedure after plea of “Not guilty”.** After the plea of “Not guilty” to any charge is recorded, the evidence for the prosecution shall be taken. At the close of the evidence for the prosecution, the accused shall be asked if he has anything to say in his defence, and may address the court in his defence, or may defer such address until he has called his witnesses. The court may question the accused on the case for the purpose of enabling him to explain any circumstances appearing in his statement or in the evidence against him. The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving answers to them which he knows not to be true; but no oath shall be administered to the accused.

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

#### NOTES

1. For general provisions as to witnesses and evidence, see ARs 143 to 143.
2. As to the record in the proceedings of transactions of the court, see generally AR 92.
3. The evidence will be taken by question and answer, or the witness may be asked to tell his own story, questions being subsequently asked to make good any omissions. It will, as a rule, be recorded in a narrative form; but where the accused or the court considers it material, the question and answer will be taken down verbatim. The material effect only of the question and answer will be written down, e.g., where the question is “what did the accused do next?” and the answer is “he left the room”, the evidence as recorded would read “the accused then left the room”. Documentary evidence after being read should be marked with a distinguishing letter or figure and attached to the proceedings; see also not 3 to AR 67.
4. It is open to the accused, at the close of the case for the prosecution, to submit that the evidence given for the prosecution has not established a prima facie case against him and that he should not, therefore be called upon his defence. If the court is satisfied that it is well founded, the accused must be acquitted; see AR 57 and notes thereto.

5. The utmost liberty consistent with the interests of parties not before the court and with the dignity of the itself should be allowed to the accused in making his defence (see AR 77 (3)) and the court should, if necessary, adjourn to allow him time for its preparation. He has the privilege of making statement which are unsupported by evidence (see not 10 to AR 58).

6. It should be remembered that an accused cannot give evidence on oath and therefore any statement made by him must be carefully considered. Though not given on oath and subject to the test of cross-examination, it will often be of value, particularly if it is in any respect corroborated by evidence from other sources.

7. As to questioning of accused by court, see note 3 to AR 58.

**119. Witnesses in reply to defence.** The court may, if it thinks it necessary in the interest of justice, call witnesses, in reply to the defence.

#### NOTES

1. This is an extreme measure and should only be resorted to when the accused has made or elicited from his witnesses some statement material to the defence, which could not reasonably have been foreseen when the case for the prosecution was being investigated ; see also note to AR 143.

2. As to reference by accused to a Government officer at a trial for desertion etc., see AA.s. 143.

**120. Verdict.** After all the evidence, both for prosecution and defence, has been heard, the court shall give its opinion as to whether the accused is guilty or not guilty of the charges.

#### NOTES

1. The court need not be closed and the finding may be pronounced at once. On the other hand the officer holding the trial may clear the court to consider the evidence, or to discuss any point with the officers/JCOs attending the trial, or may adjourn the court to allow himself time for further consideration or reference as to any doubtful point.
2. See also notes to AR 61 which apply mutatis mutandis to this rule.

**121. Form and record of finding.**

- (1) The finding on every charge upon which the accused is arraigned shall be recorded, and except as mentioned in these rules, such finding shall be recorded simply as a finding of "Guilty", or of "Not Guilty".
- (2) When the court is of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the court shall acquit the accused of that charge.
- (3) When the court is of opinion as regards any charge that the facts found to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not guilty" record a special finding.
- (4) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.
- (5) The court shall not find the accused guilty on more than one of two or more charges laid down in the alternative, even if conviction upon one charge necessarily connotes guilty upon the alternative charge or charges.

NOTE

See notes to AR 62.

**122. Procedure on acquittal.** If the finding on each of the charges in a charge-sheet is “Not guilty”, the court shall date and sign the proceedings, the finding shall be announced in open court, and the accused will be released in respect of those charges.

**123. Procedure on conviction.**

(1) If the finding on any charge is “Guilty”, the court may record of its own knowledge, or take evidence of and record, the general character, age, service, rank, and any recognised acts of gallantry or distinguished conduct of the accused, and previous convictions of the accused either by a court-martial, or a criminal court, any previous punishments awarded to him by an officer exercising authority under section 80, the length of time he has been in arrest or in confinement on any previous sentence, and any military decoration, or military reward, of which he may be in possession or to which he is entitled.

(2) If the court does not record the matters mentioned in this rule of its own knowledge, evidence on these matters may be taken in the manner provided in rule 64 for similar evidence at general and district court-martial.

#### NOTE

See notes to AR 64.

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

#### NOTES

1. See notes to AR 65.

2. Sentences, unless for one year exactly, should, if for one month or upwards be recorded in months. Sentences consisting partly of months and partly of days should be recorded in months and days. A month means a calendar month.

3. When a SCM awards a sentence of imprisonment for a period not exceeding three months, to which no sentence of dismissal is added, the court should enter a direction, which should form part of the sentence, that the imprisonment will be carried out by confinement in military custody (AA.s. 169(3)). Unless such a direction is given, the offender has to be committed to a civil prison, which is most undesirable in the case of a person who is to return to duty after undergoing his punishment. On active service, however, the officer commanding the forces in the field can, under, AA.s. 169 (4), appoint places in which sentence of imprisonment of any length may be carried out.

4. For the date of sentence of dismissal awarded by a court-martial takes effect, see AR 168. Sentences of imprisonment combined with dismissal should, as a rule, be carried out by confinement in a civil prison.

5. Sentences of simple imprisonment are inexpedient and inconvenient of execution.

6. As to suspension of sentences of imprisonment, see AA.s. 182 and notes thereto.

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

#### NOTE

It is essential that the date of sentence should be inserted, as under AA.s. 167 a term of imprisonment is reckoned to commence on the day on which the sentence and proceedings were signed by the court.

**126. Charges in different charge-sheet.** When the charges at a trial by summary court-martial are contained in different charge-sheets, the procedure laid down for general and district courts-



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

NOTE

As to insertion of charges in separate charge-sheets and procedure, see AR 79 and notes thereto.

**127. Clearing the court.**

(1) The officer holding the trial may clear the court to consider the evidence or to consult with the officers or junior commissioned officers, attending the trial.

(2) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court, and in presence of the accused.

NOTE

See notes to AR 80. Apart from the officer holding the trial and the accused, the officers or JCOs attending the trial must also be present at the "view".

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

NOTE

See generally notes to ARs 81 and 82.

**129. Friend of the accused.** In any summary court-martial, an accused person may have a person to assist him during the trial, whether a legal adviser or any other person. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the court.

**130. Memorandum to be attached to proceedings.** An explanatory memorandum is to be attached to the proceedings when a summary court-martial tries, without reference, an offence which should not ordinarily be so tried.

NOTE

See AA.s. 120(2) and notes. This explanation should invariably be attached. If the officer holding the trial loses sight of the law and tries without reference any of the offences mentioned in AA.s. 120(2) without considering whether grave reasons for immediate action exist or not, the trial is illegal.

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

NOTE

See generally notes to AR 71.

**132. Promulgation to be deferred in certain circumstances.** When the officer holding the trial has less than five years' service, the sentence of a summary court-martial shall not (except on active service) be carried out until approved by superior authority as provided in sub-section (2) of section 161.

NOTES

1. The officer to whom the sentence is referred cannot in any way alter the finding or remit, mitigate, or commute the sentence, but if he considers the sentence too severe he should inform the officer holding the trial of his views and direct him to modify the sentence, which order should be obeyed as a matter of discipline. The original sentence must not be carried out until the case is finally settled.

2. The provisions of this rule do not affect the date from which the sentence takes effect; see AA.s. 167 and AR 168.

**133. Review of proceedings.** The proceedings of a summary court-martial shall, immediately on promulgation, be forwarded (through the Deputy Judge-Advocate General of the command in which the trial is held) to the officer authorised to deal with them in pursuance of section 162. After review by him, they will be returned to the accused person's corps for preservation in accordance with sub-rule (2) of rule 146.

#### NOTE

See AA.s. 162. The proceedings of a SCM will not be set aside on merely technical grounds. The words "merits of the case" refer to cases where the charge discloses no offence, or where the evidence is insufficient to support the charge, or where there is some material irregularity in procedure which, in the opinion of the reviewing authority has led to injustice. But where the accused is not misled by any defect in the charge and the statement of offence and the particulars taken together disclose an offence under the AA and supply the accused with sufficient information of the particulars of the charge, which he has to meet, the evidence on which the accused is convicted is given on oath or affirmation and is legally admissible and reasonably sufficient to support the charge, and the accused has not been prejudiced by any irregularity in procedure and has been allowed to call his witnesses and to cross-examine the witnesses against him, the proceedings may legally be upheld, the irregularities calling for no more than a remark for future guidance.

### SECTION 4 – GENERAL PROVISIONS

#### Witnesses and evidence

**134. Calling of all prosecutor's witnesses.** The prosecutor or, in the case, of a trial by summary court-martial, the court is not bound to call all the witnesses for the prosecution whose evidence is in the summary of evidence or whom the accused has been informed he or it intends to call, but he or it should ordinarily call such of them as the accused desires, in order that he may cross-examine them, and shall, for this reason, so far as practicable, secure the attendance of all such witnesses.

