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MANUAL OF AIR FORCE LAW

VOLUME - I



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**MANUAL OF
AIR FORCE LAW
VOLUME-I**

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New Delhi.

FOREWORD

1. This Manual had been brought out in 1988 to meet the requirement of an authoritative commentary on the provisions of the Air Force Act, 1950 and the Air Force Rules, 1969, which primarily constitute the Air Force Law. Volume I of this Manual contains exhaustive commentaries on each Section of the Air Force Act, 1950 and Volume II consists of such commentaries on the Air Force Rules, 1969. Extracts of several relevant provisions of civil laws like the Constitution, CrPC, CPC, etc have also been incorporated therein.

2. Over the past two decades some amendments have been made to the Air Force Rules, 1969. Also several landmark judgements on various provisions of Air Force Law have been delivered by the Supreme Court. Therefore, these Manuals have been revised by incorporating the said amendments and case laws, thereby making the IAP up to date and more comprehensive. I am sure that this IAP would be of immense use to various authorities, dealing with administration of justice in the Air Force.

(JN Burma)
Air Marshal
Air Officer-in-charge
Administration

01 August 2006

THE AIR FORCE ACT, 1950

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LIST OF ABBREVIATIONS

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

'A'

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

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

Back

'B'

'C'

CAC	Central Air Command
Capt	Captain
CAS	Chief of Air Staff
CC	Confinement to Camp
CDJA	Command Deputy Judge Advocate
Chap	Chapter
C J A	Command Judge Advocate
Cl	Clause
Cls	Clauses
CM	Court Martial

CO	Commanding Officer
COAS	Chief of Army Staff
COs	Commanding Officers
CPC	Civil Procedure Code, 1908
Cpl	Corporal
Cr PC 1898	Criminal Procedure Code, 1898
Cr PC 1973	Criminal Procedure Code, 1973

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‘D’

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

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‘E’

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

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‘F’

Fg Offr	Flying Officer
Flt Lt	Flight Lieutenant

‘G’

GCM General Court Martial
GOI Government of India
Govt Government

Back

'H'

HC High Court
HP Himachal Pradesh
HQ Headquarters

'I'

i/c In charge
ie that is

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'J'

JA Judge Advocate
JAG (Air) Judge Advocate General (Air)
J & K Jammu & Kashmir

'K'

'L'

LAC Leading Aircraftsman
Lt Col Lieutenant Colonel
Ltd Limited

Back

'M'

Maj Major

MCO Movement Control Office
MOD Ministry of Defence
MT Mechanical Transport

'N'

NA Navy Act, 1957
NCO Non Commissioned Officer
NC(E) Non Combatant (Enrolled)
Nk Naik
No Number

Back

'O'

'P'

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

Back

'Q'

R

S

'T'

'U'

UP Uttar Pradesh

'V'

V Versus

'W'

WAC Western Air Command

w.e.f. With effect from

WO Warrant Officer

WOs Warrant Officers

Back

'X'

'Y'

'Z'

For Official Use Only

CHAPTER I



PRELIMINARY

THE AIR FORCE ACT, 1950

(45 OF 1950)

(18th May, 1950)

An Act to consolidate and amend the law relating to the government of the Air Force

Be it enacted by Parliament as follows

CHAPTER 1

Preliminary

1. **Short title and commencement** - (1) This Act may be called the Air Force Act, 1950.
2. It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

NOTES

1. The Air Force Act, 1950 came into force on 22 Jul 50 vide SRO 124 dated 22 Jul 50. See Gazette of India, 1950 Part II S. 4 p 87.
2. Hindi version of Air Force Act published vide Gazette of India 1971 Part II (Extraordinary) S, IA Ext.
 - 3.1 Affected by subsequent legislation, as follows.
 - 3.2 Amended by
 - (a) The Reserve and Auxiliary Air Forces Act, 19 52 (Act 62 of 1952);
 - (b) The Commanders - in-Chief (Change in Designation) Act 1955 (Act 19 of 1955);
 - (c) The Repealing and Amending Act, 1957 (Act 36 of 1957);

(d) The Air Force and Army Laws (Amendment) Act, 1975 (Act 13 of 1975);

(e) The Delegated Legislation Provisions (Amendment) Act, 1985 (Act 4 of 1986)

3.3 Adapted by The Adaptation of Laws (No.3) Order, 1956.

4. The AFA has been extended to -

(a) Goa, Daman and Diu, by Goa, Daman and Diu (Laws) Regulation 12 of 1962 (wef 31 Jan 63). See Gazette of India, 1962, Part II, S.1 Ext P 361.

(b) Dadra and Nagar Haveli, by Dadra and Nagar Haveli (Laws) Regulation 6 of 1963 (wef 01 Jul 65). See Gazette of India, 1963, Part II S.1 Ext p 239 and Gazette of India, 1965, Part II S.3 (ii) p 2197.

(c) Pondichery, by Pondichery (Laws) Regulation 7 of 1963 (wef 01 Oct 63) See Gazette of India, 1963, Part II S.1 Ext p 259.

(d) Sikkim (wef 01 May 76) by SO 208 (E) of 1975. See Gazette of India, 1976, Part II S.4 Ext p 67.

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

- (a) Officers and Warrant Officers of the Air Force;
- (b) Persons enrolled under this Act ;
- (c) Persons belonging to the Regular Air Force Reserve or the Air Defence Reserve or the Auxiliary Air Force, in the circumstances specified in Sec. 26 of the Reserve and Auxiliary Air Forces Act, 1952 (Lxii of 1952);
- (d) Persons not otherwise subject to air force law, who, on active service, in camp, on the march, or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of the Air Force.

NOTES

1. 'Wherever they may be' - The Air Force Act, being a special law has extra-territorial application in as much as a person subject to it continues to be so subject at all times irrespective of the place where he is serving, e.g. whether he is In India or elsewhere. The subjection to the Act and hence the liability to punishment under the Act is unaffected by the place where he is stationed or the place where the offence is committed.

2. **Clause (a)** - For definition of 'officer', 'warrant officer' and 'Air Force' see 4 (xxiii), (xxix), (iv) AFA.

3.1 **Clause (b)** - 'Persons enrolled'- See S. 13 to 15 AFA.

3.2 'Non Combatant (Enrolled)' commonly known as NC (E), is subject to AFA under this clause,

4. **Clause (c)** - Substituted by the Reserve and Auxiliary Air Forces Act, 1952 (62 of 19 52), S 35 (1), for the original clause.

5. Subjection of this category of persons to AFA is limited to the period during which they belong to any of the Air Force Reserves or to the Auxiliary Air Force and in the circumstances specified in S. 26 of the Reserve and Auxiliary Air Forces Act, 1952 which reads as follows:

"26. Application of Air Force Act, 1950. - Every member of an Air Force Reserve or the Auxiliary Air Force shall, when called up for training, medical examination or for service under this Act, be subject to the Air Force Act, 1950 (XLV of 1950), and the rules made there under in the same manner as a person belonging to the Air Force and holding the same rank is subject to the said Act and Rules and shall continue to be so subject until duly released from

such training, medical examination or service, as the case may be".

6.1 **Clause (d)** - This clause provides when persons, who are not ordinarily subject to AFA under clauses (a) to (c), become subject to the Act. Thus generally stated, it applies to all non-enrolled persons, be they civilian employees of the Government or not. In the interest of discipline and security, it becomes necessary at times that civilians who are employed by, or are in the service of, or followers of, or accompany any portion of the Air Force, should be subject to air force discipline. Hence, this clause.

6.2 For definition of 'active service', see S.4 (i) AFA and Notes thereto.

6.3 In **Gopal Upadhyaya v. UOI**, the Supreme Court reaffirmed the view contained in **Achuthan Nair v. UOI** that for attracting the subjection clause of S.2 (1) (i) AA, it is not necessary that the camp followers should themselves be 'on active service, in camp, on the march or at any frontier post' but that it is enough if they can be required to follow or accompany armed forces personnel who are 'on active service, in camp, 'on the march or at any frontier post'. S.2 (1) (i) AA is in pari materia with S.2(d) AFA.

6.4 Persons placed under the control of commissioned officers come within the ambit of the expression 'employed by or in the service of'. Any person who is allowed to go with any portion of the AF on active service, would come within the term "accompanying".

6.5 Under S.6(1) Central Government has powers to direct by notification that any person or class or persons subject to AFA under S.2 (d), shall be so subject as officers, WO, and NCOs. In the absence of such notification all persons becoming subject to AFA under this clause shall be deemed to be of a rank inferior to that of a NCO. See SRO 330 dated 14 Dec 62 (Gazette of India 1962 Pt II S.4 p 231) for notification under S.6(1). Status conferred vide notification under S.6(1) is personal. It does not give power of command over others nor does it make a person 'superior officer' within the meaning of AFA.

6.6 Flight Cadets cannot be considered as employed by, or are in the service of, or are followers of, or accompanying any portion of the AF merely because they are undergoing training in an AF Unit. SRO 330 of 14 Dec 62 deals only with Government employees.

3. Termination of application of the Act — Every person subject to this Act under Cls. (a) to (c) of Sec. 2 shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service.

NOTES

1. A person subject to AFA cannot terminate his subjection unilaterally; cessation of subjection must take place in one of the ways mentioned in this Section.

2. 'Duly' may be understood to mean by due process of law.

3.1 'Invalidated Out' is not a legal term. A person invalidated out on medical grounds may be retired, released or discharged as per administrative orders.

3.2 There is no provision in AFA under which a person can resign. In **Flt Lt K. Prabhakar v. UOI** (Unreported), the Karnataka High Court held that a person subject to AFA has no right in law to resign. See R.16 (8) AFR which contemplates calling upon an officer to resign his commission under certain circumstances.

3.3 In **Capt Chatterjee V. Sub Area Commander HQ Madras**, the Madras High

Court held the view that there can be no automatic discharge the moment the term of SSC of an officer expired. He cannot leave the force without being discharged or released or his resignation accepted even though he has tendered his resignation.

4. Cashiering can be only awarded by Court Martial. Cashiering is a disgraceful form of dismissal.

4. Definitions – In this Act, unless the context otherwise requires –

(i) "Active Service", as applied to a person subject to this Act, means the time during which such person

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

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

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

(ii) "Aircraft" includes aeroplanes, balloons, kite balloons, airships, gliders or other machines for flying;

(iii) "Aircraft Material" includes any engines, fittings, guns, gear, instruments or apparatus for use in connection with aircraft, and any of its components and accessories and petrol, oil, and any other substance used for providing motive power for planes;

(iv) "Air Force" means officers and airmen who by their commission, warrant, terms of enrolment or otherwise, are liable to render continuously for a term air force service to the Union in every part of the world or any specified part of the world, including persons belonging to (any Air Force Reserve or the Auxiliary Force) when called out on permanent service;

(v) "Air Force custody" means the arrest or confinement of a person according to the usages of the service and includes military or naval custody;

(vi) "Air Force law" means the law enacted by this Act and the rules made thereunder and includes the usages of the service;

(vii) "Air Force reward" includes any gratuity or annuity for long service or good conduct badge pay or pension, and any other air force pecuniary reward;

(viii) "Airmen" means any person subject to this Act other than an officer;

(ix) "Air Officer" means any officer of Air Force above the rank of Group Captain;

(x) "Air Signal" means any signal intended for the guidance of aircraft, whether given by flag, ground signal, light, wind indicator, or in any manner whatsoever;

(xi) "Chief Legal Adviser" means a person appointed as such by (the Chief of the Air Staff)

to give advice on matters relating to air force law and to perform such other duties of a legal character as may arise in connection therewith;

(xii) "Civil Offence" means an offence which is triable by a criminal court;

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

(xiv) "Chief of the Air Staff" means the officer commanding the Air Force;

(xv) "Commanding Officer" used in relation to a person subject to this Act, means the officer for the time being in command of the unit or detachment to which such person belongs or is attached;

(xvi) "Court-Martial" means a court martial held under this Act:

(xvii) "Criminal Court" means a court of ordinary criminal justice in any part of India (* * *);

(xviii) "Enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to air force law to act

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

(xx) "Non—commissioned officer" means a person holding a non—commissioned rank or an acting non—commissioned rank in the Air force, and includes any person holding a non-commissioned rank or an acting non—commissioned rank in [any Air Force Reserve or the Auxiliary Air Force] when subject to this Act.

(xxi) "Notification" means a notification published in the official Gazette;

(xxii) "Offence" – means any act or omission punishable under this Act, and includes a civil offence, as here in before defined;

(xxiii) "Officer" means a person commissioned, gazetted or in pay as an officer in the Air Force, and includes —

(a) An officer of [any Air Force Reserve or the Auxiliary Air Force] who is for the time being subject to this Act;

(b) In relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of the regular Army or the Navy;

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

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

(xxv) "Provost—marshal" means a person appointed as such under Sec. 108 and includes any of his deputies or assistants or any other person legally exercising authority under him or on his behalf;

(xxvi) "Regulation" includes a regulation made under this Act;

(xxvii) "Superior officer" when used in relation to a person subject to this Act, includes a warrant officer and a non— commissioned officer, and as regards persons serving under such conditions as may be prescribed, an officer, junior commissioned officer, warrant officer, petty officer and non—commissioned officer of the regular Army or the Navy

(xxviii) "Unit" includes

(a) any body of officers and airmen for which a separate authorised establishment exists;

(b) any separate body of persons subject to this Act employed on any service and not attached to a unit as aforesaid;

(c) any other separate body of persons composed wholly or partly of persons subject to this Act, and specified as a unit by the Central Government;

(xxix) "Warrant officer" means a person appointed, gazetted or in pay as a warrant officer of the Air Force and includes an acting warrant officer, a master warrant officer, and a warrant officer of [any Air Force Reserve or the Auxiliary Air Force] who is for the time being subject to this Act;

(xxx) [All words (except the word "India") and expressions used herein and defined in the Indian Penal Code, 1860 (XLV of 1860) and not hereinbefore defined, shall be deemed to have the meaning respectively assigned to them by that Code.]