#### NOTES

1. As to giving to the accused the summary or abstract of evidence, see AR 33(7).
2. It will be noted that the prosecutor is not required to call any witness at the trial who was called by the accused at the taking of summary of evidence.
3. It is not necessary for the prosecutor to examine at length a witness for the prosecution called at the request of the accused and tendered for cross-examination under this rule.

**135. Calling of witness whose evidence is not contained in summary.** If prosecutor, or in the case of a summary court-martial, the court intends to call a witness whose evidence is not contained in any summary of evidence given to the accused, notice of the intention shall be given to the accused a reasonable time before the witness is called together with an abstract of his proposed evidence; and if such witness is called without such notice having been given the court shall, if the accused so desires it, either adjourn after taking the evidence of the witness, or allow the cross-examination of such witness to be postponed and the court shall inform the accused of his right to demand such adjournment or postponement.

NOTE

It will be noted that this rule applies only in the case of witnesses called for the prosecution and not in the case of witnesses called by the accused or by the court under AR 143(4).

**136. List of witnesses of accused.** The accused shall not be required to give 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 34.

NOTE

A member of the court, JA and prosecutor are competent witnesses for the defence and may be sworn/affirmed at any stage of the proceedings, but an officer should not be

detailed to serve as a member of, or act as prosecutor or JA at, a court-martial if his evidence is likely to be required. A witness for the prosecution cannot serve as a member of the court or act as JA at the trial of the case in which he is a witness (See AR 39(2)(b) and 102).

**137. Procuring attendance of witnesses.**

(1) In the case of trials by general or district court-martial, the commanding officer of the accused, the convening officer or, after assembly of the court, the presiding officer, shall take proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured, but the person requiring the attendance of a witness may be required to undertake to defray the cost (if any) of their attendance.

(2) The court shall, in the case of trials by summary court-martial, take proper steps to procure the attendance of the witnesses whom the accused desires to call and whose attendance can reasonably be procured, but the accused may be required to undertake to defray the cost (if any) of their attendance.

NOTES

1. See AA.s 135 as to summoning witnesses.
2. Form of summons, see Appendix III, Part III to AR.
3. Witnesses who are subject to AA should be ordered by the proper authority to attend without the issue of a formal summons. The appropriate naval or air force authorities should be approached for the attendance of witness subject to naval or air force law.
4. An accused person can have no technical ground of complaint if the attendance of a witness from distant parts cannot be procured, but it is the duty of the CO or convening officer, or after the assembly of the court, the presiding officer, or, in the case of trial by SCM, the court, to take all reasonable steps to secure the attendance of any witness whom there is any ground to suppose to be material to the defence, and AR 138 makes provision for the adjournment of the court if the attendance of such witness is essential.

5. The power to require the person calling a witness to undertake to defray the cost of his attendance is given in order to prevent an unreasonable demand by prosecutors or accused persons for the attendance of witnesses. In the case of the prosecutor, the cost will usually be defrayed as part of the expenses of the prosecution. In the case of the accused, this provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness might afterwards be held to invalidate the proceedings of a court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had upon the court.

6. As to expenses of witnesses, see Travel Regulations.

7. If a civilian witness had in his possession or under his control any books, accounts, letters, returns, papers, or other documents which are considered necessary for the trial, care must be taken in summoning him to require him to bring them with him; the witness would be justified in declining to acknowledge a mere oral request.

8. For action where a civilian witness, who has been duly summoned and whose expenses have been tendered, makes default in attending, see AR 150(3) and notes thereto. As to privilege from arrest under civil or revenue process of a witness summoned to attend before a court-martial, see AA.s. 30.

**138. Procedure when essential witness is absent.** If such proper steps as mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not be reasonably procured before the assemble of the court is essential to the prosecution or defence, the court shall:-

(a) take steps to procure the issue of a commission for the examination of such witness;  
or

(b) if it is a general or district court-martial, adjourn and report the circumstances to the convening officer; or

(c) If it is a summary court-martial, adjourn to enable the witness to attend, or adopt such other course as appears to the officer holding the trial best calculated to do justice.

#### NOTES

1. See AA.ss. 137 and 138. Only the JAG of the DJAG of a command can issue a commission and then only when action is initiated by a court-martial. An AJAG cannot issue a commission.

2. At a SCM the court may, for instance, acquit the accused forthwith, or order his release without prejudice to his subsequent trial should the witness become available.

**139. Withdrawal of witnesses from court.** During the trial a witness, other than the prosecutor, shall not, except by special leave of the court, be permitted to be present in court while not under examination and if, while he is under examination, a discussion arises as to the allowance of a question, or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.

#### NOTES

1. It is customary to have all witnesses present in court while the members of the court are being sworn/affirmed, but they should withdraw before the arraignment. This does not, of course, apply to the prosecutor if he is a witness.

2. Permission to remain in court while not under examination may reasonably be given, e.g., to expert or professional witnesses, provided that no objection is made by or on behalf of the accused.

3. If any such discussion arises as is mentioned in the rule, the court should generally order the witness to withdraw, as his answer might be influenced by the discussion.

**140. Oath or affirmation to be administered to witnesses.** An oath or affirmation shall, if so required by the Act, be administered to every witness before he gives his evidence by the judge-

advocate (if any), a member of the court, or some other person empowered by the court in one of the following forms or in such other form to the same purport as the court ascertains to be according to the religion or otherwise binding on the conscience of the witness.

#### Form of Oath

“I ..... swear by almighty God that what I shall state shall be the truth, the whole truth, and nothing but the truth”

#### Form of Affirmation

“I ..... do solemnly, sincerely and truly declare and affirm that what I shall state shall be the truth, the whole truth, and nothing but the truth”

#### NOTES

1. For manner of administering and taking oaths and affirmations see notes to ARs 45 and 47.
2. The following is a translation into Hindi of the above oath:-

(Form of Oath)

(Main ..... Parmeshwar ki shapath leta hun, kih main jo kuchh kahunga vah satya, purna satya, aur kewal satya hoga).

3. The following is a translation into Hindi of the above affirmations:-

(Form of Affirmation)



(Main ..... satya nishtha, shudh hridaya tatha sachhai se ghoshana karta hun aur partigya karta hun ki main jo kuchh kahunga vah satya, purna satya aur kewal satya hoga).

4. As to power of dealing with recalcitrant witnesses, see AA.s. 59 (in the case of persons subject to AA) and AR 150 (in other cases). See also AA.s. 152 and notes thereto.

**141. Mode of questioning witness.**

(1) Every question shall be put to a witness orally by the officer holding the trial, by the prosecutor, by or on behalf of the accused, or by the judge-advocate and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor, or accused, in which case he shall not reply until the objection is disposed of. The witness shall address his reply to the court.

(2) The evidence of a witness as taken down shall be read to him if he so requests before he leaves the court, and shall, if necessary, be corrected. If he makes any explanation or correction, the prosecutor and accused or counsel or the defending officer may respectively examine him respecting the same.

(3) If the witness denies the correctness of any part of the evidence when the same is read over to him, the court may instead of correcting the evidence, record the objection made to it by the witness.

(4) If the evidence is not given in English and the witness does not understand the language, the evidence as recorded shall be interpreted to him in the language in which it was given, or in a language which he understands if he so requests before he leaves the court.

(5) Where evidence is recorded by shorthand writer, it shall not be necessary to read the evidence of the witness to him under sub-rule (2) or (4), if, in the opinion of the court and the judge-advocate, if any (such opinion to be recorded in the proceedings), it is unnecessary to do so.

## NOTES

1. The court and JA must carefully listen to the actual questions put by the prosecutor and by or on behalf of the accused, as well as to the form in which such questions are put, and they must intervene before the witness replies if in their opinion, any question is improper or “leading”. If either the prosecutor or the accused, or the officer or counsel representing him, considers that a particular question about to be put by him may be objected to, he should submit the propriety of the question to the decision of the court, having first informed the witness that he must not make his reply until the decision of the court has been given.

2. A witness is first examined by the person calling him, then cross-examined by the opposite party, after which he may be re-examined by the party calling him on matters raised in the cross-examination. The court should, if requested by either party, allow the cross-examination of a witness by the party to be postponed, especially if his evidence comes as a surprise; see also AR 135 where a witness is called whose evidence is not contained in the summary or abstract of evidence. A request for postponement should not be acceded to, if, in the opinion of the court, it is made for purposes of obstruction.

3. When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end of the record of his evidence, and not by way of interlineations or erasure.

4. If the witness makes any explanation or correction, the prosecutor and accused or counsel or defending officer may respectively examine him respecting the same.

5. Under the sub-rule (2) and (4) evidence of a witness is required to be read over or translated to him if he so wishes. The fact that the witness was informed of his right under the said sub-rules should be recorded in the proceedings, if he declines to have his statement read over or translated to him.

6. After a witness has given his evidence every effort should be made to keep him separate from other witnesses who have not given their evidence before the court.