NOTES

1. The following general principles govern the interpretation of the definitions in this section

(a) The definitions do not take away the ordinary and natural meaning of the word or phrase.

(b) The definition will determine the application of the word or phrase defined; but the

definition itself must first be interpreted before it is applied.

(c) When the definition of a word gives it an extended meaning, the word is not to be interpreted by its extended meaning every time it is read, for the meaning ultimately depends on the context.

(d) Definitions are to be applied only when there is nothing repugnant in the context or subject: and this is particularly so when such a qualification as 'unless the context otherwise requires' is expressly stated in the Act (See opening words of S.4 AFA).

(e) An interpretation clause may use the verb 'includes' or 'means' or 'means and includes', or 'denotes' or 'deemed to be'.

(f) The word 'includes' is generally used in the interpretation clause to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, those words and phrases must be considered as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.

(g) If the words 'means' or 'means and includes' are used, it affords an exhaustive explanation of the meaning which, for the purpose of the Act, must inevitably be attached to those words or expressions.

(h) If the word 'denotes' is used it has the same significance as 'includes'.

(i) If the words 'deemed to be' are used they create a fiction and a thing is treated to be that which in fact it is not.

2.1 Clause (i) - For definition of 'enemy', see cl (xviii) *ibid*.

2.2 See also S.9 AFA which empowers the Central Government to declare by notification persons not covered by S.4(i) also as persons on active service within the meaning of the Act. See also SRO 5E dated 17 Mar 78 issued under S.9 AFA which declares that all persons subject to AFA who are not on active service under S.4 (i) shall, while serving in the areas specified in the notification, would be deemed to be on active service. Accordingly civilians working with the AF in the areas where persons subject to AFA are on active service would be subject to AFA.

2.3 In **Balbir Singh V. State of Punjab**, the Supreme Court held that a person subject to the Air Force Act shall be deemed to be on 'active service' even when he is on casual leave.

3.1 Clause (iv) - For definition of 'officer' and 'airman' see cis. (xxiii) and (viii) *ibid*.

3.2 Liability to render air force service continuously for a term in any part of the world, is the distinguishing feature. See also S.26 Reserve and Auxiliary Air Force Act, 1952.

4.1 Clause (v) - Confinement would include confinement in unit guard room or detention cell

while undergoing a sentence of imprisonment as per direction under S 166 (3) AFA, or of detention awarded under S.82 or by a court martial.

4.2 Arrest is either close or open arrest. See also Regs. AF, Chap XIII, Section 1.

5. **Clause (vi)** - For rule making power, see S.189 AFA.

6. **Clause (vii)** - Medal or decoration, not being a pecuniary reward is not an air force reward.

7. **Clause (viii)** - For definition of 'officer' see ci (xxiii) *ibid*.

8. **Clause (ix)** - For definition of 'officer', see ci (xxiii) *ibid*.

9. **Clause (x)** - In the Regs and for certain official purposes the Chief Legal Adviser is also referred to as 'Judge Advocate General (Air)'.

10. **Clause (xii)** — For definition of 'offence' and 'criminal court' see cls (xxii) and (xvii) *ibid*.

11. **Clause (xiii)** - 'Criminal prisoner' means any prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction or by order of a court martial (S.3(2) Prisons Act, 1894).

12.1 **Clause (xiv)** - The term 'Commander-in-Chief' was replaced by the term 'Chief of the Air Staff' (wef 07 May 55) vide S.2 of the Commanders-in-Chief (Change in Designation) Act, 1955. Under Art 53(2) of the Constitution of India, the supreme command of the Defence Forces of the Union vests in the President. Continuance of the designation 'Commander-in-Chief' would have meant that in him vests the supreme command of the Defence Forces of the Union. Hence the change.

12.2 For definition of 'officer' see cl (xxiii) *ibid*.

13.1 **Clause (xv)** - For definition of 'officer' see cl (xxiii) *ibid*.

13.2 A CO may be called by other terms as Commandant, President, Assistant Provost-Marshal, or Officer Commanding. So long as he fulfils the definition of the term, he will be the CO, irrespective of any, other designation by which he is known. However in all legal documents, such as charge sheets, he should be described only as Commanding Officer.

13.3 A Station Commander is not the Commanding Officer of a person belonging to a lodger unit, unless such person is attached to that Station. Where a deserter or absentee who is posted to Personnel Holding Section, C/O AFCAO, New Delhi, is subsequently apprehended or surrenders at his parent unit (i.e. the unit to which he belonged at the time he deserted or became AWL), or after apprehension/surrender elsewhere he is brought back to such parent unit, he automatically stands reposted to such parent unit wef the date he is taken on strength at that unit; and the then CO of such parent unit becomes his CO.

13.4 The movement of a unit from one location to another does not affect the CO's powers.

13.5 For detailed orders on exercise and devolution of command, see para 16 Regs. An Officer who assumes command of a unit in terms of para 16 Regs, will be the CO of all persons subject to AFA belonging to or attached to that unit. This is so even if such CO is junior in seniority to some officer of that unit.

13.6 For disciplinary purposes, as regards officer/airman routed on posting, the CO of the receiving unit will be the CO from the effective date of posting, irrespective of any joining time/leave granted beyond the effective date of posting.

14. **Clause (xvi)** - For the kinds of Court-Martial under the Act, see S.109 AFA. The term does not include courts martial held under the AA or NA.

15.1 **Clause (xvii)** - The words "other than the State of Jammu and Kashmir" at the end of the clause were omitted by the Air Force and Army laws (Amendment) Act, 1975.

15.2 For definition of 'India' see Art 1(3) Constitution. See also cl (xxx) *ibid*. The definition of 'India' vide S.18, IPC is not applicable for purposes of AFA.

16.1 **Clause (xviii)** - Term includes an armed airman running amuck. See para 575 Regs.

16.2 In **Ex-Havaldar Ratan V. UOI**, the Supreme Court held that 'militants' are covered under the expression 'enemy' under Clause 3 (x) of the Army Act. (Corresponds to Sec 4 (xviii) AFA)

17.1 **Clause (xix)** - The term does not include those forces, which even if falling within the definition of 'Armed Forces' are not the regular Army, Navy, and Air Force. For example, the members of Coast Guard are part of the Armed Forces vide S.4 of the Coast Guard Act, 1978 but the term 'Forces' in s.4 (xix) AFA will not include the Coast Guard.

17.2 See also S. 113 (b) where the term used is 'forces' and not 'Forces'. Notwithstanding this difference it would be desirable to attach the same meaning to the term as in S.4 (xix).

18.1 **Clause (xx)** - An acting NCO is by definition a NCO for all purposes including cls (g), (h), (j) of S.73 and S.84(4), (5).

18.2 All persons selected to hold a non-commissioned or acting non- commissioned rank shall be attested, S.16 AFA.

19.1 **Clause (xxii)** - Every civil offence is deemed to be an offence under AFA. See S.71 AFA.

19.2 For definition of civil offence, see S.4 (xii) AFA.

20.1 **Clause (xxiii)** - A re-employed officer is an 'officer' if he is in pay as an officer in the AF.

20.2 For conditions prescribed under sub-clause (b), see R.158 AFR,

20.3 A combined reading of cls (xxiii) and (xxvii) would reveal that when any person subject to AFA is serving under the prescribed conditions, then

(a) an officer of the Army or the Navy shall, in relation to those persons, have the same status and powers as an 'officer' or a 'superior officer' has under the Air Force Act.

(b) a junior commissioned officer, warrant officer, petty officer or non—commissioned officer of the Army or the Navy shall in relation to those persons, have the same status and powers as a 'superior officer' has under the Air Force Act, (but not that status or those powers which only an officer can have).

20.4 An officer of the Army or the Navy may exercise the same powers of trial and punishment over a person subject to AFA in relation to whom he is an 'officer' within the meaning of the cl read with R.158 AFR, as in similar circumstances, an air force officer holding equivalent rank may exercise, provided such officer of the Army or the Navy is a commanding officer or subordinate commander as per air force law.

21. **Clause (xxiv)** - For rule making power, see. S.189 AFA. See Air Force Rules, 1969 as amended from time to time

22. **Clause (xxv)** - It is immaterial to which Branch or trade the person appointed under S.108 (1) belongs.

23.1 **Clause (xxvi)** - For power to make regulations, see S.190 AFA. No regulations have so far been made under S.190. However, non-statutory regulations have been published by the Central Govt., titled 'Defence Service Regulations - Regulations for the Air Force'.

23.2 Under Art 73 Constitution, the Central Government can frame administrative instructions in respect of any matter on which there is no law and which falls within the legislative competence of the Parliament. As respects such matters the administrative instructions/orders contained in the non-statutory regulations have the force of law. When however any provision of these non-statutory regulations is inconsistent with any law or statutory rule, such provision of the regulation shall, to that extent, be inoperative.

24.1 **Clause (xxvii)** - For conditions prescribed, see R 159 AFR.

24.2 An officer of the Army or the Navy who is an "Officer" within the meaning of S.4 (xxiii) AFA read with AFR 158 will automatically be also a superior officer in the same circumstances in which an air force officer holding an equivalent rank will be a superior officer. In such circumstances it will not be necessary that the conditions prescribed in AFR 159 must also exist. But a junior commissioned officer, warrant officer, petty officer or a non-commissioned officer of the Army or the Navy cannot be a superior officer of a person subject to the AFA, unless the latter is serving under such conditions as prescribed in AFR 159.

24.3 No person can, in any circumstances, be a superior officer of another person holding a higher rank. An officer, WO or NCO may be superior officer of another officer, WO or NCO as the case may be, of the same rank but junior in seniority, if such seniority gives to the former power of command, according to the usages of the service.

25. **Clause (xxviii)** - The term is wide enough to include Army units and Naval ships/establishments.

26. **Clause (xxix)** - Definition includes Junior Warrant Officer. The rank of Flight Sergeant was redesignated as JWO wef 16 May 77.

27.1 **Clause (xxx)** - The words and brackets "(except the word "India")" inserted by Air Force and Army Laws (Amendment) Act, 1975.

27.2 For definition of India, see Art 1(3) Constitution.

CHAPTER II

Special Provisions for the application of Act in certain cases

5. Application of Act to certain forces under the Central Government.

(1) The Central Government may, by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in India and suspend the operation of any other enactment for the time being applicable to the said force.

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

(3) The provisions of this Act so applied shall also have effect in respect of persons who are employed by, or are in the service of, or are followers of, or accompany any portion of the said force as they have effect in respect of persons subject to this Act under CI. (d) of Sec. 2.

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

NOTES

1. So far no notifications have been issued under this section.

2.1 The term 'force' has a wider meaning than the term 'the forces' as defined in S.4(xix) AFA.

2.2 For definition of 'Air Force, see S.4(iv) AFA.

6. Special provision as to rank in certain cases.

(1) The central Government may, by notification, direct that any persons or class of persons subject to this Act under C1. (d) of Sec. 2, shall be so subject as officers, warrant officers or non-commissioned officer, and may authorise any officer to give a like direction and to cancel such direction.

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

NOTES

1. See Notes to S.2(d).
2. Notification No.330 dated 14 Dec 62 issued under S.6(1) AFA. (See Gazette of India 1962 Pt II S.4 p 231).
3. For definition of 'officer', 'warrant officer' and 'non-commissioned officer', see S.4(xxiii), (xxix) and (xx) AFA.

7. Commanding Officer of persons subject to Air Force law under Cl. (d) of Sec. 2. –

(1) Every person subject to this Act under Cl. (d) of Sec. 2, shall, for the purposes of this Act, be deemed to be under the commanding officer of the unit, or detachment, if any, to which he is attached, and if he is not so attached under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force.

(2) An officer commanding a force shall not place a person subject to this Act under Cl. (d) of Sec. 2 under the command of an officer of official rank inferior to that of such person if there is present at the place where such person is, any officer of higher/rank under whose command he can be placed.

NOTES

1. For prescribed officer, see R.160 AFR.

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

8. Officers exercising powers in certain cases -

(1) Whenever persons subject to this Act are serving under an officer commanding any air force formation not in this section specifically named, and being, in the opinion of the Central Government, not less than a squadron, the said Government may prescribe the officer by whom the powers which, under this Act, may be exercised by air officers in charge of commands, and officers commanding groups, wings and squadrons shall, as regards such persons, be exercised.

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

NOTES

1. For definition of 'officer', and 'air officer', see S.4(xxiii) and (ix) A FA.
2. No presumption has been made under this section.

9. Power to declare persons to be on active service. Notwithstanding anything contained in Cl. (i) of Sec. 4, the Central Government may, by notification, declare that any person or class of persons subject to this Act shall, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, be deemed to be on active service within the meaning of this Act.

NOTES

1. The following notifications have been issued
 - (a) SRO 8E dated 5 Dec 62 - (No longer in force)
 - (b) SRO 34E dated 6 Dec 71 - (Superseded)
 - (c) SRO 5E dated 17 Mar 78
2. According to SRO 5E, those serving in J&K, Manipur, Nagaland, Tripura, Sikkim, A & N Islands, Arunachal Pradesh and Mizoram are deemed to be in active service for the purpose of AFA.
3. Notification issued under this section declaring that all persons subject to AFA wherever they may be serving be deemed to be on active service was interpreted by the Punjab and Haryana High Court in **Ajit Singh v. State of Punjab** to cover not only persons actually engaged in duties but also persons on leave at the relevant time.
4. For definition of 'active service', see S.4(i) AFA.

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CHAPTER III



COMMISSION, APPOINTMENT AND ENROLMENT

CHAPTER III

Commission, Appointment and Enrolment

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

NOTES

1. 'Such person as he thinks fit' - expression will include an alien or a female.
2. Grant of commission, or appointment as a WO, is not a contractual act and does not necessarily require the consent of the grantee/appointee. It confers a legal status on the grantee/appointee and entitles him to the rights as well as privileges under the Constitution, AFA, and other relevant statutes. The relationship being one of legal status and not contractual, the conditions of service are alterable unilaterally by the Central Government.
3. Three types of commission are contemplated under the Regs, namely, Permanent, Short Service and Temporary.
4. For definition of 'officer', 'warrant officer', and 'Air Force' see S.4 (xxiii), (xxix) and (iv) AFA.