### **142. Questions to witnesses by court or judge-advocate.**

(1) The presiding officer, the judge-advocate (if any), or the officer holding the trial and, with the permission of the court, any member of the court may address a question to a witness while such witness is giving his original evidence and before he withdraws.

(2) Upon any such question being answered, the presiding officer, the judge-advocate (if any), or the officer holding the trial, shall also put to the witness any question relative to that answer which he prosecutor or the accused or counsel or the defending officer may request him to put and which the court deem reasonable.

#### NOTES

1. It will be noted that this rule applies only to the original evidence of a witness and not to any evidence given by him on being recalled. As to recalled witnesses, see AR 143.

2. It is desirable that any questions should be put after the conclusion of the examination, cross-examination (If any) of the witness; but questions may properly be put to a witness during his examination in order that his evidence may be clearly recorded.

3. The presiding officer, JA or officer holding the trial should always, under the provisions of this rule, put any question which they are requested by the prosecutor, or by or on behalf of the accused, to put and which does not seem unreasonable. It is to be noted that members of the court other than the presiding officer are not empowered except in the circumstances mentioned in sub-rule (1), to put questions.

#### **143. Re-calling of witnesses and calling of witnesses in reply.**

(1) At the request of the prosecutor or of the accused, a witness may, by leave of the court, be recalled at any time before the closing address of or on behalf of the accused (or at a summary court-martial at any time before the finding of the court) for the purpose of having any question put to him through the presiding officer, the judge-advocate (if any), or the officer holding the trial.

(2) The court may, if it considers it expedient, in the interest of justice, so to do allow a witness to be called or recalled by the prosecutor, before the closing address of or on behalf of the accused, for the purpose of rebutting any material statement made by a witness for the defence or for the purpose of giving evidence on any new matter which the prosecutor could not reasonably have foreseen.

(3) Where the accused has called witnesses to character, the prosecutor before the closing address of or on behalf of the accused, may call or re-call witnesses for the purpose of proving a previous conviction or entries in the defaulters' book against the accused.

(4) The court may call or re-call any witness at any time before the finding, if it considers that it is necessary for the ends of justice.

#### NOTES

1. The presiding officer, JA or officer holding the trial should also put to a witness recalled under the provisions of sub-rule (1) any further questions which they consider necessary in view of the answers given.

2. Sub rules (2) and (3) are inapplicable to a SCM where there is no prosecutor, Sub-rule (4) will, however, admit of the officer holding the trial calling or recalling witnesses in similar circumstances when the ends of justice require it. See also AR 119.

3. The power given under sub-rule (4) of calling or recalling a witness should only be exercised in exceptional circumstances, e.g., where it appears for the first time from the evidence given at the trial that a person, who has not been called either by the prosecutor or on behalf of the defence, was present at, and probably witnessed the occurrence which forms the subject of the charge which is being tried. Witnesses should not be called or recalled under this provision in order to supplement any negligent conduct on the part of the prosecution. If witnesses are called or recalled under this provision, the prosecutor and the accused should be invited to put or suggest any relevant questions which in their opinion should be put by the court. If new evidence is given after the closing address by or on behalf of the 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).

4. If a witness is recalled, he should not be sworn or affirmed again, but reminded of his previous oath or affirmation. The fact of his being so reminded should be recorded in the proceedings.

### **Addresses**

**144. Addresses.** All addresses by the prosecutor and the accused and the summing up of the judge-advocate may either be given orally or in writing, and if in writing shall be read in open court.

### **NOTE**

The summing-up of the JA should invariably be in writing. See note 1 to AR 60. Also see AR 92(4).

**145. Finding of insanity.**

(1) Where the court finds either that the accused by reason of unsoundness of mind, is incapable of making his defence; or that he committed the act alleged but was reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the court shall give brief reasons in support thereof. The judge advocate, if any, or the presiding officer or in the case of summary court-martial, the officer holding the trial shall record or cause to be recorded such brief reasons in the proceedings.

(2) The presiding officer or in the case of summary court-martial, the officer holding the trial, shall date and sign the above record, and the proceedings, upon being signed by the judge-advocate, if any, shall at once be transmitted to the confirming officer or to the authority empowered to deal with its finding under section 162, as the case may be.

### **NOTES**

1. See AA.ss. 145 and 146 and notes thereto.
2. For form of finding see page .....

### **Preservation of proceedings**

#### **146. Preservation of proceedings.**

(1) The proceedings of a court-martial (other than a summary court-martial) shall, after promulgation, be forwarded, as circumstances require, to the office of the Judge-Advocate General, and there preserved for not less, in the case of a general court-martial, than seven years, and, in the case of any other court-martial, than three years.

(2) The proceedings of a summary court-martial shall be preserved for not less than three years, with the records of the corps or department to which the accused belonged.

**147. Right of person tried to copies of proceedings.** Every person tried by a court-martial (other than Summary Court Martial) shall, after the proceedings have been signed by the Presiding Officer and in the case of Summary Court-Martial the officer holding the trial, and before they are destroyed, on a request made by such person in writing to the Court or the officer holding the trial or the person having the custody of his proceedings, be entitled for the supply of a copy of such proceedings, within a reasonable time and free of cost, including the proceedings upon revision, if any.

### NOTES

(1) Under this rule an accused is entitled to a copy of the proceedings of his trial free of charge. In case of joint trial by SCM the officer holding the trial or in case of joint trial by GCM, DCM, or SGCM the convening officer, should ensure that sufficient copies of the proceedings are prepared to facilitate delivery of the same to the accused on demand. The application for a copy of the proceedings should be made personally by the accused.

2. For custody of proceedings after confirmation or where no confirmation is required, see AR 146.

**147A. Copy of proceedings not to be given in certain cases.** Notwithstanding anything contained in rule 147, if the Central Government certifies that it is against the interests of the security of the State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof under the said rule, he shall not be furnished with such copy:

Provided that if the Central Government is satisfied that the person demanding the copy is desirous of submitting a petition in accordance with the Act or instituting any action in a court of law in relation to the finding or sentence, it shall permit inspection of the proceedings to such person or his legal adviser, if any, on the following conditions, namely:-

(a) the inspection shall be made at such times and such places as the Central Government or any authority authorized by it may direct; and

(b) the person allowed to inspect the proceedings shall, before such inspection, furnish:-

(i) an undertaking, in writing, that he shall not make copies of the proceedings or any part thereof and that the information or documents contained in such proceedings shall not be used by him, for any purpose whatsoever other than for the purpose of submitting a petition in accordance with the Act or instituting an action in a court of law in relation to the said finding or sentence; and

(ii) a certificate that he is aware that he may render himself liable to prosecution under sections 3 and 5 of the Indian Official Secrets Act, 1923 (19 of 1923) if he commits any act specified in the said sections in relation to the documents or information contained in the said proceedings.

NOTE : This rule shall be deemed always to have been inserted in the Arm Rules. Ministry of Defence Gazette Notification No E-7 dated 17<sup>th</sup> June 1960 published in Extra-ordinary Gazette Pt I Sec. 3 dated 20<sup>th</sup> June, 1960, refers.

## NOTE

The accused or his legal adviser will be liable to be prosecuted for contravening section 3 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 unauthorized use of such information.

### **148. Loss of proceedings.**

(1) If, before confirmation, the original proceedings of a court-martial which require confirmation or any part thereof, are lost, a copy thereof, if any, certified by the presiding officer or the judge-advocate at the court-martial may be accepted in lieu of original.

(2) If there is no such copy, and sufficient evidence of the charge, finding, sentence, and transactions of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings, or part thereof, which have been lost.

(3) In any case above in this rule mentioned, the finding and sentence may be confirmed, and shall be as valid as if the original proceedings, or part thereof, had not been lost.

(4) If the accused refuses the assent referred to in sub-rule (2), he may be tried again, and the finding and sentence of the previous court of which the proceedings have been lost shall be void.

(5) If, after confirmation or in any case where confirmation is not required, the original proceedings of a court-martial or any part thereof are lost, and there is sufficient evidence of the charge, finding, sentence, and transactions of the court and of the confirmation (if required) of the finding and sentence, that evidence shall be a valid and sufficient record of the trial for all purposes.

## NOTES



1. Confirmation is not complete until the finding and sentence have been promulgated, see AR 71.
2. As to annexure to the proceedings of original documents, see note 3 to AR 67.
3. The evidence may be obtained by the presiding officer or some member of the court writing out from memory the substance of the charge, finding, sentence and transactions of the court, which should be authenticated by the signatures of the members. A copy of the charge, however, should always be procured if possible.
4. As soon as it is known that the proceedings have been lost; steps should be taken to obtain and preserve the best evidence available.

#### **Irregular Procedure when no injustice is done**

**149. Validity of irregular procedure in certain cases.** Whenever, it appears that a court-martial had jurisdiction to try any person and make a finding and that there is legal evidence or a plea of guilty to justify such finding, such finding and any sentence which the court-martial had jurisdiction to pass thereon may be confirmed, and shall, if so confirmed and in the case of a summary court-martial where confirmation is not necessary, be valid, notwithstanding any deviation from these rules or notwithstanding that the charge-sheet has not been signed by the commanding officer or the convening officer, provided that the charges have, in fact, before trial been approved by the commanding officer and the convening officer or notwithstanding any defect or objection, technical or other, unless it appears that any injustice has been done to the offender, and where any finding and sentence are otherwise valid they shall not be invalid by reason only of a failure to administer an oath or affirmation to the interpreter or shorthand writer; but nothing in this rule shall relieve an officer from any responsibility for any willful or negligent disregard of any of these rules.

#### NOTES

1. This rule is intended to prevent a miscarriage of justice in consequence of defects, usually of a technical nature, in matters of procedure which do not affect the real merits of the case; but before acting upon this rule the confirming officer must be satisfied that the accused has not suffered any injustice through any deviation from the AR or through any defect or objection. Whether or not a deviation, etc., is of a substantial nature will often

depend upon the circumstances. The court should not allow any technicality to interfere with the accused in the making of his defence.

2. The confirming officer should always direct the attention of all officers concerned to deviations and defects which have been observed and for which they are responsible.

3. It may be convenient to note here that if, after confirmation, the charges or findings thereon are declared to be invalid, the trial must be treated as null, the conviction set aside, the person convicted relieved of all consequences of his trial and the record of conviction erased.

4. As to the substitution of valid finding and sentence for invalid finding and sentence, see AA.s. 163.

5. As to review of SCsM, see AA.s. 162 and notes to AR 133.

#### **Offences of witnesses and others**

**150. Offences of witnesses and others.** When any court-martial is of opinion that there is ground for inquiring into any offence specified in sections 59 and 60 and committed before it or brought under its notice in the course of its proceedings, or into any act done by a person subject to the Act, have constituted such an offence, such court-martial may proceed as follows that is to say:-

(1) If the person who appears to have committed the offence is subject to the Act, the court may bring his conduct to the notice of the proper military authority, and may also order him to be placed in military custody with a view to his punishment by an officer exercising authority under section 80, 83, 84 or 85 to his trial by a court-martial.

(2) If the person who appears to have done the act is amenable to naval or air force law, the court may bring his conduct to the notice of the proper naval or air force authority, as the case may be.

(3) If the person who appears to have done the act is not subject to military, naval or air force law, then in the case of acts which would, if done by a person subject to the Act, have constituted an offence under clause (a), (b), (c) or (d) of section 59, the officer who summoned the witness to appear or the presiding officer or officer holding the court, as the case may be, may forward a written complaint to the nearest Magistrate of the first class having jurisdiction, and in the case of acts which would, if done as aforesaid, constitute an offence under clause (e) of section 59 or section 60, the court, after making any preliminary inquiry that may be necessary, may send the case to the nearest Magistrate of the first class having jurisdiction for inquiry or trial in accordance with section 340 of the Code of Criminal Procedure, 1973(Act 2 of 1974).

#### NOTES

1. A trial by court-martial is deemed to be a judicial proceeding within the meaning of IPC.ss. 193 and 228. A court-martial is deemed to be a court within the meaning of CrPC.ss. 480 and 482 (CrPC 1973, ss. 345 and 346); see AA.s. 152 and notes thereto.

2. An act includes an illegal omission, See AA.s. 3(xxv) and IPC.s. 32.

3. When a person subject to AA commits an offence under any of the clauses of AA.s. 59, or when a corresponding offence is committed by a person subject to naval or air force law or by a civilian, court-martial will often act wisely in accepting an apology sufficient to vindicate their dignity instead of resorting to the more severe measures here indicated. As already pointed out (note 3 to AR 76) the best course to adopt when a person, other than the accused, interrupts the proceedings will ordinarily be to order his exclusion from the court.

4. Courts-martial should exercise the greatest discretion in instituting proceedings or in taking measures which may result in the institution of proceedings, against a person subject to AA for the offence specified in AA.s. 60, or against a person subject to naval or air force law, or a civilian for corresponding offence. It is not enough that the court-martial has by its verdict shown that it did not believe the witness, for it may have thought him to be mistaken or, on the balance of probabilities, it may have accepted another version of what took place. Before instituting proceedings as indicated in this rule against a witness, the court should be satisfied that there are good grounds for believing that the witness has willfully given false evidence on some point which is material to the issue, and that his conviction is likely. The credit of another witness is a point material to the issue.

5. When it is likely that a witness will be prosecuted for giving false evidence, the exact words used, in the language in which the evidence was given, should be recorded; see AR 92(2).

6. In the case of a person subject to AA, the court-martial may, in its discretion either merely report his conduct to the proper military authority, or may in addition order him into military custody pending disposal of his case.

7. If a person is so ordered into custody this fact should be mentioned in the report; and it then becomes the duty of the officer receiving the report to see that the case is promptly investigated in accordance with AA.s. 102(1). The report should be in sufficient detail to place the officer in full possession of the facts and enable him to exercise his discretion whether to order trial by court-martial if he is competent to do so, or to direct summary disposal.

8. As to “proper military authority”, see AR 2 (d). This will depend on the status of the offender, and the authority under whose orders the court has been convened.

9. In the case of a SCM the officer holding the trial would ordinarily report to the next superior authority and a GDM, DCM or SGCM would report to the convening officer observing in each case the usual channel of correspondence.

10. As explained in the notes to AA.s. 59, the members of a court-martial reporting an officer under this rule are individually disqualified (AR 39(2)(c) and (e) from trying him on charges arising out of their report. If the officer, to whom the case is finally referred, decides on trial, he must convene a new court for the purpose. For similar reasons it is undesirable that a CO should try by SCM a person under his command who has offended against his authority when holding a SCM or when sitting as a member of a GCM, DCM or SGCM. He could, save in grave emergency, only do so with the sanction of superior authority which should, therefore, as a rule, be withheld – AA.s 120(2).

11. A court-martial convened or assembled under AA has, as such, no authority over a person subject to naval or air force law and cannot as a court order him into military custody. Sub-rule (2) enables the court merely to report offences of contempt or of giving false evidence committed by such persons to proper naval or air force authority for disposal under the appropriate act. See, however, AA.s. 152 and notes thereto.

12. When a person subject to AA commits contempt or gives false evidence before a court-martial other than the one convened under AA, the charge can only be framed under AA.s. 63, as a court-martial convened under an Act other than AA is not a court-martial for the purpose of charges under AA.s. 59 to 60.

13. Sub rule (3) deals with civilian offenders; Cr PC.ss. 195 and 476 (Cr PC 1973, ss. 195 and 340/341) provide for the institution of proceedings for certain offences against the IPC, on the written complaint of the public servant concerned or of the court before which the offence complained of was committed. A court-martial is a “criminal court” for the purpose of the above sections and is also a “court of justice” for the purpose of the IPC. See Cr PC.s. 6 and IPC.s. 20. The effect of this is that all the acts and omissions which are punishable under AA.s. 59 clause (a), (b), (c) or (d), when committed by person subject to AA, are, when committed by civilians, offences under IPC.ss.174, 175, 178 and 179, for which the officer who summoned the witness to appear or the officer conducting the proceedings of the court-martial, as the case may be, can institute proceedings under Cr PC.s. 195(1)(a); and that all acts and omissions which are punishable under AA.ss. 59(e) and 60 when committed by persons subject to AA are, when committed by civilians, offences under IPC.ss. 193, 194 and 228, for which the aggrieved court-martial can institute proceedings under Cr PC.s. 476 (Cr PC 1973, s. 340). Before instituting such proceedings, the officer (in the case of offences corresponding to those in AA.s. 59, clauses (a), (b), (c) or (d)), and a court-martial (in the case of offences corresponding to those in AA.s. 59(e) or (60) must prima facie be satisfied that a definite offence has been committed by some definite person or persons against whom proceedings in a criminal court are to be taken. It is not sufficient that the circumstances may raise some sort of 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.

14. The report to the magistrate may be in letter form, and should be sufficiently detailed to place him in full possession of all the materials on which the decision to prosecute was based. It should set forth the name and identity of the person accused and of the witnesses who can substantiate the accusation. A narrative of the events complained of, should be included in the report and a record of the evidence taken in preliminary inquiry (if any) attached.

15. In the case of a person subject to naval or air force law the proper course is to report the offence to the proper naval or air force authority, though proceedings could be taken under sub-rule (3).

## SECTION 5 – SUMMARY GENERAL COURTS-MARTIAL

The foregoing rules in this Chapter shall not, save as hereinafter mentioned, apply to a summary general court-martial which shall be subject to the following rules, namely-

### **151. Convening the court and record of proceedings.**

(1) The court may be convened and the proceedings of the court recorded in accordance with the form in Appendix III, with such variations as the circumstances of each case may require.

(2) The officer convening the court shall appoint or detail the officers to form the court, and may also appoint or detail such officers as waiting members as he thinks expedient. Such officers should have held commissions for not less than one year, but, if any officers are available who have held commissions for not less than three years, they should be selected in preference to officers of less service.

(3) The provost-martial, an assistant provost martial, or an officer who is prosecutor or witness for the prosecution shall not be appointed a member of the court, but subject to sub-rule (2), any other available officer may be appointed to sit.