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

Provided that nothing contained in this section shall bar the enrolment of the subjects of Nepal in the Air Force.

NOTES

1. For definition of 'Air Force ' see S. (iv) AFA.

2. The following persons can be enrolled.

(a) A citizen of India (see Arts S-11 Constitution and Ss 3 to 7 of Citizenship Act, 1955).

(b) A subject of Nepal

(c) Those not falling in (a) and (b) above, if written consent of the Central Government has been signified.

3. As regards enrolment of females, see S.12 AFA.

4. For conditions under which, enrolment of a non-eligible person is deemed to be duly enrolled, see S.15 AFA.

5. 'Provided' - A proviso may serve four different purposes.

(a) qualifying or excepting certain provisions from the main enactment;

(b) it may entirely change the very concept or the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(c) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(d) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

See **S. Sundaram Pillai v. VR Pattabhiraman**

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

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

NOTES

1. This section is not ultra vires the Constitution. See Arts 16(3) and 33 Constitution. In **Asha Goel v UOI** the Delhi High Court has held that Arts 14, 15 and 16 Constitution are not violated by excluding females from SSC in JAG Branch of the Army.
2. Vide SRO 415 dated 12 Nov 55, Gazette of India 1955, Part II S.4 p 267 (Appendix 'B') females are eligible for employment in Medical Branch in SSC.
3. The Military Nursing Service (India) Ordinance, 1943 (No. 30 of 1943) is still in force. See Appendix 'D4'.
4. 'Provided' - See Note 5 to S. 11 AFA.
5. For definition of 'Air Force', see S.4(iv) AFA.

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

NOTES

1. For prescribed enrolling officer - See R. 7 AFR.
2. For prescribed forms of enrolment - See First Schedule to AFR (Forms A.1 and A.2).
3. An enrolling officer may be designated as Officer i/c Airmen Selection Centre etc. But documents in terms of Ss 13 and 14 should be signed by him as and in his capacity as Recruiting Officer or Assistant Recruiting Officer.
4. The enrolment form is an important document and the enrolling officer should take particular care to ensure that entries therein are truthfully and correctly recorded.
5. Giving willfully false answer to a question set forth in the prescribed enrolment form is an offence punishable under S. 44 AFA.
6. A person whose subjection to AFA is ceased under S.3 can be re-enrolled under Ss. 13 and 14 AFA, if the conditions therefore are fulfilled.

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

NOTES

1. See Notes 3 to 6 to S. 13 AFA.
2. 'enrolment paper' - presumption and evidentiary value, see S.140 AFA.
3. Affidavit or declaration in writing when made as a condition of enrolment under the AFA is exempt from stamp duty. See Art 4 Sch I to Stamp Act, 1899.

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

NOTES

1. The effect of this section is that if a person including one ineligible for enrolment receives pay for three months or more, as an enrolled person and has been borne on the rolls of any unit without having been enrolled in accordance with the provisions of Ss. 13 and 14 AFA, he shall be deemed to have been duly enrolled and subject to the AFA; except that such a person can claim his discharge before the expiry of the three months on grounds of illegality or irregularity in his enrolment or other grounds. However his position as an enrolled person is not affected until his discharge. After the expiry of three months he cannot claim discharge on grounds of illegality or irregularity of enrolment.

2. For definition of 'Unit' - See S.4 (xxviii) AFA.

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

- (a) all persons enrolled as combatants;
- (b) all persons selected to hold a non—commissioned or acting non-commissioned rank ; and
- (c) all other persons subject to this Act as may be prescribed by the Central Government.

NOTES

1. The section specifies the category of persons subject to AFA who shall be attested.
2. Attestation involves no further liability beyond those involved at enrolment, but confers upon the attested person certain status and privileges. For example, only attested persons are eligible to hold non-commissioned rank. Discharge of attested persons can be authorised under R. 15 (2) AFR only by relatively higher air force authorities.
3. Mere refusal on the part of an enrolled person to take attestation does not constitute an offence under AFA: but it indicates lack of allegiance to the Constitution.

Personnel who refuse to be attested are liable to be dismissed/removed/released from the Service. Cases of such nature are to be reported to Air HQ through proper channels.
4. See also R. 8 AFR.
5. Clause (c) – None prescribed in AFR.
6. For definition of ‘non-commissioned officer’, see S.4 (xx) AFA.

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

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

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

NOTES

1. For prescribed form of oath of affirmation, see R 9 (1) AFR. In case of persons who do not understand English, a truly translated version may be used.

2. For list of other attesting officers, see R 9 (2) AFR.

3. Attestation is done only once in a serviceman's career.

4.1 For definition of 'oath', see S. 51 IPC.

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

4.3 For definition of 'Air Force', and 'officer', see S.4 (iv) and (xxiii) AFA.

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CHAPTER IV



CONDITIONS OF SERVICE

CHAPTER IV

Conditions of Service

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

NOTES

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

2.1 In **Samsher Singh v. State of Punjab** the Supreme Court held, overruling its earlier decision in **Sardari Lal v. UOI** that it was not necessary for the President himself to sign the order under Art 311 (2) (c) Constitution, under which a civil government servant can be dismissed by the President without holding the inquiry prescribed by Art 311 (2) Constitution if he is satisfied that in the interest of the security of the State it is not expedient to hold such a inquiry.

2.2 In **UOI v. Tulsiram Patel** the Supreme Court examined in detail the doctrine of pleasure and reiterated the prevailing view that though under Art 310 (1) Constitution (corresponds to S.18 AFA) the tenure of a Government servant is at the pleasure of the President (or the Governor) the exercise of such pleasure can be either by the President (or the Governor) acting with the aid and on the advice of Council of Ministers or by the authority specified in Acts made under Art 309 or in Rules made under such Acts or made under the Proviso to Art 309; the pleasure of the President (or the Governor) is not required to be exercised by either of them personally.

3. In **Major Diwan Singh v UOI**, the Delhi High Court held as follows:

- (a) S.18 AA only reiterates the doctrine of pleasure envisaged under Art 310 (1) Constitution.
- (b) President's powers under Art 310 Constitution can be delegated to the executive.
- (c) Doctrine of pleasure extends to dismissal from service and not merely to termination simpliciter.
- (d) Doctrine of pleasure extends to termination of service but not to deprive the individual of his pensionary rights, in view of Arts 19(l) (f) and 31(1) of Constitution. (However Arts 19(l)(f) and 31 have been omitted by the Constitution (Forty fourth amendment) Act, 1978).

4.1 In B it was held by a single judge of the Delhi High Court that

- (a) S.19 AFA does not control the exercise of power under S.18 AFA.
- (b) The Presidential power in relation to the Defence Services being wholly untrammelled could not possibly be subjected to any constraint other than those found in the Constitution itself.
- (c) The Presidential pleasure in relation to Services need not be exercised by the President personally and may be exercised like other executive powers of the Union in accordance with the GOI (Allocation of Business) Rules, 1961.
- (d) The foundation of the two powers under S.18 and S.19 is distinct. Thus they cannot be equated even if under the Allocation of Business Rules, they are exercisable by the same authority in Central Govt.

4.2 While affirming the above judgment, a Division Bench of the Delhi High Court, observed that where power is exercised under S.18 in terms of Art 310 Constitution "it would be advisable for the authorities to avoid using the word 'dismissal' which in common parlance does amount to a punishment and amounts to casting a stigma on an employee".

5. In **Hazara Singh v CAS** a Division Bench of Delhi High Court has held that

- (a) An order under S.18 AFA need not be a speaking order.
- (b) Action under para 16(a) Pension Regs for AF for forfeiting pension can be taken only if it is preceded by an order of dismissal or cashiering as a measure of punishment by order of a court martial, or under Ss. 19 or 20 AFA.

6. See also para 217 Regs.

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

NOTES

1. Exercise of power under this section is subject to the other provisions of the AFA, AFR and of regulations, if and when made under S.190 AFA.

2.1 For rules laying down the procedure, See Rr. 16,17 AFR both of which apply to officers only. The rules provide for reasonable safeguard against arbitrary or improper exercise of power under this section.

2.2 The power under Ss. 18 and 19 are independent powers. In **Uol v Ranbir Singh** the Allahabad High Court has clarified that no section of the AA restricts the power of dismissal or removal conferred by S.19 AA. Thus even if the alleged misconduct on the part of an officer amounted to an offence under S.42(e) or 45 AA triable by a court martial, it was proper for taking action under S.19 AA. (S.19 AA corresponds to S.19 AFA). In **RK Pathik v MS Pawar**, the dismissal of an army officer under S.19 AA read with R 14 AR for contracting plural marriage was held not bad in law, by Allahabad High Court. See also Notes to R.16 AFR.

2.3 Both Rr. 16 and 17 AFR require that the affected officer should be furnished with all matters adverse to him before he is called upon to show cause why action under S.19 AFA should not be taken. Failure to do so would be bad in law. See **RN Kumrah v UOI**. However see also R.16(2), (3) AFR and Provisos to R.17(1) AFR.

2.4 See also Note 4 to S.18 AFA.

3. Dismissal or removal under this section or under S.20 is not a punishment for purposes of S.73 AFA. Dismissal and removal are methods whereby an employer compulsorily discontinues the service of persons, who by their acts of commission or omission, make themselves unfit to be retained in service. Such acts of commission or omission may or may not amount to an offence. Removal is less severe form of terminating the service, than dismissal.

4. Persons dismissed or removed from service under this Section are entitled to be issued with a discharge certificate. See S.23 AFA.

5. Power to dismiss or remove does not include power to order reduction or reversion.

6. Dismissal/removal under this section cannot be retrospective; nor can a valid order of dismissal/removal be cancelled without the person's consent. For purposes of exercise of powers under this section and S.20 AFA the degree and standard of proof are not the same as those required in judicial proceedings. Evidence not admissible under the laws relating to

admissibility of evidence in judicial proceedings, could validly form the basis for administrative action under Ss 19 or 20 AFA.

7. For date of effect, See R 12 AFR.

8. The conviction of an officer by the civil power is to be reported to the Central Govt. through proper channels, so as to consider whether action under this section is to be taken. See Para 687 Regs.

9. See also Para 217 Regs.

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

11. In **UOI V. Harjeet Singh Sandhu**, the Supreme Court held that when an officer, subject to the Army Act, is alleged to have committed a misconduct and if the alleged misconduct amounts to an offence including a civil offence, Sec 125 (Corresponds to Sec 124 AFA) vests discretion in the officer commanding the Army, Army Corps, Division or independent Brigade in which the accused person is serving or such other officer as may be prescribed, to decide before which court the proceedings shall be instituted i.e. before a Court-Martial or a criminal court. If the initial decision was to have the delinquent officer tried not by a criminal court but by a Court-Martial, then under sub-rule (2) of Rule 14 (Corresponds to Rule 16 (2) AFR) it is for the Central Government or the COAS to arrive at a satisfaction whether the trial of the officer by a Court-Martial is expedient and practicable whereupon the Court-Martial shall be convened. The Central Government or the COAS may arrive at a satisfaction that it is inexpedient or impracticable to have the officer tried by a Court-Martial then the Court-Martial may not be convened and additionally, subject to formation of the opinion as to undesirability of the officer for further retention in the service, the power under Sec 19 read with Rule 14 (Corresponds to Sec 19 AFA and Rule 16 AFR respectively) may be taken either before convening the Court Martial or even after it has been convened and commenced, subject to satisfaction as to the trial by a Court-Martial becoming inexpedient or impracticable at which stage the Central Government or the COAS may revert back to Sec 19 read with Rule 14. It is not that a decision as to inexpediency or impracticability of trial by a Court-Martial can be taken only once and that too at the initial stage only and once taken cannot be changed in spite of a change in the fact situation and prevailing circumstances.

20. Dismissal, removal or reduction by Chief of the Air Staff and other officers

- (1) The Chief of the Air Staff may dismiss or remove from the service any person subject to this Act other than an officer.
- (2) The Chief of the Air Staff may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.
- (3) An officer having power not less than an air officer in charge of a command or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a warrant officer.
- (4) On active service, an officer commanding the air forces in the field may reduce to a lower rank or to the ranks any warrant officer or non-commissioned officer under his command.
- (5) The chief of the Air Staff or any officer specified in sub section (3) may reduce to a lower class in the ranks any airman other than a warrant officer or non-commissioned officer.
- (6) The commanding officer of an acting non-commissioned officer may order him to revert to his substantive rank as a non commissioned officer, or if he has no such substantive rank, to the ranks.
- (7) The exercise of any powers under this section shall be subject to the other provisions contained in this Act and the rules and regulations made thereunder.

NOTES

1. See also generally Notes to S.19 AFA.

2.1 The difference between dismissal and discharge is that the former ordinarily does and the latter does not imply culpability. Discharge does not involve forfeiture of claim to pension/gratuity.

2.2 See Note 3 to S.19 AFA. Merely because dismissal is a punishment awardable by a Court Martial under S.73 AFA, it cannot be said that administrative action in the nature of dismissal cannot be ordered by the competent authority under this section. See **Phillipose Sammuel & Others v UOI**.

2.3 In **NN Chakravarthy v UOI** the Supreme Court rejected the contention that the power granted under sub-sections (3) and (5) is unfettered or unguided. It was also held that

proceedings by way of court martial were totally distinct from the power for administrative dismissal/Removal/Reduction under S.20 AFA.

3. The conviction of a WO or other airman by the civil power is to be reported to the Air HQ/Command HQ as the case may be, for consideration as to whether action under sub-sec (1) or (3), as the case may be is called for. Para 687 Regs.

4. All persons other than an officer sentenced to imprisonment (except persons sentenced by court martial whose sentences are suspended) and such persons sentenced to detention as it is not desired to retain in the service, may if not dismissed by the sentence of a court-martial, be dismissed under this section or under S.19 AFA. See R-18 AFR. COs will use their discretion in applying for the dismissal and the higher authorities use their discretion in ordering it. Where the imprisonment is carried out in a civil prison, such dismissal should not be applied for, or at any rate should not be put into effect, until the convict or prisoner sentenced by court-martial has been committed to a civil prison (R 146(2) AFR). In the case of a sentence passed by a civil court, the application should, if the dismissal is desired, be made as soon as possible after the sentence has been passed by the civil court. In special cases, a prisoner whom it is not desired to retain in the service may be discharged instead of being dismissed.

5. A person who has been administratively dismissed/removed/reduced under this section has a statutory right to submit a petition under S.26 AFA, if he considers himself aggrieved by such order.

6.1 **Sub-section (1) and (3)** - For definition of 'Chief of the Air Staff' and 'officer' see S.4(xiv) and (xxiii) AFA.

6.2 For definition of 'air officer', see S.4 (ix) AFA.

6.3 For definition of 'warrant officer' and 'non-commissioned officer', see S.4 (xxix) and (xx) AFA.

6.4 Exercise of power under sub-sec (1) or (3) is governed by R 18 AFR.

6.5 For prescribed officer under sub-sec (3), See R.160A, AFR.

6.6 Sub-sec (3) 'equivalent' signifies equal in status.

6.7 Where show cause notice in terms of R.18 AFR has been issued, there would be no necessity to issue fresh show cause notice before discharging the person under R.15(2) (g) (ii) AFR.

6.8 Show cause notice issued under R.17 AR (corresponds to R 18 AFR) need not necessarily specify whether it is proposed to dismiss or to remove the individual. **(NK Ram Singh v UOI)**.

7. Reduction under sub sec (2), (4) and (5) of this section, or by sentence of court martial can only be from a higher to a lower substantive rank. Reversion under sub-sec (b) or under S.82(d) involve only loss of acting rank and hence seniority in substantive rank is not affected thereby.

8.1 **Sub-section (5)** - For definition of 'airman' see S.4 (viii) AFA.

8.2 The power under this sub-section does not include power to reduce to a lower rank a WO or NCO.

9 **Sub-section (6)** - For definition of Commanding Officer, See, S.4 (xv) AFA.

10.1 **Sub-section (7)** - See N.1 to S.19 AFA.

10.2 Under R 137A (8) IAFR the proceedings of a Court of Inquiry shall not be admissible as evidence against a person except upon a trial for willfully giving false evidence. In **Gurdial Singh Cheema v UoI** Delhi High Court has expressed a view that the ban under R 137A (8) IAFR (corresponds to R 156 (6) AFR) does not apply in relation to termination of service under S 20 AFA and that such proceedings can be used for forming opinion against a person by the removing or dismissing authority.

11. See also para 217 Regs.

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

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

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

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

NOTES

1. This section empowers the Central Govt. to make rules restricting certain fundamental rights conferred by Art 19 Constitution. For rules, see Rr. 19, 20 and 21 AFR.

2. The section is not ultravires the Constitution, since it is saved by Art 33 Constitution. **See R Viswam v. UOI.**

3. Official reports, correspondence and documents of whatever description, whether classified or not, are the property of the Govt. and are not to be disclosed without special authority, to any person not officially entitled to receive them. Para 600 Regs.

4. For definition of 'Air Force', see S.4 (iv) AFA.

5. In **UOI V. Ex Flt Lt GS Bajwa**, the Supreme Court held that the provisions of the Act cannot be challenged on the ground that they infringe the fundamental right guaranteed under Article 21 of the Constitution of India. Since the Air Force Act is a law duly enacted by Parliament in exercise of its plenary legislative jurisdiction read with Art 33 of the Constitution of India, the same cannot be held to be invalid merely because it has the effect of restricting or abrogating the right guaranteed under Article 21 of the Constitution of India or for that reason under any of the provisions of Chapter III of the Constitution.

22. Retirement, release or discharge - Any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed.

NOTES

1. A person subject to the AFA continues to be so subject until he is duly retired, released, removed, discharged, dismissed or cashiered from the service; S.3 AFA.

2. For prescription, See R. 10 to 15 AFR.

3. For date of effect of retirement, release or discharge, See R. 12 AFR. See also R. 10,13,14 and 15 AFR.

4.1 See Paras 212, 213 Regs for age limits for retirement in respect of different ranks. Though age limits have been specified in Regs and other orders of the Central Govt., every person subject to AFA holds office during the pleasure of the President and has thus no legal right to continue in service till he reaches such age limit.

4.2 As to voluntary retirement, See Paras 215, 216 and 218 Regs.

4.3 As to rank on retirement and resignation, See Para 219 Regs.

5. 'Released' See R. 13 AFR.

6.1 For authorities competent to discharge, See R 15 AFR.

6.2 A valid discharge ought not to be cancelled without the consent of the discharged person, as such cancellation will in effect amount to re-enrolment.

6.3 As to furnishing a person who is discharged with a discharge certificate, See S.23 AFA, R.11 AFR and Para 353 Regs.

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

- (a) the authority terminating his service;
- (b) the cause for such termination; and
- (c) the full period of his service in the Air Force.

NOTES

1. The certificate is called 'discharge certificate'.
2. For mode of delivery, see R 11 AFR.
3. Duplicate discharge certificate will not be issued, but see para 353 Regs.
4. An officer is not entitled to be furnished with a discharge certificate.
5. For definition of 'warrant officer', 'commanding officer' and 'Air Force', see S.4 (xxix), (xv) and (iv) AFA.

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

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

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

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

NOTES

1. Where an enrolled person's entitlement to be discharged or released accrues when he is serving out of India, he must, if he so requests be sent to India for being discharged or released; in other words, the discharge or release must then be carried out in India. If he does not so request, the discharge or release can be carried out at the place he was serving.

2. Dismissal/removal of an enrolled person can be given effect to when he is serving out of India; but he shall be sent to India with all convenient speed.

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

4. For the purposes of this section, the word "discharge" includes release, and the word "dismissal" includes removal.

5. 'transportation' - see N.6.1 to S.73 AFA.

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CHAPTER V



SERVICE PRIVILEGES

CHAPTER V

Service Privileges

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

NOTES

1. The term 'pay' means the rate of pay with increases, if any, for length of service, to which a person subject to the AFA is entitled by reason of his rank, appointment, trade group or trade classification, and includes additional remuneration such as rank pay, flying pay, qualification pay, proficiency pay and the various forms of additional pay. All other emoluments are "allowances", which, as the word itself suggests, are purely discretionary and may be withdrawn at any time. The protection under this section does not extend to such allowances; however where any regulation lays down a procedure for deductions from allowances such procedure will have to be followed.

2. 'due to him as such' means earned but not disbursed. The place of payment of pay is not specified in the section, yet it is reasonable to assume that the same would be payable at the place of duty of the person at the time he claims the same, after it has become due.

3. For definition of 'regulation', see S.4 (xxvi) AFA. The term 'regulation' has contextually a wider meaning in this section; it need not be a statutory one.

4. 'for the time being in force' - refers not only to regulations in force at the time of passing of AFA but also to any other regulation subsequently issued and which is in force at the relevant time.

5.1 For deductions authorised by or under this-Act, see Ss. 91-92 AFA.

5.2 Instances of deduction authorised by or under any other Act may be found in the Income Tax Act, 1961 and the rules made thereunder.

6. It is illegal to make deductions which are not authorised and unlawful detention of pay is an offence under S.61 AFA.

26. Remedy of aggrieved airmen - (1) Any airman who deems himself wronged by any superior or other officer may, if not attached to a unit or detachment, complain to the officer under whose command or orders he is serving; and may, if attached to a unit or detachment, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved airman may complain to such officer's next superior officer, and if he thinks himself wronged by such superior officer, he may complain to the Chief of the Air Staff.

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

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

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

NOTES

1.1 For definition of 'airman', 'officer' and 'superior officer', see S.4 (viii), (xxiii) and (xxvii) AFA.

1.2 For definition of 'commanding officer' and 'Chief of the Air Staff', see S.4 (xv) and (xiv) AFA.

1.3 For definition of 'Unit', See S.4 (xxviii) AFA.

2. The right of a person subject to the Act to move his superior for redress for grievances emanates from Ss.26-27 AFA. Regulations, Instructions, and orders of the subject issued by the administrative authorities, including the Central Govt. only amplify the statutory provisions and lay down the procedure for seeking redress; they do not and cannot restrict the scope of Ss. 26-27 AFA.

3. Before a person subject to AFA can complain under S.26 or 27, two conditions must be satisfied. Firstly, he must deem himself to be wronged by any superior or other officer (in the case of officers, by his CO or any superior officer). Secondly, the wrong must relate to his treatment as such person subject to AFA, by his superior in a matter pertaining to the service. In other words, the complainant must show that he has been denied or deprived of something to which he has a right under Air Force Law or procedures. For example, a WO or

NCO who has been refused compassionate leave or a compassionate posting has no right to complain under this section unless he can produce some evidence of improper motive for the refusal of leave, posting, etc. Similarly non-acceptance of request of an officer for premature retirement does not constitute a service wrong for purpose of S 27 AFA.

4. Ss. 26 or 27 AFA do not bestow a statutory right to have an interview with any Air Force authority. Whether to grant or refuse an interview sought, is entirely at the discretion of the officer with whom the interview is requested.

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

6. A person can complain only once under this section in respect of any such matter. Repetitive complaint may be summarily rejected unless the applicant, has brought out some new facts, occurring subsequently or which come to the knowledge of the complainant only subsequently.

7. A complaint cannot legitimately be preferred to a superior officer except in the regular course defined by this section. The channels through which complaints must be preferred are specified in para 621 & 622 Regs and it is only where the immediate superior refuses to give a legitimate redress or unnecessarily delays forwarding of the complaint, that direct application can be made to higher authority. The officer in question ought to be informed of the application being made to his superior.

8. A false accusation or false statement made in preferring a complaint under this section or S.27 AFA is punishable under S 56 (b) AFA; but the mere fact that a complaint appears to be baseless, or even frivolous, does not render the maker liable to punishment. As to the repetition of baseless complaints, or the submission of complaints in disrespectful language, see Notes to S 65 AFA.

9. Under this section an airman's statutory right exhausts after his application has been considered and a decision thereon has been given by the CAS. Sub-section (5) empowers the Central Govt. to revise the decision of the CAS, but the airman has no statutory right to petition the Central Govt. for such a revision.

10. Subject to sub-section (5), the decision of the CAS is final. While relief to the petitioner may be given by any lower authority, the final rejection of application can only be at the level of the CAS. There is no provision for CAS to delegate this power to a subordinate authority.

11. An airman who has been administratively dismissed/removed/educated under S.20 AFA has a statutory right to submit a petition under this section, if he considers himself aggrieved by such order.

12. See also Notes 4-5 to S 27 AFA.

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

NOTES

1. For definition of 'officer', 'commanding officer' and 'superior officer', see S.4 (xxiii), (xv) and (xxvii) AFA.
2. See also Notes 2 - 8 to S 26 AFA.
3. The manner of making complaints under this section is stated in para 622 Regs.
4. Whether or not an application is to be treated as a statutory complaint under Ss.26 or 27 AFA will depend upon its contents. Neither the title of the application, nor a request that it should be forwarded to CAS, Central Govt. etc., would by itself make the application come within the scope of S.26 or 27 AFA.
5. Rejection of a complaint under S.26 or 27 AFA need not be by a speaking order, and the applicant has no right to demand that a speaking order should be issued in the event of rejection of the application.
6. This section does not create a statutory right to petition the President against orders of the Central Government.
7. The right under this section is not available to officers seconded for services with a civil department or organisation of the Central or State Govt. or to one on deputation, in respect of matters arising in the course of such seconded employment or deputation.

28. Immunity from attachment — The arms, Clothes, equipment, accoutrements or necessaries of any person subject to this Act shall not be seized, and the pay and allowances of any such person or any part thereof shall not be attached, by direction of any civil or revenue court or any revenue officer, on satisfaction of any decree or order enforceable against him.

NOTES

1. As to action to have an attachment order set aside, see para 822 Regs. It is not proper to engage in correspondence with a Court in regard to validity of a judicial order. In all such cases a formal application should be made to the Court either personally by the person affected or through the Central Govt. Counsel. The administrative authorities are under no obligation to file an affidavit.

2. The words "civil or revenue court" in this section do not include a criminal court.

The section does not afford protection against a distress warrant issued under S.421 of Cr PC; but the amount in respect of which the distress warrant is issued should be paid by the competent authority from the individual's pay and allowances under S.91 (f) or S.92 (h) AFA as the case may be.

3. See also Proviso (j) to S 60 CPC 1908.

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

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

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

NOTES

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

2.1 For definition of 'the Forces', see S.4 (xix) AFA.

2.2 For definition of 'superior officer', see S.4 (xxvii) AFA.

3. The immunity under this section is only from arrest and not from recovery of dues towards land revenue or other debt. See **Kr. Chitraketu Singh v State of UP**.

30. Immunity of persons attending courts-martial from arrest

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

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

NOTES

1. For definition of 'court martial', see S 4 (xvi) AFA.
2. 'Judge advocate' See s.128 AFA and Rr. 110-111 AFR.

31. Privileges of reservists - Every person belonging to any Air Force Reserve or the Auxiliary Air Force shall, when called out for, or engaged in, or returning from, training or service, be entitled to all the privileges accorded by Secs. 28 and 29 to a person subject to this Act.

NOTES

1. Air Force Reserve - See Notes to S.2 AFA.

32. Priority in respect of Air Force personnel's litigation —

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

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

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

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

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

NOTES

1.1 'Proper air force authority' - See R.2(d) AFR

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

2. 'other proceedings' in sub—sec (1) will encompass criminal proceedings wherein a person subject to AFA is accused.