### NOTES

1. In the convening order, members and waiting members (if any) may be appointed by name, or only their ranks and units may be mentioned. In the latter event, the ranks, names, etc., of the members of the court as constituted, will be recorded in the proceedings.

2. The convening order must be signed personally by the convening officer.

3. Under sub-rule (2), it is no mandatory that a member of a SGM must have held a commission for not less than one year. An officer with less than one year's commissioned service can legally sit as a member.

**152. Charge.** The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Act.

**153. Trial of several accused persons.** The court may be sworn at the same time to try any number of accused persons then present before it, but except as provided in rule 35, the trial of each accused person shall be separate.

**154. Challenges.**

(1) The names of the presiding officer and members of the court shall be read over to the accused who shall thereupon be asked if he objects to be tried by any of these officers.

(2) Any objection shall be decided as provided for in section 130 and rule 44 – the vacancies being filled from among the waiting members (if any), or by fresh members being appointed by the convening officer.

**155. Swearing or affirming the court, judge-advocate, etc.** The provisions of rule 45, 46 and 47 relating to administering and taking of oaths and making of affirmations shall apply to every summary general court-martial.

**156. Arraignment.** When the court is sworn or affirmed, the judge-advocate (if any) or the presiding officer shall state to the accused then to be tried, the offence with which he is charged with, if necessary, an explanation giving him full information of the act or omission with which he is charged and shall ask the accused whether he is guilty or not guilty of the offence.

## NOTES

1. As to objection by accused to charge, see AR 49 which by AR 164 is applied, so far as practicable, to a SGCM. As to responsibility of presiding officer, see AR76.

2. As to general plea of “Guilty” or “Not Guilty”, see AR 52 and notes; as to procedure after plea of “Guilty”, see AR 54. Both these rules are, by AR 164 applied, so far as practicable, to a SGCM.

3. A plea of “Guilty” will not be accepted by the court if the charge or charges upon which an accused is arraigned render him liable, on conviction, to be sentenced to death. If such plea is offered, the court will enter a plea of “Not Guilty” and proceed with the trial accordingly. See AR 52 (4).

**157. Plea of jurisdiction.** If a special plea to the general jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer.

#### NOTE

See AR 51, which by AR 164 is applied, so far as practicable, to a SGCM.

**158. Evidence.**

(1) The witnesses for the prosecution will be called and the accused shall be allowed to cross-examine them and to call any available witnesses for his defence.

(2) An oath or affirmation as laid down in rule 140 shall be administered to every witness, if so required by the Act, before he gives his evidence, by one of the persons specified in the rule.

#### NOTE

Although by AR 164 only a limited number of the foregoing rules are applied to SGCM, so far as practicable, the procedure to be adopted at a SGCM should be the same as at a GCM or DCM.



**159. Defence.**

(1) The accused shall be asked what he has to say in his defence, and shall be allowed to make his defence. He may be allowed to have any person to assist him during the trial.

(2) The court or the judge-advocate, if any, may question the accused on the case for the purpose of enabling him to explain any circumstances appearing in his statement or in the evidence against him. The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving answers to them which he knows not be true.

NOTES

1. See note to AR 158.

2. As to rights of the accused to prepare his defence, see AR 33 which by AR 164 is applied, so far as practicable, to a SGCM.

3. See ARs 95 to 101. If the person assisting is an officer subject to AA or a counsel (see AR 10(2)), he may be allowed full privileges of address, etc.

**160. Record of the Evidence and defence.**

(1) The judge-advocate (if any), or the presiding officer shall take down or cause to be taken down a brief record of the evidence of the witnesses at the trial and of the defence of the accused; the record so taken down shall be attached to the proceedings.

(2) If it appears to the convening officer that military exigencies or other circumstances prevent compliance with sub-rule (1), he may direct that the trial will be carried on without any such brief record being taken down.

(3) If the accused pleads "Guilty" the summary or abstract 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 or abstract of evidence so read.

#### NOTE

It would hardly ever be necessary for the convening officer to give such a direction as is mentioned in sub-rule (2). If he does so, he must record it in his order convening the court and state shortly the exigencies or other circumstances which appear to him to prevent compliance with this rule.

**161. Finding and sentence.** The court shall then be closed to consider its finding. If the finding on any charge is "Guilty", the court may receive any evidence as to previous convictions and character which is available. The court shall then deliberate in closed court as to its sentence.

#### NOTES

1. As to voting of members, see AA.s. 132(1) and (4).

2. For votes required before a sentence of death can be passed, see AA.s. 132(3).

3. ARs 61 (Consideration of finding), 62 (form, record and announcement of finding), 64 (recommendation to mercy) and 67 (announcement of sentence) are applied by AR 164, so far as practicable, to trials by SGCM.

**162. Signing and transmission of proceedings.** Upon the court arriving at a finding of "Not Guilty", or awarding the sentence in case of having at a finding of "Guilty", the presiding officer shall

date and sign the finding or sentence, as the case may be. The signature shall authenticate the whole of the proceedings and the proceedings upon being signed by the judge-advocate, if any, shall at once be transmitted to the confirming officer, for confirmation.

#### NOTES

1. Every finding and sentence of a SGCM is subject to confirmation; see AA.s. 153.
  
2. As to retention to serve in the ranks of a person sentenced on active service to imprisonment or dismissal, see AA.s. 78.

#### **163. Adjournment.**

- (1) A summary general-court-martial may adjourn from time to time and from place to place and may when necessary view any place.
  
- (2) The proceedings shall be held in open court, in the presence of the accused except on any deliberation among the members when the court may be closed.

#### NOTE

As to adjournment see AR 82 and notes thereto.

**164. Application of rules.** The foregoing rules, namely rules 22 (hearing of charge), 23 (procedure for taking down the summary of evidence), 24 (remand of accused), 25 (procedure on charge against officer), 27 (delay report), 33 (rights of accused to prepare defence), 34 (warning of accused for trial), 36 (suspension of rules on grounds of military exigencies or the necessities of discipline), 38 (adjournment for insufficient number of officers), 49 (objection by accused to charge), 51 (special plea to the jurisdiction), 52 (general plea of 'Guilty' or 'Not guilty'), 53 (plea in bar), 54 (procedure after plea of "Guilty"), 55 (withdrawal of plea of 'Not guilty'), 61 (consideration of finding), 62 (form, record and announcement of finding), 64 (procedure on conviction), 65 (sentence), 66 (recommendation of mercy), 67 (announcement of sentence), 71 (promulgation), 72 (mitigation of sentence on partial confirmation), 73 (confirmation notwithstanding informality in, or

excess of, punishment), 74 (member or prosecutor not to confirm proceedings), 76 (responsibility of presiding officer), 77 (power of court over addressor prosecutor and accused), 78 (procedure on trial of accused persons together), 80 (sitting in closed court), 84 ( proceedings on death or illness of accused), 85 (death, retirement or absence of presiding officer), 86 (presence throughout of all members of the court), 94 (transmission of proceedings after finding), 95 (defending officer and friend of accused), 96 (counsel allowed in certain general and district court martial), 97 (requirement for appearance of counsel), 98 (counsel for prosecution), 99 (counsel for accused), 100 (general rules as to counsel), 101 (qualification of counsel), 102 (disqualification of judge-advocate), 103 (invalidity in the appointment of judge-advocate), 104 (substitute on death, illness, or absence of judge-advocate), 105 (powers and duties of judge-advocate), 145 (finding of insanity), 146 (preservation of proceedings), 147 (right of person tried to copies of proceedings), 148 (loss of proceedings), 149 (validity of irregular procedure in certain cases), shall so far as practicable apply as if a summary general court-martial were a district-court-martial.

#### NOTES

See also ARs 152, 154(2), 155 and 158(2).

**165. Evidence of opinion of convening officer.** Any statement in an order convening a summary general court-martial as to the opinion of the convening officer shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

#### NOTE

See IEA.s 4 for the meaning of “conclusive evidence”.

#### SECTION 6 – EXECUTION OF SENTENCES

**166. Committal Warrants.** A warrant for the committal of a person sentenced by a court-martial to a prison under the provision of section 168 and sub-section (2) of section 169 shall be in one of the forms given in Appendix IV. Such warrant shall be signed and dispatched by the commanding officer of the prisoner or by any higher authority or his staff officer and forwarded to the proper prison authority.

NOTE

See AR 4, For presumption as to signature on warrant see AA.s. 140.

**167. Warrants under Section 173.** Any warrant issued under the provisions of section 173 shall be in one of the forms given in Appendix IV, and shall be signed by the officer making the order in pursuance of which such warrant is issued, or by his staff officer, or by the commanding officer of the unit to which the person undergoing sentence belonged.

NOTE

See note to AR 166.

**168. Sentence of Cashiering or Dismissal.**

(1) A sentence of cashiering or dismissal awarded by a court-martial shall take effect from the date on which the sentence is promulgated to the person under sentence, or except in the case of an officer, from such subsequent date as may be specified by the commanding officer at the time of such promulgation.

(2) When dismissal is combined with imprisonment which is to be carried out in a military prison or in military custody or with field punishment, the dismissal shall not take effect until the date on which the prisoner is released from a military prison or from military-custody, or until the completion of the field punishment, unless such field punishment is remitted by a competent authority.

(3) When cashiering or dismissal is combined with imprisonment for life or with imprisonment which is to be carried out in a civil prison, the cashiering or dismissal shall not take effect until the date on which the prisoner is received into a civil prison.

NOTES

1. Under AA.s. 23, a discharge certificate must be furnished to every JCO, WO or enrolled person who is dismissed from the service (see also AR 12). An officer is not furnished with a discharge certificate.

2. A sentence of cashiering or dismissal awarded a court-martial to an officer takes effect from the date of promulgation, or when combined with imprisonment, from the date on which the prisoner is received into a civil prison. The sentence is notified in the gazette of India.

3. It may sometimes be expedient for a CO, in order to keep a person sentenced to dismissal (other than an officer) subject to AA for a short period, to specify a date subsequent to the date of promulgation. If he considers such action desirable he must do so at the time of the promulgation of the sentence to the person and he should record the date he specified in the minute of promulgation. When a CO exercises this option of specifying a subsequent date, the date specified must be strictly limited by the requirement of the case. For instance, in the case of a person sentenced out of India to dismissal alone, or to dismissal combined with imprisonment which is carried out locally either in military custody or for special reasons in local civil custody (AA.s. 171), the subsequent date might be "date of disembarkation" or "date of embarkation" according to whether the intention is to despatch the person to India on a transport or by a private vessel. It is obviously desirable to keep the person subject to military discipline while traveling on a transport or until he can be despatched to India. If the person is to be sent by a transport, the CO can enter in the discharge certificate "date of disembarkation" as the date from which the dismissal takes effect.

4. The effect of sub-rule (3) is that a prisoner under sentence of cashiering or dismissal combined with imprisonment which is carried out in a civil prison remains subject to AA until he is received into a civil prison. The CO should enter on the discharge certificate the date of admission into a civil prison as the date from which the dismissal takes effect, or in the case of any officer, report the date of admission to the proper military authority.

5. AA will apply to an offender who upon conviction by court-martial is sentenced to imprisonment and committed to a civil prison, during the term of his imprisonment, through he is cashiered or dismissed from the regular Army or otherwise has ceased to be subject to AA and he may be kept, removed, imprisoned and punished as if he continued to be subject of AA; see AA.s. 123 and noted thereto.

**169. Custody of Person under Sentence of Death.** When a person is sentenced by a court-martial to suffer death, the commanding officer for the time being of such person may, if he thinks fit, by a warrant in one of the forms in Appendix V, commit the said person for safe custody in a civil prison pending confirmation or the carrying out of the sentence.

**170. Opportunity for petition against sentence of death..**

(1) While confirming the sentence of death, the confirming authority shall specify the period within which the person sentenced may, after the sentence has been promulgated to him, submit a petition against the finding or sentence against him of the court-martial.

(2) A person against whom a sentence of death has been confirmed shall at the time of promulgation, be informed of his rights under sub-section (2) of section 164 and of the period specified by the confirming authority within which he may, if he so wishes to do, submit a petition against the finding or sentence of the court-martial.

(3) Every petition against a finding or sentence submitted by a person against whom a sentence of death has been confirmed, and every order in respect of such petition shall be transmitted, where the confirming authority is the Chief of the Army Staff or the Central Government, through the Adjutant General at the Army Headquarters and in any other case, through the confirming officer.

(4) A sentence of death shall not be carried into the effect until the expiry of the period specified by the confirming authority under sub-rule (1) or if, within the period as 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.

**170A. Death Warrant.**

(1) The officer commanding the army, army corps or division or an officer commanding forces in the field shall nominate a provost marshal or other officer not below the rank of Lieutenant Colonel who shall be responsible for the due execution of the sentence of death passed under the Act, and shall issue to such officer the death warrant in the relevant form contained in Appendix V.

(2) The officer specified in sub-rule (1) shall not issue the death warrant until he is satisfied that having regard to the provisions of rule 170, the sentence of death may be carried into effect.

(3) No sentence of death passed under the Act shall be carried into effect until the death warrant has been received by the provost marshal or other officer nominated under sub-rule (1).

(4) If the authority specified in sub-rule (1) is of the opinion that the sentence of death be carried out in a civil prison, he shall forward a warrant in one of the forms in Appendix V together with an order of the confirming authority certifying the confirmation of the sentence, to the civil prison for the execution of the sentence.

**170B. Execution of sentence of death.**

(1) On receipt of the death warrant, the provost marshal or other officer, nominated under sub-rule (1) of rule 170A shall :-

(a) inform the person sentenced as soon as possible of the date on which the sentence will be carried out.

(b) if the person sentenced has been committed to a civil prison under rule 169, obtain the custody of his person by issuing a warrant in one of the forms in Appendix V, and

(c) proceed to carry out the sentence as required by the death warrant and in accordance with any general or special instructions which may from time to time be given by or under the authority of the Chief of the Army Staff.



(2) During the execution of a sentence of death passed under the Act, no person except the 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 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 in the execution;

(e) if the execution is carried into effect in an army unit, the officer for the time being in command of such unit.

(3) After the sentence of death has been carried into effect, the provost marshal or other officer nominated under sub-rule (1) of rule 170A or the Superintendent of the civil prison, as the case may be, shall complete or cause to be completed parts II and III of the death warrant, and shall, without unnecessary delay return the completed death warrant to the officer who had issued the same.

**171. Procedure or Commutation of Sentence of Death.** If a sentence of death is commuted under the Act or if the person sentenced to death is pardoned, and

(a) if he has been committed to a civil prison under a warrant issued under rule 169, a further warrant in one of the forms given in Appendix V shall be issued by the commanding officer of such person.

(b) if he has been detained in military custody, any warrant which may be necessary to give effect to the sentence as so commuted, shall be issued in one of the forms given in Appendix IV.

**172 to 176. Cancelled vide SRO 17E dt 06 Dec 93.**

## CHAPTER VI

### COURTS OF INQUIRY

#### **177. Courts of Inquiry.**

(1) A court of inquiry is an assembly of officers or of officers and junior commissioned officers or warrant officers or non-commissioned officers directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them.

(2) The court may consist of any number of officers of any rank, or of one or more officers together with one or more junior commissioned officers or warrant officers or non-commissioned officers. The members of court may belong to any branch or department of the service, according to the nature of the investigation.

(3) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.

#### NOTES

1. See generally as to courts of inquiry Regs Army paras 516 to 526. For disqualification of members of courts of inquiry for serving on subsequent courts-martial, see AR 39(2)(c).

2. A court of inquiry has no power to compel the attendance of civilian witnesses.
  
3. The court of inquiry should normally consist of three members.

**178. Members of Court not to be Sworn or Affirmed.** The members of the court shall not be sworn or affirmed, but when the court is a court of inquiry on recovered prisoners of war, the members shall make the following declaration-

“I do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which ..... become a prisoner of war, according to the true spirit and meaning of the regulations of the regular Army; and I do further declare, upon my honour that I will not on my account, or at any time disclose or discover my own vote or opinion or that of any particular member of the court, unless required to do so by competent authority”.

**179. Procedure.**

(1) The court shall be guided by the written instructions of the authority who assembled the court. The instructions shall be full and specific and shall state the general character of the information required. They shall also state whether a report is required or not.

(2) The officer who assembled the court shall, when the court is held on a returned prisoner of war or on a prisoner of war who is still absent, direct the court to record its opinion whether the person concerned was taken prisoner through his own wilful neglect of duty, or whether he served with or under, or aided the enemy; he shall also direct the court to record its opinion in the case of a returned prisoner of war; whether he returned as soon as possible to the service and in the case of a prisoner of war still absent whether he failed to return to the service when it was possible for him to do so. The officer who assembled the court shall also record his own opinion on these points.

(3) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry except a prisoner of war who is still absent.

(4) The court may put such questions to a witness as it thinks desirable for testing the truth or accuracy of any evidence he has given and otherwise for eliciting the truth.

(5) The court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

(5A) Any witness may be summoned to attend by order under the hand of the officer assembling the court. The summons shall be in the form provided in Appendix III.

(6) The whole of the proceedings of a court of inquiry shall be forwarded by the presiding officer to the officer who assembled the court.

#### NOTES

1. As to the authorities who can remit the forfeiture of pay and allowances incurred by absence as a prisoner of war, see AR 195(c). If the officer who assembles the court is not one of these authorities, he should forward the proceedings with his recommendation, to one of these authorities. A court of inquiry on a prisoner of war who is still absent may be assembled in order to assist the authorities prescribed in AR 195(c) and 196, in determining what remission of forfeiture of pay and allowances shall be ordered and what provision in terms of AA.ss.98 and 99 shall be made for the dependants of such prisoner of war. A second court of inquiry must be assembled as soon as possible after the return of the prisoner of war. See Regs Army para 522.

2. For form of oath and affirmation see AR 140.

**180. Procedure when character of a person subject to the Act is involved.** Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation and producing any witnesses in defence of his character and military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure

that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule.