3. Form of certificate - IAFD 902.

4.1 A power of attorney to institute or defend a suit when executed by a member of any of the Armed Forces of the Union, not in civil employment, is not chargeable with any court fee. See S.19(1) Court Fees Act, 1870 and para 824 Regs. A vakalatnama is a kind of power of

attorney and hence the exemption extends to it, if it is to institute or defend a civil suit.

4.2 For form of power of attorney, see para 823 Regs.

5. See also para 825-826 Regs.

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

33. Saving of rights and privileges under other laws - The rights and privileges specified in the preceding sections of this Chapter shall be in addition to any others conferred on persons subject to this Act or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force.

NOTES

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

(a) All Govt. pensions (including military pensions) are immune from attachment in the execution of decrees of civil courts. See S.11 Pensions Act, 1871, and Proviso (g) to S.60, CPC 1908.

(b) Receipts for pay or allowances by NCOs or airmen when serving in such capacity need not bear stamp. See Art 53 Sch 1 to Stamp Act, 1899.

(c) All officers and airmen of the Air Force as well as their families, authorised followers, baggage when accompanying any body of troops or members of the families of any officer, airmen or authorised followers on duty or on the march, are exempt from tolls, subject to certain conditions. See S.3, Tolls (Army and Air Force) Act, 1901.

2.1 For definition of 'Air Force', see S.4(iv) AFA.

2.2 For definition of 'regular Army', see S.3 (xxi) AA.

2.3 For definition of 'Indian Navy', see S.3 (10) NA.

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CHAPTER VI



OFFENCES

CHAPTER VI

Offences

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) treacherously or shamefully causes the capture or destruction by the enemy of any aircraft belonging to the forces; or

(n) treacherously uses any false air signal or alters or interferes with any air signal; or

(o) when ordered by his superior officer or otherwise under orders to carry out any air force operation, treacherously or shamefully fails to use his utmost exertions to carry such orders into effect shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

NOTES

1. For statements of offences under this sections, see Appendix 'A'.
2. A minor punishment under S. 82 AFA cannot be awarded for an offence under this section except in accordance with S. 83 AFA.
3. The maximum punishment for an offence under this section being death, a plea of guilty cannot be accepted. See R. 60 (4) AFR.
4. For offences in relation to the enemy and not punishable with death, see S. 35 AFA.
5. Offences under Ss. 34 to 43 and Ss. 45 to 71 are triable under air force law only if the offence was committed after the offender became subject to AFA. For meaning of term 'persons subject to this Act', see S.2 AFA.
6. Where there is evidence that an accused has committed some other offence which is specifically mentioned in the Act as under clause (a) or (b) of this section, or S. 38 (1) AFA, such other offence should be charged in preference to a charge under S. 34 (e) AFA.
- 7.1 **Clause (a):** shamefully abandons etc. This offence can only be committed by the person in charge of the garrison, post etc., and not by the subordinates under his command. The surrender of a place by an officer charged with its defence can only be justified by superior's orders or the utmost necessity such as want of provisions or water, the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place with its garrison, their arms and ammunition, falling into the hands of the enemy.
- 7.2 For a conviction to be obtained, it must be proved that the accused had no necessity to surrender or abandon the post. Particulars of a charge under this clause must detail some circumstances which make abandonment in a military sense shameful. 'Shameful' means a

positive and disgraceful dereliction of duty and not merely negligence or misapprehension or error of judgement. Abandons means relinquishing, giving up, deserting or leaving in disregard of a duty with respect thereto.

7.3 'Post' includes any point or position (whether fortified or not) which a detachment may be ordered to hold, and the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in clauses (h) and (k) of this section or S. 36 (c) AFA where it has reference to the position of an individual.

7.4 guard - A guard is a body of persons detailed to safeguard personnel or property.

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

8.2 For definition of 'enemy', see S.4 (xviii) AFA.

9.1 **Clause (c):** 'shamefully' - The particulars of the charge must show the circumstances which make the act in an air force sense shameful; see Note 7.2 above.

9.2 The enemy must be near at hand and an airman not in the forward area cannot be convicted of an offence under this clause if, for example, he casts away his arms during an air raid.

9.3 Casts away, means to dispose of, throw aside, or discard without authority or justification.

9.4 Enemy - see S.4 (xviii) AFA. The term includes any person in arms against whom it is the duty of a person subject to air force law to act. A person subject to the AFA, therefore, who, when a comrade 'runs amok', shows cowardice by refraining from acting against him is liable to be charged under this clause. See also para 575 Regs.

9.5 'misbehaves' - This means that the accused, from an un-airman like regard for his personal safety, in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well-understood customs of the service, or by the requirements of the case, as applicable to the position in which he was placed at the time. Misbehavior of any kind not evidencing cowardice cannot be charged under the last part of this clause.

9.6 Cowardice - Where the essence of the offence is cowardice, it is essential to prove that the accused acted with an un-airman like regard for his personal safety and that he failed in respect of some distinct and feasible duty imposed upon him whether by specific order or by customs of the service.

10.1 **Clause (d)** - 'treacherously' - See Note 12.1 below.

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

10.3 if there is no evidence of treachery, the charge should be laid under S. 35 (b) AFA.

10.4 'intelligence' - Should be understood to mean information which is or purports to be information, as to any matter, such that information about it would or might be directly or indirectly useful or beneficial to the enemy.

10.5 For definition of 'enemy', see S.4 (xviii) AFA.

10.6 Union - This term has been used to signify the States and Union Territories of which India comprises. See Art 1 Constitution.

11.1 **Clause (e)**: As a general rule every man is presumed to intend the natural and probable consequences of his acts and if he, therefore, voluntarily does an act which assists the enemy, it may be presumed, in the absence of evidence to the contrary, that on his part he intended to assist the enemy. The presumption however is rebuttable and is not one, which must always be drawn.

11.2 For definition of 'enemy', see S.4 (xviii) AFA.

12.1 **Clause (f)**: 'treacherously' - Treacherously implies an intention to assist the enemy and must be carefully distinguished from 'through cowardice'. The intention to help the enemy is an essential ingredient of the offence of treachery.

12.2 'Cowardice', see Note 9.6 above.

12.3 If there is no treachery or cowardice, the charge should be laid under S.35 (c) AFA.

12.4 For definition of 'enemy', see S.4 (xviii) AFA.

12.5 White Flag - An officer or airman who, when in the presence of the enemy, displays a white flag or other symbol, in anticipation or in token of surrender will be tried by general court martial. When the evidence is not sufficient to justify a charge under Ss. 34 or 35 AFA' the charge will be laid under S. 65 AFA. See para 693 Regs.

13.1 **Clause (g)** 'intentionally' - See Note 8.1 above.

13.2 'occasions a false alarm' - The particulars of the charge must set out briefly the means whereby the alarm was caused. The term alarm imports excitement or commotion, or the apprehension of danger caused by the spreading of any false or disturbing rumour or report, or by the sounding or giving of any signal established for an alert or approaching danger.

13.3 'spreads reports' - The particulars of the charge must detail the reports alleged to have

been spread, and should indicate how they were calculated to create alarm or despondency. It is not necessary to aver or prove that the reports were false; indeed the truth may increase the offence; nor is it necessary to show that any effect was actually produced by the reports spread. It will be sufficient if it is shown that the, alleged report spread had the tendency to create such alarm or despondency, as to make the spreading of such report culpable. It would however seldom be expedient to try an officer or soldier under this section for reports, which could not be shown to have had some effect. The offence may be committed either with reference to the service personnel with whom the offender is serving, or with reference to the inhabitants of the country. When the false alarm is occasioned or such reports are spread otherwise than in time of war or during any military operation, the charge should be framed under S. 36 (e) AFA, which makes punishable such spreading of reports etc., even though through neglect. The persons in whom alarm etc is created need not necessarily be service personnel.

13.4 Camp - Includes a barrack and any quarters, shelter or other place where service personnel are temporarily located.

14.1 **Clause (h)** - For definition of 'commanding officer', see S.4 (xv) AFA.

14.2 'guard' - See Note 7.4 above.

14.3 A 'Patrol' consists of one or more members of a guard detailed to safeguard personnel or property in a given area, but not confined to a specific beat or post.

14.4 'post', as used in this clause, refers to the position or place in which it is the duty of an individual to be, especially when under arms, with respect in particular to a sentry, it applies :-

(i) to the spot where the sentry is left or posted in order that he may carry out his duties ;
or

(ii) to any limits pointed out as his beat, but it is not limited by any imaginary line, and includes, according to orders and circumstances, such surrounding areas as may be necessary for the proper performance of the duties for which he was posted.

14.5 In determining what in any particular case is a post, the court may use their general air force knowledge.

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

14.7 The fact that a sentry has not been regularly posted is immaterial if he is charged with an offence committed while at his post, provided evidence is given to prove that he knew where his duty required him to be. For example, when a member of a guard or piquet furnishing sentry for a post receives orders that he will relieve the sentry on that post at a fixed hour, and in due course does so he will have been regularly posted, although the officer or NCO in-charge was not present himself at the time.

14.8 This offence can be committed by any member or commander of the guard, piquet etc., but a joint charge cannot be preferred.

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

15.1 **Clause (i)** - No person may be tried by court martial for an offence unless the trial is begun within three years after the commission of the offence; but this period of three years does not include any time during which the accused was a prisoner of war. See S. 121 (3) AFA.

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

15.3 'serves with', i.e. serves with armed or uniformed forces.

15.4 'aids', i.e. helps the enemy directly or indirectly but without necessarily serving with the enemy.

15.5 For definition of 'enemy', see S.4 (xviii) AFA.

15.6 **Clause (j)** 'knowingly' - A state of mind, not capable of positive proof. The Court may infer knowledge from the circumstances. Evidence should, if possible, be given that the accused knew.

16.2 'harbouring' - The word 'harbour' includes supplying a person with shelter, food, drinks, money, clothes, arms, ammunition or means of conveyance or the assisting of a person by any means, whether of the above kind or not, to evade apprehension. See S. 52A, IPC.

16.3 For definition of 'enemy', see S4 (xviii) AFA.

16.4 'not being a prisoner', may be understood to mean not being a prisoner of war.

16.5 If the fact of the harbouring or protecting is proved, the court may infer from the circumstances that the accused knew the person harboured or protected to be an enemy who is not a prisoner.

17.1 **Clause (k)** - A sentry is a member of a guard stationed at a particular place to safeguard personnel or property. A policeman on gate duty is not a sentry.

17.2 Post - See Notes 14.4 to 14.7 above.

17.3 A sentry found sleeping even a short distance from his 'post' should be charged with leaving his post under clause (h) of this section or S. 36 (d) AFA; he cannot be charged with sleeping on his post under this clause. However, where a sentry is found intoxicated, he could be charged under this clause though he is so found at a short distance away from his post 'as the place where he is found intoxicated is immaterial not being ingredient of the offence. The fact that he was also asleep need not be alleged in the charge but need not be excluded from the evidence.

17.4 Intoxicated - For purposes of this clause, a person shall be treated as intoxicated if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit for, or to be entrusted with his duty.

17.5 The same offence when committed by a sentry in circumstances which do not fall under this clause is triable under S. 36 (c) AFA.

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

18.1 **Clause (l)** 'knowingly' - See Note 16.1 above.

18.2 It is for the court to say whether the act charged can be said to be calculated to imperil the success of the military, naval or air forces of India etc.

19.1 **Clause (m)** - 'treacherously or shamefully' - See Notes 12.1 and 7.2 above.

19.2 For definition of 'enemy' and 'aircraft', see S.4 (xviii) and (ii) AFA.

19.3 'forces' - See S.4 (xix) AFA and Notes thereto.

19.4 Same offence committed negligently but not treacherously or shamefully is punishable under S. 35 (d) AFA.

20.1 **Clause (n)** - 'treacherously' - See Note 12.1 above.

20.2 For definition of 'air signal', see S.4 (x) AFA.

21.1 **Clause (o)** - 'treacherously or shamefully' - See Notes 12.1 and 7.2 above.

21.2 For definition of 'superior officer', see S.4 (xxvii) AFA.

21.3 Same offence committed negligently or through other default, but not treacherously or shamefully is punishable under S. 35 (e) AFA.

22.1 'on conviction by court-martial' - For definition of 'court-martial', See S.4 (xvi) AFA. Disposal of the charge under S 82 or S 86 is also permissible. It is not necessary that in all cases the offender must be tried by a Court Martial. But see also Note 2 above.

22.2 'Such less punishment' – See S.73 AFA for scale of punishments.

22.4 Sentence of death. See S.163 AFA and Rr. 147 to 151 AFR.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

No.1

S 34 (a) SHAMEFULLY ABANDONING A POST COMMITTED TO HIS CHARGE

In that he,

at _____ on _____ being in charge of _____ post and attacked by the enemy, shamefully abandoned the said post without any attempt to resist the enemy.

No. 2

S 34 (c) IN PRESENCE OF AN ENEMY SHAMEFULLY CASTING AWAY HIS ARMS

In that he,

at _____ on _____ when sentry on Guard Post No.1 and attacked by the enemy, shamefully cast away his rifle, left his post, and ran away.

No.3

S 34 (k)

BEING A SENTRY IN TIME OF WAR, SLEEPING UPON HIS POST

In that he,

at _____ on _____ being a sentry on guard Post No. _____ between 0100 hours and 0300 hours was asleep at _____ hours.

No.4

S 34(m)

TREACHEROUSLY CAUSING THE CAPTURE BY THE ENEMY OF AIRCRAFT BELONGING TO THE FORCES

In that he,

at_on_when flying aircraft (type) No. _____ belonging to the Air Force, over territory in enemy occupation, voluntarily landed the said aircraft in the said territory, with intent to assist the enemy, and thereby caused the capture by the enemy of the said aircraft.