#### NOTE

Whenever it appears possible that the character or military reputation of a person subject to AA may be affected as the result of the court of inquiry, the authority who assembles the court of inquiry will take all necessary steps to secure that the provisions of this rule are observed. The ultimate responsibility of ensuring that they are observed in every case will, however, rest upon the presiding officer of the court of inquiry, and should it transpire during the sitting of the court that the character or military reputation of any person subject to AA is affected by the evidence put forward, the presiding officer, will immediately arrange for such person to be afforded the full facilities of the rule, adjourning the court if necessary for the purpose of securing his attendance.

**181. Evidence when to be taken on oath or affirmation.** Evidence shall be recorded on oath or affirmation when a court of inquiry is assembled-

- (a) on a prisoner of war, or
- (b) to inquire into illegal absence under section 106, or
- (c) in any other case when so directed by officer assembling the court.

Explanation. The court shall administer the oath or affirmation to witnesses as if the court were a court-martial.

**182. Proceedings of court of inquiry not admissible in evidence.** The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry, shall not be admissible in evidence against a person subject to the Act, nor shall any evidence respecting the proceedings of the court be given against any such person except upon the trial of such person for wilfully giving false evidence before the courts:-

Provided that nothing in this rule shall prevent the proceedings from being used by the prosecution or the defence for the purpose of cross-examining any witness.

NOTE

See AA.s. 60 and notes thereto.

**183. Court of inquiry as to illegal absence under Section 106.**

(1) A court of inquiry under section 106 shall, when assembled, require the attendance of such witnesses as it thinks sufficient to prove the absence and other facts specified as matters of inquiry in that section.

(2) It shall taken down the evidence given it in writing and at the end of the proceedings shall make a declaration of the conclusions at which it has arrived in respect of the facts it is assembled to inquire into.

(3) The commanding officer of the absent person shall enter in the court-martial book of the corps or department a record of the declaration of the court, and the original proceedings will be destroyed,.

(4) The court of inquiry shall examine all witnesses who may be desirous of coming forward on behalf of the absentee, and shall put such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given and otherwise for eliciting the truth, and the court in making its declaration shall give due weight to the evidence of all such witnesses.

(5) An oath or affirmation shall be administered to the witnesses in the manner specified in rule 181.

NOTES

1. See notes to AA.s. 106.
  
2. See notes to AR 177.
  
3. The court of inquiry declares that (number, rank, name) illegally absented himself for a period of 30 clear days, excluding the day on which the absence commenced and that on which the court of inquiry assembles.
  
4. The court of inquiry in making its declaration will follow the wording shown below. As exact reproduction of the declaration will be entered in the court-martial book. It should be free from alteration or erasure.

DECLARATION

The court declares that (number, rank, name and unit) ..... illegally absented himself without leave (or other sufficient cause) at .....station or place) on the ..... ; that he is still so absent, and that on the (date on which the inventory of kit was taken) ..... he was deficient, and that he is still deficient of the following articles (value of equipment and clothing to be stated).

\_\_\_\_\_ Value Rs. \_\_\_\_\_

\_\_\_\_\_ Value Rs. \_\_\_\_\_

Name of the  
Presiding Officer  
Presiding Officer  
and members  
Members

5. In framing a charge of losing by neglect under AA.s. 54(b), the date of taking the inventory should be averred in the particulars.

6. Before a court of inquiry is entitled to find deficiencies, it will require evidence:-

(a) that the absentee has been at some time previously in possession of a complete kit, or at any rate, of the articles alleged to be deficient.

(b) that an inventory of his kit has been taken, and at the taking of the inventory certain specified articles were deficient;

(c) that none of the articles have since been recovered (any articles recovered will, of course, be omitted).

7. When the declaration is to be produced in evidence at a court-martial, a copy will be made on IAFD-918 which is admissible under AA.s. 142(4), and will be produced instead of the court-martial book. IAFD-918 must be a correct extract from the court-martial book and free from alteration or erasure.

8. As to form of oath see AR 140.

**184. Right of certain persons to copies of statement and documents.**

(1) Any person subject to the Act who is tried by a court-martial shall be entitled to copies of such statements and documents contained in the proceedings of a court of inquiry, as are relevant to his prosecution on defence at his trial.



(2) Any person subject to the Act whose character or Military reputation is affected by the evidence before a court of inquiry shall be entitled to copies of such statements and documents as have a bearing on his character or Military reputation as aforesaid, unless the Chief of the Army Staff for reasons recorded by him in writing, orders otherwise.

### Losses or Thefts of Arm

**185. Court of inquiry when rifles, etc., are lost or stolen.**

(1) Whenever any weapon or part of a weapon which forms part of the equipment of a squadron, battery, company or other similar unit, and in respect of the loss or theft of which a fine may be imposed under the rule 186 is lost or stolen, a court of inquiry shall be assembled, under the orders of the officer commanding the army, army corps, division or independent brigade, to investigate the circumstances under which the loss or theft occurred.

(2) The officer who assembled the court shall direct it to record an opinion as to the circumstances of the loss of theft.

**186. Collective fines may be imposed.**

(1) The officer commanding the army, army corps, division or independent brigade shall then record his opinion on the circumstances of the loss or theft, and may impose for each weapon or part of a weapon lost or stolen, collective fines to be extent of the current official prices of such weapons or part of weapons on the junior commissioned officers, warrant officers, non-commissioned officers, and men of such unit or upon so many of them as he considers should be held responsible for the occurrence.

		Rs.	A.	P.
Gun Machine Bren 303 in.	.	.	.	.
0		1,200		0
Block Breech	.	.	.	.
				82 0

0	Barrel . . . . .	100	0
0	Magasine . . . . .	15	0
0	Gun Machine Vickers 303 in . . . . .	2,880	0
0	Block Breech . . . . .	490	0
0	Barrel . . . . .	93	0
0	Gun Machine Cal.30 Browning . . . . .	3,600	0 0
0	Block Breech . . . . .	660	0
0	Barrel . . . . .	120	0
0	Gun Machine Cal. 50 Browning . . . . .	4,800	0 0
0	Block Breech . . . . .	600	0
0	Barrel . . . . .	180	0
0	Gun Machine Besa 7.2 mm . . . . .	1,150	0
0	Block Breech . . . . .	110	0
0	Barrel . . . . .	440	0
0	Garbinee Machine Setn 9 mm . . . . .	95	0
0	Block Breech . . . . .	16	12



0	Launcher Rocket Anti-tank	.	.	.	.	.	.	600	0
	Barrel	.	.	.	.	.	.	480	0
0	Grenades	.	.	.	.	.	.	18	0

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

NOTE

See AA.s. 89 and notes thereto.

CHAPTER VII

PRESCRIBED OFFICERS, AUTHORITIES AND OTHER MATTERS

187. 'Corps' prescribed under Section 3 (vi).

(1) Each of the following separate bodies of persons subject to the Act shall be a "Corps" for the purposes of Chapter III and section 43(a) of the said Act and of Chapters II and III of these rules, except rule 13 namely:-

(a) President's Body Guard.

- (b) The Armoured Corps, Horsed Cavalry Regiments, including Training Centres and non-combatants.
  
- (c) The Regiment of Artillery.
  
- (d) The Corps of Engineers including non-combatants.
  
- (e) The Corps of Signals including non-combatants.
  
- (f) Each regiment or each ungrouped battalion (as the case may be) of Infantry, or, in the case of grouped Gorkha Regiments, each group of Infantry including non-combatants.
  
- (g) Each parachute battalion.
  
- (h) The Army Service Corps (including postal).
  
- (i) The Remount, Veterinary & Farms Corps.
  
- (j) The Army Medical Corps.
  
- (k) The Army Dental Corps.
  
- (l) The Army Ordnance Corps.
  
- (m) The Corps of Electrical & Mechanical Engineers.
  
- (n) The Technical Development Establishment.

- (o) The Intelligence Corps.
- (p) The Corps of Military Police.
- (q) The Pioneer Corps.
- (r) The Defence Security Corps.
- (s) The Army Education Corps.
- (t) The Army Physical Training Corps.
- (u) The General Service Corps.
- (v) The Frontier Defence Corps.
- (w) Each Boys Battalion.
- (x) Gorkha Boys Company.
- (z) Any other separate body of persons subject to the Act, employed on any service and NOT attached to any of the above corps or to any department.

(2) Every unit in which a court-martial book is maintained shall be a "corps" for the purpose of section 106 and rule 183.

(3) For the purposes of every other provision of the said Act and of these rules each of the following separate bodies shall be "corps":-

- (a) Every battalion.
- (b) Every company which does NOT form part of battalion.
- (c) Every regiment of cavalry, armoured corps or artillery.
- (d) Every squadron or battery which does NOT form part of regiment of cavalry, armoured corps or artillery.
- (e) Every school of instruction, training centre, or regimental centre.
- (f) Every other separate unit composed wholly or partly of persons subject to the Act.