No.5

S 34 (n)

TREACHEROUSLY USING A FALSE AIR SIGNAL

In that he,

at_on_, with intent to assist the enemy showed a flare by night, thereby indicating that the said place was a suitable landing place for friendly aircraft when in fact, as he well knew, the said place was unsuitable for the landing of such aircraft.

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

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

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

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

(d) negligently causes the capture or destruction by the enemy of any aircraft belonging to the Government ; or

(e) when ordered by his superior officer, or otherwise under orders to carry out any warlike operations in the air, negligently or through other default fails to use his utmost exertions to carry such orders into effect shall on conviction by court—martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

NOTES

1. For statements of offences under this section, see Appendix 'A'.

2. A minor punishment under S. 82 cannot be awarded for an offence under this section, except in accordance with S. 83 AFA. But see also S.83 (2) AFA.

3. For offences in relation to the enemy and punishable with death, see S.34 AFA.

4.1 **Clause (a)** - Wilful or wilfully means that the act is done deliberately or intentionally; not by accident or inadvertence but so that the mind of the person who does the act goes with it.

4.2 As regards forfeiture of pay and allowances of officers based on findings of court of inquiry held for the purpose, see Ss. 91(h), 97 and 99 AFA. See Ss. 92 (f), 97 and 99 with respect to airmen.

5.1 **Clause (b)** - See S. 34 (d) for more grave form of this offence.

5.2 Intelligence - See Note 10.4 to S.34, AFA.

5.3 'Communicates intelligence to' - A man must be taken to intend the natural consequence

of his acts, and this clause appears to be wide enough to cover the case of intelligence reaching the enemy through the capture or the re-publication (e.g. by relatives or newspapers) of letters, sketches, photographs, etc. Everyone connected with the forces should recognise the grave danger of assisting the enemy by gossip, whether verbal or written, as to plans, prospects, operations, numbers etc. As to unauthorised publication of official documents, see Para 597 Regs and Official Secrets Act, 1923.

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

5.5 For definition of 'enemy' 'commanding officer' and 'superior officer', see S.4 (xviii), (xv) and (xxvii) AFA.

6.1 **Clause (c)** - See S. 34(f) AFA for more grave form of this offence.

6.2 For definition of 'enemy' see S.4 (xviii) AFA and Notes thereto.

6.3 An officer or airman who, when in the presence of the enemy, displays a white flag or other symbol, in anticipation or in token of surrender will ordinarily be tried by general court martial. When the evidence is not sufficient to justify a charge under Ss. 34 or 35 AFA, the charge will be laid under S 65 AFA. See Para 693 Regs.

7.1 **Clause (d)** - See S. 34(n) AFA for more grave form of this offence.

7.2 Scope of the offence under this clause is wider as compared to S.34 (m) AFA. It relates to any aircraft belonging to the Govt.

7.3 For definition of 'aircraft', see S.4 (ii) AFA.

8.1 **Clause (e)** - See S. 34 (c) AFA for more grave form of this offence.

8.2 For definition of 'superior officer', see S.4 (xxvii) AFA.

9.1 'on conviction by court-martial' - For definition of 'court-martial', see S.4(xvi) AFA. Disposal of the charge under S. 82 or S. 86 AFA is also permissible. It is not necessary that in all cases the offender must be tried by a court martial. But see also Note 2 above.

9.2 'such less punishment' - See S. 73 AFA for scale of punishments.

9.3 Sentence of imprisonment - See Ss. 164, 166 et seq and R. 144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

**WITHOUT DUE AUTHORITY, COMMUNICATING INTELLIGENCE TO
THE ENEMY**

S 35 (b)

in that he,

at _____ on _____, without due authority, gave intelligence to the enemy by informing _____ an enemy agent, of a projected air bombing attack by the Air Force over _____ on the night of _____

**HAVING BEEN ORDERED BY HIS SUPERIOR OFFICER TO CARRY
OUT WARLIKE OPERATIONS IN THE AIR, NEGLIGENTLY FAILING TO
USE HIS UTMOST EXERTIONS TO CARRY SUCH ORDERS INTO
EFFECT**

S 35 (e)

in that he

at/on _____, having been ordered by _____ to proceed on a mission to destroy _____ situated in enemy territory, negligently failed to use his utmost exertions to successfully complete the said mission.

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

- (a) forces a safeguard, or forces or uses criminal force to a sentry ; or
- (b) breaks into any house or other place in search of plunder ; or
- (c) being a sentry sleeps upon his post, or is intoxicated ; or
- (d) without orders from his superior officer leave his guard, piquet, patrol or post;
or
- (e) intentionally or through neglect occasions a false alarm in camp or quarters; or spreads reports calculated to create unnecessary alarm or despondency or
- (f) makes known the parole, watchword or counter sign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what he received ; or
- (g) without due authority alters or interferes with any air signal ; shall, on conviction by court-martial,

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

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

NOTES

1. For statements of offences under this section, see Appendix 'A'. The words 'when on active service' should be added if the offence has been committed when on active service.
2. A minor punishment under S. 82 cannot be awarded for an offence under this section when committed on active service, except in accordance with S. 83 AFA. But see also S. 83 (2) AFA.
3. For definition of 'active service', see S.4 (i) AFA and notes thereto.
4. Since the punishment for an offence under this section is greater if the offence is

committed on active service than it is if the offence is committed not on active service, S. 138 (7) AFA empowers a court when the accused is charged with having committed an offence on active service to convict him by special finding, in an appropriate case, of having committed the offence not on active service.

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

5.2 'forces' - Does not necessarily mean use of physical force. Passing the sentry when warned by him not to do so will amount to this offence.

5.3 For definition of 'criminal force', see S. 349-350, IPC.

5.4 Sentry - A sentry is posted for protecting some place, property or person and any forcible interference with such protection amounts to an offence under this clause provided the accused was aware that the sentry was in fact acting as such. A policeman on gate duty is not a sentry. See also generally Note 17.1 to S.34 AFA.

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

6.2 For definition of 'house breaking', see S.445, IPC. A house indicates some structure intended for affording some sort of protection to the person dwelling inside it or for the property placed there for custody. What is a house must always be a question of fact and circumstances.

6.3 If charge is for breaking into 'other place', such place should be specified in the charge.

7.1 **Clause (c)** 'Sentry' See Note 17 to S. 34 AFA and Note 5.4 above. A sentry found asleep even a short distance from his post should be charged with leaving his

post under clause (d); he cannot properly be charged with being asleep on his post, though he may be charged under S. 65 AFA with being asleep when on sentry duty. However the words 'upon his post' do not qualify the words 'is intoxicated'. It is therefore enough to constitute the offence if a person subject to the AFA acting as a sentry is found intoxicated on his post or elsewhere during his tenure of duty as a sentry.

7.2 For purposes of this clause, a person shall be treated as intoxicated if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit for, or to be entrusted with, his duty.

7.3 'post', see Notes 14.4 to 14.7 to S. 34 AFA.

7.4 Persons should not be charged jointly with an offence under this clause.

8.1 **Clause (d)** For definition of 'superior officer', see S.4 (xxvii) AFA.

8.2 'guard' See Note 7.4 to S. 34 AFA.

8.3 'patrol' - See Note 14.3 to S. 34 AFA.

8.4 'post', see Notes 14.4 to 14.7 to S. 34 AFA.

8.5 A joint charge cannot be preferred under this clause.

9.1 **Clause (e)** - 'through neglect' neglect means disregard, slight or omission. It is not the same as 'negligence'; neglect always consists of a failure by a person to discharge a duty which is imposed upon him in some way.

9.2 See also generally Notes to S. 34 (g) AFA.

10.1 **Clause (f)** -The particulars of the charge must aver that the accused made known the parole, watchword etc. to a person and that person was not entitled to receive the parole, watchword etc.

10.2 A 'Parole' is a word used as a check on the countersign; it is imparted only to those who are entitled to inspect guards and to commanders of guards.

10.3 'watchword' is the password required to be given to a watch or sentry.

10.4 'Countersign" means a word specified for the time being to aid guards and sentries in their scrutiny of persons who apply to pass their post or lines, it consists of a secret challenges and a password.

10.5 'knowingly' - See Note 16.1 to S. 34 AFA.

11. **Clause (g)** - For definition of 'air signal', see S.4 (x) AFA.

12.1 'on conviction by court-martial' - For definition of 'court-martial', see S.4 (xvi) AFA. Disposal of the charge under S. 82 or S. 86 is also permissible. It is not necessary that in all cases the offender must be tried by a court martial. But see also Note 2 above.

12.2 'such less punishment' - See S. 73 AFA for scale of punishments.

12.3 Sentence of imprisonment - See Ss. 164, 166 AFA et seq and R. 144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

USING CRIMINAL FORCE TO A SENTRY

S 36 (a)

in that he,

at _____ on _____, used criminal force to _____ Sep_ (DSC Guard) of _____ DSC PLATOON attached_, while the latter was performing duty as sentry at the Station Armoury, by hitting him.

WHEN A SENTRY, ON ACTIVE SERVICE, SLEEPING UPON HIS POST

S 36 (c)

in that he,

when on active service, at_on_between _____ hours and _____ hours when a sentry at _____ post, was asleep at _____ h.

S 36(c)

SPREADING REPORTS CALCULATED TO CREATE UNNECESSARY ALARM

in that he,

at_on_said to airmen assembled in the dining hall of Airmen's Mess that all airmen who did not possess Higher Secondary qualification are going to be discharged from the IAF within a month.

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

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

(b) joins in any such mutiny ; or

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

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

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

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.

2. A minor punishment under S. 82 cannot be awarded for an offence under this section, except in accordance with S. 83 AFA. But see also S. 83 (2) AFA.

3. The term 'mutiny' has not been defined in AFA. Mutiny implies collective insubordination or a combination of two or more persons to resist or to induce others to resist lawful military, naval or air force authority. The term may be understood to mean that whenever a person subject to air force law combines with one or more persons

(a) to overthrow or resist lawful authority in the Forces or any forces co-operating therewith or in any part of any of the said forces ; or

(b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline or with the object of evading any duty or service against, or in connection with operations against the enemy; or

(c) to impede the performance of any duty or service in the forces or in any forces co-operating therewith or any part of any of the said forces.

4. The maximum punishment for an offence under this section being death, a plea of guilty cannot be accepted. See R.60(4) AFR.

5.1 The limitation of time for the commencement of trial stipulated in S. 121 (2) AFA does not apply to the offences under this Section.

5.2 An offence under this section committed by a person subject to AFA will be punishable even after he ceases to be subject to the Act. The ban under S. 122 AFA does not apply. See S. 122 (3) AFA.

6. As mutiny is the most serious of all forms of indiscipline, charges under this section should normally be preferred only when the facts disclose a concerted and a deliberate rejection of air force authority which strikes at the root of discipline and is calculated to prejudice significantly the ability of a Unit to carry out its duties.

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

7.2 In framing a charge under this section the specific act or acts which are alleged to have constituted the offence must always be averred; and the offence is so grave that a charge for it should only be brought on very clear evidence. Cases of insubordination, even on the part of two or more persons, should, unless there appears to be a combined design on their part to resist authority, be charged jointly under S.40 (a) AFA with using criminal force, assaulting, or separately under S.40 (b) or (c) AFA with using threatening or insubordinate language, or under S.41 AFA or if these sections are inapplicable jointly or separately under S. 65 AFA. Provocation by a superior or the existence of grievances, is no justification for mutiny or insubordination though such circumstances would be given due weight in considering the question of punishment.

7.3 Collective petitions/representations or the submission of a petition through the medium of any association in respect of service matters are forbidden on this ground.

8. **Clauses (a) and (b)** - If there is evidence that a person caused, or conspired with others to cause a mutiny, but a doubt exists as to whether he took such an active part as to have actually joined, in the mutiny, he may be charged under clause (b) with an alternative charge

under clause (a). On the other hand doubts may arise whether the persons who appear to be taking an active part are actually acting in combination, and in such cases it is desirable to prefer separate charges in the alternative under S.40 or 41 AFA, as appropriate.

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

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

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

11.1 For definition of CO, see S.4 (xv) AFA.

11.2 For definition of 'superior officer', see S.4 (xxvii) AFA.

12. **Clause (e)** - Endeavours to seduce etc - The attempt itself is punishable. It is immaterial whether the attempt succeeds or not.

13.1 'on Conviction by court-martial' - For definition of 'court-martial' see S.4 (xvi) AFA. Disposal of the charge under S. 82 or S. 86 AFA is also permissible. It is not necessary that in all cases the offender must be tried by a court martial. But see also Note 2 above.

13.2 'such less punishment' - See S. 73 AFA for scale of punishments.

13.3 Sentence of death, see S. 163 AFA and Rr. 147 to 151 AFR.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

S37 (a)

CAUSING A MUTINY IN THE AIR FORCES OF INDIA

in that he,

at_on _____, in Billet No. _____ addressed_and other airmen of _____(Unit). There assembled, in mutinous language, by advising them, not to observe ceremonial kit layout the next day, in consequence of which language they, the said _____and other airmen of the said unit, did not so lay out their kit.

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

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

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

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

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

NOTES

1. For statements of offences under this section, see Appendix 'A'. The words 'when on active service' should be added if the offence has been committed when on active service.

2. A minor punishment under S. 82 cannot be awarded for an offence under this section except in accordance with S. 83 AFA. But See also S.83 (2) AFA.

3. The maximum punishment for an offence under this section, committed when on active service, being death, a plea of guilty cannot be accepted. See R. 60 (4) AFR.

4.1 The limitation of time for the commencement of trial stipulated in S. 121 (2) AFA does not apply to the offence under this section. However, in the case of desertion not on active service, where the accused is not an officer, the limitation period of three years will apply if subsequently to the commission of the offence, the accused has served continuously in an exemplary manner for not less than three years with any portion of the Air Force. See S. 121 (2) & (4) AFA. In computing the period of time for limitation, see also S. 121 (3) AFA. For purposes of S. 121 AFA, an airman will be considered as having served in an exemplary manner, if he has not had any red ink entry in his conduct sheet for a continuous period of three years subsequent to the commission of the offence. See para 725 Regs. For list of red ink entries, see para 1054 Regs.

4.2 An offence under this section committed by a person subject to AFA will be punishable even after he ceases to be subject to the Act. The ban under S. 122 AFA does not apply. See S. 122 (3) AFA.

5.1 A person charged with desertion may be found guilty of attempting to desert or of being AWL. S. 138 (1) AFA.

5.2 A person charged with attempting to desert may be found guilty of being AWL. S. 138(2) AFA.

5.3 Where absence began more than three years before the date of trial, the provisions of S. 121 AFA must be borne in mind if a special finding for AWL under S. 138 (1) or (2) AFA is contemplated. For instance, where an accused person is charged with desertion commencing on a date more than three years before the date of trial, he cannot be found guilty under S. 138 (1) AFA of being AWL from that date but such absence must be restricted to a period not exceeding three years immediately prior to the commencement of trial; where such a finding and sentence has been wrongly confirmed, the competent authority under S. 160 AFA may substitute a valid finding and pass a sentence for the offence specified or involved in such finding.

6. When a person subject to AFA has been absent from his duty without authority for a period of 30 days, assembly of court of Inquiry is mandatory under S. 107 AFA. See also R. 155 AFR and para 385 Regs.

7.1 The expression 'desertion' has not been defined in the Act. A person is said to desert, who ;

(i) leaves the service or, when it is his duty to join or rejoin the service, fails to do so, with (in either case) the intention subsisting at the time of the leaving or failure, or formed thereafter of remaining permanently absent from his duty; or

(ii) absents himself without leave with intent to avoid some important air force service, for example, to avoid proceeding on active service or for air force operation.

7.2 Every desertion necessarily implies AWL; the distinction between the two must necessarily depend on the animus. If there is animus deserendi the absence is straightaway desertion. See **Capt Virendra Kumar v COAS**. The offence of desertion is complete when the fact of absence and the animus deserendi co-exist. A man may be a deserter even though his absence was in the first instance legal. A man who becomes absent without leave and then decides to desert turns his absence into desertion and becomes a deserter as from the commencement of his absence. The mere fact that an absentee has surrendered himself is no conclusive proof negating the offence of desertion.

7.3 Examples of facts from which the existence of the intent could be inferred are that the accused -

- (a) had been absent for a very long time although having had opportunities to return; or
- (b) threw away his uniform and was wearing civilian clothes; or
- (c) endeavoured to disguise his identity; or
- (d) was arrested and resisted arrest.

It is for the court to decide in each case whether the existence of the intent may be inferred from such facts. Similarly, the fact that an accused has been declared as absentee under S. 107 AFA is not by itself a deciding factor if other evidence suggests the contrary.

7.4 However, the fact that an absentee surrenders himself is no conclusive proof negating the offence of desertion.

8. Persons cannot be charged jointly with the offence under sub-section (1) but can be so charged with respect to the offence under other two sub-sections of this section.

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

10. For definition of 'active service', see S.4(i) AFA and Notes thereto.

11. Abetment of desertion of a person subject to AFA can be charged under Ss.68 or 69 AFA.

12. Knowingly harbours - See Notes 16.1 and 16.2 to S.34 AFA.

13. 'any such deserter' - A charge under sub-section (2) can lie only when the offence of desertion has already been committed.

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

15. For definition of 'superior officer', see S.4(xxvii) AFA. Superior officer in sub-section (3) refers to the superior officer in relation to the offender, and not to the deserter or intending

deserter.

16. As regards capture of deserter by civil authorities including civil police officials, see S. 106 AFA.

17. As regards apprehension, custody and despatch of deserters, see paras 382, 383 Regs.

18. For form of apprehension/surrender certificate, see para 384(b) Regs.

19. Sections 91(a) and 92(a) read with P & A Regs provide for penal deductions for every day a person is absent on desertion or without leave. See also para 388 Regs.

20. See also generally paras 381-388 Regs.

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

21.2 Commencement of absence under this section or S.39 AFA may conveniently be proved in the following ways: -

(a) orally by a witness who found the accused absent. In this case the oral evidence should cover every day of absence till surrender/apprehension; or

(b) by production (by a witness on oath, who can identify the accused as the person named in it) the declaration of court of inquiry held under S.107 AFA as entered in the unit court martial book or a certified true copy of the entry.

21.3 Termination of absence may be proved in the following ways:-

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

(b) by production (by a witness on oath, who can identify the accused as the person named in it) a certificate stating the fact, date and place of surrender or apprehension and the manner in which the accused was dressed and

(i) signed by a police officer not below the rank of an officer incharge of a police station to whom the accused surrendered or by whom he was apprehended (S.141(b) AFA); or

(ii) where the surrender was made to an officer or other person subject to AFA or any portion of the Air Force; or where the accused was apprehended by such officer or other person subject to AFA, then signed by such officer or the CO as the case may be (S.141(5) AFA).

22.1 'on conviction by court-martial' - For definition of 'court-martial', see S.4(xvi) AFA. Disposal of the charge under 3.82 or S.86 AFA is also permissible. It is not necessary that in all cases the offender must be tried by court martial. But see also Note 2 above.

22.2 'such less punishment' - See S.73 AFA for scale of punishments.

22.3 Sentence of imprisonment -See Ss. 164, 166 AFA et seq and R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

No.1

S 38(1) DESERTING THE SERVICE

in that he,

when on active service, on_____ left_(Unit) with the intention at the time of leaving or formed thereafter, of remaining permanently absent, and remained absent till his apprehension on_____ at_____ (Place) by_____

No.2

S 38(1) DESERTING THE SERVICE

in that he,

at _____on _____ absented himself from_(Unit), until apprehended by the civil police at _____ (Place) on_____ .

Note 1. As a rule, proof of the date and circumstances in which the period of absence terminated is necessary to enable the court to decide whether the absence constituted desertion or merely absence without leave. Occasionally, however, these facts are not material, and proof of them cannot be obtained without inconvenience to the public service and great delay. In such cases they need not be proved, and should, therefore, not be averred in the particulars of the charge.

No.3

S 38(1) DESERTING THE SERVICE

in that he,

at _____ on _____ deserted from the service.

Note: This form may be used when the date and circumstances of the termination of the absence are not material facts, and proof of them cannot be obtained without an unreasonable amount of delay or expense.

No.4

S 38(1) DESERTING THE SERVICE

in that he,

at _____ on _____, having been placed under orders for active service and having been granted leave of absence from _____ to _____ to proceed to _____, did not rejoin at _____ on the expiry of the said leave but absented himself with intent to avoid such active service.

Note: It will often be advisable to frame an alternate charge for without sufficient cause overstaying leave granted to him.

No.5

S 38(1) ATTEMPTING TO DESERT THE SERVICE

in that he,

at _____ on _____ attempted to quit the unit domestic area disguised as a woman, with the intention to desert the service.

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

- (a) absents himself without leave; or
- (b) without sufficient cause overstays leave granted to him; or
- (c) being on leave of absence and having received information from proper authority that any unit or detachment to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or
- (d) without sufficient cause fails to appear at the time fixed, at the parade or place appointed for exercise or duty; or
- (e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or
- (f) when in camp or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or
- (g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there;

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

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NOTES

1. For statements of offences under this section, see Appendix 'A'. See also R.36(6) AFR.
2. Two or more accused should not be jointly charged with an offence under this section.
3. As regards Court's power to make a special finding when the evidence shows that the accused was absent for a shorter period than that charged, see R. 71(4) AFR.
4. As regards apprehension, custody and despatch of deserters/absentees, see paras 382, 383 Regs.
5. For form of apprehension/surrender certificate, see para 384(b) Regs.

6. When a person subject to AFA has been absent from his duty without authority for a period of 30 days, assembly of Court of Inquiry is mandatory under S.107 AFA. See also R.155 AFR and para 385 Regs.

7. See also generally para 381 - 388 Regs.

8. For factors to be taken under consideration while awarding punishment, see para 668 Regs.

9.1 **Clause (a)** - The distinction between desertion and absence without leave lies in the intention. Where all the ingredients of the offence of desertion are present except an intention not to return to the service or to avoid some important air force duty, the offence will be one of AWL or any other offence of the same genus e.g., failure to appear at the time fixed at the parade. See also Note 7 to S. 38 AFA.

9.2 Absence without leave must be culpable. If it is proved that the accused was absent and that he had not been granted leave, the court may, in the absence of any satisfactory explanation by him, infer that his absence was culpable.

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

9.4 To render an absence involuntary there must be some physical impracticability, outside the control of the offender, that prevents his return to his unit. Inability to return to his unit through intoxication, which is an offence under S.48 AFA, will not make such absence involuntary nor would an inability, which arises through lack of money or loss of his railway or other ticket. Further, where the AWL was originally voluntary and has by change of circumstances, subsequently become involuntary, the offender may be convicted of absence for the whole period. Similarly, an absence that was originally involuntary becomes voluntary, if the offender fails to return to his unit at the earliest practicable moment e.g. failure to return on release from a civil prison.

9.5 Thus if an airman is prevented from returning to his unit solely because of circumstances over which he had no control, then clearly his absence is not culpable and he is not guilty of being AWL. If, however, such circumstances supervene when the airman is already AWL and he does not return as soon as he is able to do so after the disability has ceased, then it may be presumed that he was intentionally absent during the whole period and that he would not have returned even if he had not been prevented temporarily from doing so. Thus, if an airman contracts an illness while he is AWL and after he has recovered continues to be absent, he may, in the absence of any explanation by him, be found guilty of being AWL from the time of his original absence until his final arrest or surrender.

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

9.7 A court considering a charge under this section should consider 'was the accused at the place where his duty required him to be?'. When evidence has been given to the accused's absence, or failure to appear at the place required, and that

evidence is sufficient to raise an inference that -he had no leave of absence, then the court may look to the accused to provide evidence, by way of defence, for his 'leave', 'sufficient cause' or 'due cause' as the case may be.

9.8 A person charged with desertion or attempting to desert may be found guilty of AWL but not vice versa. See S.138(1), (2) AFA. See also Note-5 to S.38 AFA.

9.9 If a person commits a crime as a result of which he is taken into civil custody and is subsequently convicted of the offence by a civil court, he will be guilty of absence without leave for any period during which he is in civil custody either while awaiting trial or while serving a sentence passed by the court. It is his own fault that he committed the crime and he should have foreseen that he might be arrested and sentenced as a result of it. If, however, he is subsequently acquitted of the charge against him, he must be deemed to be innocent of it and he will not be guilty of absence without leave for any period during which he is in civil custody while awaiting trial or during trial, unless it can be proved that it was his own fault that he was arrested or that his absence was not due merely to the fact of his arrest.

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

10.2 Whether the reasons which led the accused to overstay do or do not amount to 'sufficient cause' is a question of fact to be decided by the court-martial in the circumstances of each case.

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

10.4 Overstayal of leave is a continuing offence and the particulars of offence for a charge under S.39(b) AFA must state the dates of commencement and termination of the absence which constituted overstayal.

10.5 Where an accused is charged under S.39(b) AFA and the facts as proved, show that though there was sufficient cause initially for the accused to overstay the

leave, yet his continued overstaying at some later time became unjustified, the accused may be found guilty under R.71(4) AFR of such shorter period of overstaying, as was not justified by sufficient cause.

10.6 Where certain portion of overstaying of leave has become time-barred in view of S.121(1) AFA, such period should be excluded while framing the charge.

11.1 **Clause (c)** - For definition of active service, see S.4(i) AFA.

11.2 Without sufficient cause - See Notes 10.2 and 10.3 above.

11.3 For definition of Unit, see S.4(xxviii) AFA.

12.1 **Clause (d)** - Before a conviction can be obtained under this clause it must be proved that the time was fixed and the place appointed by a competent authority, and that the accused was aware of such facts.

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

12.3 Absence from a parade etc., through intoxication should not be charged under this section but under S.48 AFA. Ignorance of the order for the parade, although exposing the offender to a charge under S.65 AFA, for failing to acquaint himself with the order as required by para 561 Regs, will not render him liable to a conviction under this clause. Where a reasonable misapprehension of the order exists, based on lack of clarity in the terms of the order itself, this may, in certain circumstances amount to a good defence to the charge

13.1 **Clause (e)** — 'without sufficient cause', see Notes 10.2 and 10.3 above.

13.2 For definition of 'superior officer', see S.4(xxvii) AFA.

14.1 **Clause (f)** - Camp - See Note 13.4 to S.34 AFA.

14.2 'general, local or other order' - The orders specified in this clause are standing orders or orders in writing and applicable continuously over a period of time to persons present in a certain geographical area or in a certain Air Force formation. Ignorance of the order is no excuse if the order is one, which the accused ought, in the ordinary course, to know. But a misapprehension reasonably arising from want of clarity in the order is a ground for exculpation. The existence of the order must be proved by producing it or a certified copy where so permissible under S.141(3) or (4) AFA on oath/affirmation to the court. A written order cannot be proved by oral testimony. Evidence must also be led to show that the order was duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents.

14.3 A charge alleging "without a pass or written leave from his superior officer" would be a good charge under this clause, since it is a single offence for him to have neither a pass nor

written leave. On the other hand, a charge alleging "beyond the limits fixed by general or local orders" would be bad since it might be one offence to be beyond the limits fixed by general orders, and another offence to be beyond the limits fixed by local orders. See R.36 AFR.

14.4 'without a pass or written leave from his superior officer' - The words are in the nature of an execution, and on being proved that the accused was found beyond fixed limits, it will rest on him to show that he had the proper authority.

14.5 For definition of 'superior officer', see S.4(xxvii) AFA.

15. **Clause (g)** - For definition of 'superior officer', see S.4(xxvii) AFA.