#### NOTES

1. The effect of this rule is that each of the bodies specified in sub-rule (1) is a "corps" for the purpose of enrolment, attestation, and discharge, except for AR 13. For all other purposes (except those of AA.s. 106) the bodies mentioned in sub-rule (3) are "corps".
2. The effect of AR 7 read with the prescribed forms of enrolment in Appendix I, is that every person enrolled under AA must be enrolled in some corps, as defined in sub-rule (1), or in some department as defined in AA.s. 3(ix).

**188. Conditions prescribed under Section 3(Xviii) (f).** In the Act and in these rules, the expression 'officer', in relation to a person subject to the Act, includes a person holding a commission in the Indian Navy or the Air Force, when he is serving under any of the following conditions, namely:-

- (a) When he a member of a body of the regular Army, acting with a body of the Indian Navy or the Air Force which is on active service;

(b) When he is being conveyed on any vessel or aircraft employed as a transport or troop ship.

(c) When a serving in or is a patient in any hospital or medical unit in which any officer of the Indian Navy or the Air Force is on duty or is a patient.

(d) When he is a member of a body of the regular Army acting in an emergency with a body of the Indian Navy or the Air Force and an order in writing is made by the officers commanding the bodies concerned stating that an emergency exists and that it is necessary for officers of the Indian Navy or the Air Force to exercise command over persons subject to the Act. A copy of every such order shall forthwith be sent to the Central government.

(e) When he is serving in any place in which or with any body of the regular Army with which, there is present any officer of the Indian Navy or the Air Force and the Central Government has by special order declared that it is necessary for officers of the Indian Navy or the Air Force to exercise command over persons subject to the Act in that place or with that body of the regular Army.

#### NOTES

1. For active service see AA.ss. 3 (i) and 9.

2. For the declaration made, by the Central Government under clause (e) see Government of India, Ministry of Defence, SRO No 34 dated 19 Jan 63.

**189. Prescribed Officer under Section 7(1).** The prescribed officer for the purpose of sub-section (1) of section 7 shall be the officer commanding the army, army corps, division, or brigade or any equivalent formation with which the person subject to the Act under clause (i) of sub-section (1) of section 2 is for the time being serving.

**190. Prescribed form under Section 13.** The prescribed form for the purposes of section 13 shall be the same as set forth in Appendix I.



**191. Prescribed Officer under Section 78.** The prescribed officer for the purposes of section 78 shall be the officer commanding the forces in the field, or, in the case of a sentence which he confirms or could have confirmed or which did not require confirmation, the officer commanding the army corps, division, brigade or any detached portion of regular Army within which the trial was held.

**192. Prescribed extend of Punishment under Section 80.** Subject to the other provisions of the Act, a commanding officer or other officer as is specified under section 80, may -

(i) if not below field rank, award punishments specified in section 80 to the full extent;

(ii) if below field rank, award imprisonment and detention upto seven days and other punishments to the full extent. An officer having power not less than an officer commanding a division may, however, empower such officer to award imprisonment and detention to the full extent.

**193. Prescribed Officer under Sections 90(i) and 91(i).** The prescribed officer for the purposes of clause (i) of section 90 and clause (i) of section 91 shall be the Chief of the Army Staff or the officer commanding the Army.

**194. Prescribed Officer under Section 93.** Prescribed officer for the purpose of section 93 shall be, in the case of an officer, the Chief of the Army Staff and in the case of a person other than an officer, the officer empowered to convene a court-martial for his trial.

**195. Prescribed Authorities under Section 97.** Any penal deduction from the pay and allowances of a person subject to the Act, made under Chapter VIII thereof, may be remitted as hereinafter provided, that is to say:-

(a) a penal deduction from the pay and allowances of any such person may be remitted by the Central Government,

(b) the commanding officer of any such person, other than an officer, who has been absent without leave for a period not exceeding five days may, unless the person is

convicted by a court-martial on a charge for such absence, remit the forfeiture of pay and allowances to which that absence renders him liable.

(c) a forfeiture of pay and allowances incurred by any such person owing to his absence as a prisoner of war may, (unless it shall have been proved before a court of inquiry that he was taken prisoner through his own wilful neglect of duty, or that he served with or under, or aided, the enemy or that he did not, as soon as possible, return to the service) be remitted by the Chief of the Army Staff, by the officer commanding an army, army corps, division or independent brigade, or by the officer commanding the forces in the field.

**196. Prescribed Authorities under Sections 98 and 99.** The prescribed authorities for the purpose of sections 98 and 99 shall be –

(i) in the case of officer of the Army Medical Corps, Director General Armed Forces Medical Services.

(ii) in the case of all other officers, the Director of Personal Services, and

(iii) in all other cases, the officer not below the rank of Lieutenant Colonel commanding a Training Battalion, Training Centre, Depot or Record Office who maintains the accounts of the individual or any superior authority.

**197. Prescribed Officer under Section 107 (1).** The prescribed officer for the purposes of sub-section (1) of section 107 shall be the officer commanding an army, army corps, division or independent brigade or an officer commanding the forces in the field.

**197A. Prescribed Officer under Section 125.** The prescribed officer for the purpose of Section 125 of the Act shall, except in cases falling under Section 69 of the Act in which death has resulted, be the officer commanding the brigade or station in which the accused person is serving.

**198. Prescribed Officer under Section 142.** The prescribed officer for the purpose of sub-section (1) of section 142 shall be the officer commanding the corps, department or detachment to which the person appears to have belonged or alleges that he belongs or had belonged.

**199. Prescribed Manner of Custody and Prescribed Officers under Sections 145 and 146.**

(1) The prescribed officer for the purposes of section 146 shall be -

(a) in the case of trial by summary court-martial, the commanding officer of the Corps, Department or Detachment to which the accused person belongs, or any authority to the commanding officer.

(b) in the case of trial by any other court-martial, the convening officer or any authority superior to him.

(2) Where an officer who proposes to act as a prescribed officer under sub-rule (1) is under the command of the officer who has taken action in the case under sub-section (4) of section 145, he shall ordinarily obtain the approval of such officer before he acts; but, if he is of the opinion that military exigencies, or the necessities of discipline, render it impossible or inexpedient to obtain such approval, he may act without obtaining such approval, but shall report his action and the reasons therefore to such officer.

(3) For the purpose of sub-section (4) of section 145 the manner in which an accused person shall be kept in custody shall be as follows:-

The accused shall be confined in such manner as may, in the opinion of the proper military authority, be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal but as a person labouring under a disease.

**200. Prescribed Officer under Section 162.** The prescribed officer for the purposes of section 162 shall, whenever any division or brigade is temporarily withdrawn from its territorial area, be the officer, not being below the rank of field officer commanding the corresponding divisional or brigade area, within which the trial is held;

Provided that, when the officer who held the trial is himself the commander of such area, he shall forward the proceedings to superior authority.

When the trial is held on board a ship the prescribed officer shall be the officer commanding the troops on board the ship, or the officer who would have had power to deal with the proceedings had the trial been held at the port of disembarkation;

Provided that, when the officer who held the trial is himself the officer commanding the troops on board the ship, he shall forward the proceedings to the authority at the port of disembarkation.

**201. Prescribed Officer under Section 164(2).** The prescribed officer for the purpose of sub-section 2 of section 164 shall be any officer superior in command to the commanding officer and in the case of summary court-martial any officer superior in command to the officer who held the summary court-martial, provided that such superior officer has power not less than a brigade commander.

**202. Prescribed Officer under Section 165.** The prescribed officer for the purposes of section 165 shall be the officer commanding an army, army corps, division or brigade in respect of proceedings confirmed by him or by a person under his command.

**203. Prescribed Officer under Section 169.** The prescribed officer, under sub-section (1) of section 169, for the purposes of directing whether the sentence shall be carried out by confinement in a civil prison or by confinement in a military prison, shall be, in the case of a sentence which has been confirmed, and higher authority than the confirming officer, and in the case of a sentence which does not require confirmation, any higher authority to the officer holding the trial.,

**204. Prescribed Officer under Section 169.** The prescribed officer for the purposes of section 179 shall be-

(a) as regards persons undergoing sentence in a civil prison or any other place, the officer command commanding the army, army corps, division, or independent brigade within the area of whose command the prisoner subject to such punishment may for the time be:

(b) as regards persons convicted on active service, the officer commanding the forces in the field.

### **Authorised Deductions**

**205. Authorised Deductions.** The following deductions may be made from the pay, non-effective pay and all other emoluments payable to a person subject to the Act, namely:-

(a) upon the general or special order of the Central Government, any sum required to meet any public claim there may be against him, any regimental debt that may be due from him or any regimental claim;

(b) any sum required to meet compulsory contributions to any provident fund or any benevolent or other fund approved by the Central Government.

Explanation:-

(i) "Public Claim" means any public debt or disallowances including any over-issue; or a deficiency or irregular expenditure of public money or store of which, after due investigation, no explanation satisfactory to the Central Government is given by the person who is responsible for the same.

(ii) The aforesaid deductions shall be in addition to those specified in the Act.

### **NOTES**

1. When a person subject to AA accepts his liability in respect of regimental dues, it becomes a regimental debt. When he does not so accept his liability, it becomes a regimental claim.

3. See AA.s. 25 and notes thereto. This rule lays down the deduction authorised under AA.