16.1 The particulars of a charge of absence without leave should state the date when the absence began and terminated. Where the exact hour of the absence is material for the purpose of proving a whole day's absence, as it may be under the provisions of S.93 AFA, the hour of the offender's departure and return should also be stated in the particulars of the charge.

16.2 Where, for some reason, it is not possible to prove the exact dates of commencement and termination of the absence, but it is possible to show that an absence was at some place other than his place of duty, a charge under S.65 AFA alleging that he was improperly at one place whereas his duty required him to be elsewhere, may be preferred.

16.3 For proof of commencement and termination of absence, see Note 21 to S.38 AFA.

17. Under S.91(a) AFA read with P& A Regs (Officers), an officer automatically forfeits all pay and allowances due to him for every day he absents himself without leave (or overstays the period of his leave) unless a satisfactory explanation has been given to his CO and has been approved by the Central Govt. S.92(a) AFA read with P& A Regs (Airmen), makes such deductions also automatic in the case of airmen; the CO of such absentee can, however remit such penal deduction if the absence does not exceed five days (R.164 (b) AFR).

18. When a person subject to AFA has been absent from his duty without due authority for a period of 30 days, assembly of a court of inquiry is mandatory under S.107 AFA. See also R.155 AFR and para 385 Regs.

19. If at any trial for desertion or absence without leave, over-staying leave or not rejoining when warned for service, the accused states in his defence any sufficient or reasonable cause for his absence and refers in support to any officer in the service of the Govt, it is the duty of the court to address such officer if it appears that such officer may prove or disprove the accused's statement. Failure to comply with this provision may result in annulment of the proceedings. S.142 AFA.

20.1 on conviction of court-martial - For definition of court-martial, see S.4 (xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the

charge under S.82 or 86 AFA is also permissible.

20.2 'such less punishment' - See S.73 AFA for scale of punishments.

20.3 Sentence of imprisonment - See Ss.164, 166 AFA at seq.; R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

No.1

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

S 39(a) at _____ absented himself without leave from _____ (date) till he was apprehended at _____ on _____ by Constable _____, No. of police Station.

No.2

S 39(a) ABSENTING HIMSELF WITHOUT LEAVE

in that he,

at _____ absented himself without leave, from _____ hours on _____ till _____ hours on _____

No.3

ABSENTING HIMSELF WITHOUT LEAVE

S 39(a) **in that he,**

having been routed on posting from _____ (Unit) on _____ (Date) requiring him to report at _____ (Unit) on _____ (Date), did

not so report but absented himself without leave till he surrendered himself at _____ (Unit) on _____ (Date).

No.1

S 39(b) WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM

in that he,

at having been granted leave from _____ to _____ enroute posting to_(Unit) overstayed

the said leave without sufficient cause, until he was apprehended by _____ Cpl _____ of_(Unit) on_(Date).

No.2

S 39 (b) WITHOUT SUFFICIENT CAUSE OVERSTAYING LEAVE GRANTED TO HIM

in that he,

_____ at _____ , on _____ having been granted leave of absence from_to_to proceed to_____ failed without sufficient cause, to rejoin at _____ on _____ on expiry of the said leave.

S 39 (c) BEING ON LEAVE OF ABSENCE AND HAVING RECEIVED INFORMATION FROM PROPER AUTHORITY THAT THE UNIT TO WHICH HE BELONGS HAS BEEN ORDERED ON ACTIVE SERVICE FAILS WITHOUT SUFFICIENT CAUSE TO REJOIN WITHOUT DELAY.

in that he,

on_____, while on leave of absence at_____, having received information from_____ that_____ had been ordered on active service failed, without sufficient cause to rejoin the said _____

without delay.

**S 39(d) WITHOUT SUFFICIENT CAUSE FAILING TO APPEAR AT THE TIME FIXED,
AT THE PARADE**

in that he,

at_(Unit) on_, failed without sufficient cause to appear at_(Time) at_, the place appointed for Commanding Officer's Parade.

**S 39(d) WHEN ON PARADE, QUITTING THE PARADE WITHOUT LEAVE FROM HIS
SUPERIOR OFFICER.**

in that he,

at_____ on _____ when on parade as SNCO I/c of No. 2 Flight of No. 1 Squadron, quit the parade without leave from his superior officer.

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

- (a) uses criminal force to, or assaults his superior officer ; or
- (b) uses threatening language to such officer; or
- (c) uses insubordinate language to such officer;

shall, on conviction by court-martial,

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

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

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

NOTES

1. For statements of offences under this section, see Appendix 'A'. If the offence has been committed when on active service or if the superior officer was in the execution of his office, this fact should be included in the statement of offence. See also S. 138(7) AFA as regards special finding.

2. A minor punishment under Section 82 cannot be awarded for an offence under this section except in accordance with S. 83 AFA. But see also S.83(2) AFA.

3.1 For definition of 'superior officer', see S.4(xxvii) AFA.

3.2 While framing a charge under this section, the name of the superior officer shall be set out in the particulars of the charge.

3.3 The expression 'superior officer' in this section and in S.41 AFA means not only a superior in rank but also a senior in the same grade where that, seniority gives power of command according to the usages of the service, but one aircraftman can never be the 'superior officer' of another. The court should be satisfied, before conviction, that the accused knew the person, with respect to whom the offence was committed, to be a superior officer. Such awareness on the part of the accused is a material ingredient of the offences under this section. If the superior did not wear the insignia of his rank, and was not personally known to

the accused, evidence would be necessary to show that the accused was otherwise aware of his being his superior officer, or had reason to believe him, to be his superior officer. If such evidence is not available, the accused should be charged under Ss. 65 or 71 AFA.

3.4 A court is entitled to rely upon its general service knowledge with regard to the respective seniority of various air force ranks but when the accused and the superior to whom he used the language which is the subject of the charge, are of the same rank evidence must be adduced to prove that the accused was the junior and that he knew it.

3.5 Ordinarily the lower the rank of the superior the less the gravity of the offence.

3.6 It is not an offence under this section to use criminal force, to assault etc, a member of the army or navy even if he is of superior rank except when such member is a 'superior officer' in terms of S.4 (xxvii) AFA. However, in such cases it will be permissible to charge the accused for an offence under S. 71 AFA as applicable.

4.1 The offences under this section are punishable more severely if such superior officer was at the relevant time in the execution of his office or if the offence is committed on active service. Such aggravating circumstances may not be averred in the particulars unless the case warrants severe punishment and it is intended to try the accused by a GCM.

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

4.3 When the accused is charged, with using criminal force to or assaulting his superior officer who is at the time in the execution of his office or if the accused is charged with committing the offence on active service and the court is satisfied that the offence was committed but not on active service or that the superior officer was not then in the execution of his office, he may be found guilty under S. 138 (7) AFA of the same offence as having been committed in circumstances involving a less severe punishment.

5.1 **Clause (a)** - For definition of 'force', 'criminal force' and 'assault', Ss. 349, 350 and 351, IPC. The difference between the offences mentioned in this clause will be clear from the following examples: -

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

has attempted to use criminal force.

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

5.2 An 'assault' is something less than the use of criminal force, the force being cut short before the blow actually falls. An assault is included in every use of criminal force. Mere words do not amount to an assault, but the words which the party threatening uses at the time may give his gestures such a meaning as may make them amount to an assault. For example, when a person draws a bayonet or otherwise makes a show of violence against a superior; but not when he is behind the bars at such a distance as to rule out at the moment any actual use of criminal force.

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

5.4 Provocation is not a ground of acquittal, but tends to mitigate the punishment; evidence of provocation, if tendered, must therefore be admitted. Also see Note 5 to R. 60 AFR.

5.5 As to intoxication as an excuse or defence to a charge under this section, see Note 4 to S. 48, AFA.

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

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

5.8 A person charged with using criminal force may be found guilty of an attempt to use criminal force, or of assault. S. 138(8) and (3) AFA.

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

6.2 Where the charge is for using threatening or insubordinate language the particulars of the charge must state the expression or their substance, and the superior to whom they were addressed. See Note 3 above.

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

6.4 Expressions used of a superior officer and not within his hearing, or which cannot be proved to be used to a superior officer, must be charged as an offence under S. 65 AFA, and not under S. 40 AFA; but the use of threatening or otherwise insubordinate language regarding one superior to (in the sense that it is intended to be heard by) another superior constitutes an offence of using threatening or insubordinate language under S.40 AFA.

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

6.6 All threatening language is insubordinate but the converse is not true. In any case therefore in which it is doubtful if the words used constituted a threat the accused should be charged with using insubordinate language and not with using threatening language. However, when the accused is charged with the offence of threatening language, if the court is satisfied in other respect that an offence under this section has been committed, make a special finding that he was guilty of using insubordinate language. See S. 138(4) AFA.

7.1 **Clause (c)** - Insubordinate language. The words must be used with an insubordinate intent i.e. they must either in themselves, or in the manner or circumstances in which they are spoken, be insulting or disrespectful and in all cases it must reasonably appear that they were intended to be heard by the superior.

7.2 On the other hand, the words themselves need not necessarily be discourteous. If they indicate a deliberate intention to be insubordinate they may properly be regarded as disrespectful of authority although courteously expressed, e.g. an airman who having been given a lawful command which does not require immediate compliance indicates respectfully that he does not intend to comply with the order and is at once placed in arrest may be charged with an offence under this para.

7.3 The use of insulting or disrespectful language regarding a superior to another person, which is and was, intended to be heard by the superior to whom it relates constitutes an offence under this clause. See also Note 6.4 above.

7.4 As to the, use of coarse and abusive language by a person, who is intoxicated, see Note 4.4 to S. 48 AFA.

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

7.6 The use of what is commonly known as 'bad' language need not necessarily give rise to a

charge either under this section or S.65 AFA.

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

8. If any of the offences under clauses (a) or (b) of this section is committed when on active service or when the superior officer is in the execution of his office, the maximum punishment is imprisonment for fourteen years. In other cases the maximum punishment is imprisonment for ten years. For an offence under clause (c), the maximum punishment is imprisonment for five years.

9.1 'on conviction by court-martial' - For definition of 'court-martial', see S.4(xvi) AFA. Disposal of the charge under S.82 or S.86 AFA is also permissible. It is not necessary that in all cases the offender must be tried by a court martial. But see also Note 2 above.

9.2 'such less punishment' - See S.73 AFA for scale of punishments.

9.3 Sentence of imprisonment'- See Ss. 164, 166 'et seq;' R.144 AFR and Seventh Schedule to AFR for committal warrants.

10. 'Provided that' - See Note 5 to S.11 AFA.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

USING CRIMINAL FORCE TO HIS SUPERIOR OFFICER

S 40(a)

in that he,

at _____(Unit) on_(date) used criminal force to Sgt _____ of by hitting him on the head.

S 40(b)

USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER

in that he,

at _____ on_said to MWO _____ MTO, "Your days are numbered. I will break your neck when you come out" or words to that effect.

S 40(c) USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

in that he,

at _____ on _____ when ordered by Sqn Ldr _____ to report to the Station Warrant Officer for a special duty, said to him (Sqn Ldr _____) "I will not go. You may do whatever you like" or words' to that effect.

S 40(c) USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

in that he,

at _____ on _____ said to _____ of the same Unit "You know only how to get drunk every day. You are good for nothing" or words to that effect.

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

S 40(c) in that he,

at _____ on _____, in the morning when told by Fg Offr _____ () Adm, that tea or any refreshment would be provided to him from the DSC Mess only, replied to the said Fg Offr _____ "You are nobody to tell me to take tea from that beggars' Mess" or words to that effect.

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

S 40(c) in that he,

at _____ on _____, when asked by Flt Lt _____ () Adm to leave his office, replied "I am not going and do what ever you like, one more charge cannot make a difference" or words to that effect.

S 40(c) USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

in that he,

at _____ on _____ by pointing to the rank badges of Sqn Ldr _____ () AE(L) said "YE HEI TO KYA BHAGWAN SE BADA HO GAYA" or words to that effect.

41. Disobedience to superior officer: - (1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally or in writing or by signal or otherwise shall, on conviction by court—martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

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

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

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

NOTES

1. For statements of offences under this section, see Appendix 'A'. If the offence has been committed when on active service, or if the superior officer was in the execution of his office, this fact should be included in the statement of offence. See also S. 138(7) AFA as regards special finding.

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

3.1 A command to be lawful must satisfy the following four requirements: -

(a) It must be a specific command to an individual. A command given on the parade to thirty airmen in a flight to come to 'Savdhan' (attention), is an individual command to each of them.

(b) It must be capable of execution by the individual to whom it is addressed.

(c) It must be justified by air force as well as civil law and by usages.

(d) It must relate to air force duty; that is to say, disobedience to it must tend to impede, delay or prevent some air force proceeding.

3.2 It is not necessary to prove that the command was given direct; it is sufficient to show that it was given by a deputy or agent of the person authorised to give it and whom the accused might reasonably suppose was so authorised. It must be a specific command emanating from the person authorised to give it. In such a case evidence of the fact that the person from

whom the command originated told his deputy what command to give may be proved, although the accused was not present at the time, because what has to be proved is the fact that the order originated from a person authorised to give it.

3.3 An accused should not be charged in one charge with disobeying two separate orders as such a charge would be bad for duplicity. R 36(1) AFR.

3.4 If commands are obviously illegal, an inferior would be justified in questioning or even refusing to execute such commands, but as long as the orders of the superior are not obviously and decidedly in opposition to the law of the land or to the air force law or to the usages of the service, so long must they meet with complete and unhesitating obedience. See also para 568 Regs as regards conflicting orders.

3.5 Disobedience of lawful command of captain of an aircraft is an offence under S.64 (a) AFA and should be charged accordingly.

3.6 A serviceman cannot legitimately disobey an order legally given to engage in warlike operation, if otherwise it is lawful merely on the ground that he has turned conscientious objector.

3.7 As regards refusal to take attestation, see Note 3 to S.16 AFA.

3.8 Below are given examples of what are and what are not lawful commands. These examples should not be regarded as constituting hard and fast rules. Circumstances alter cases and it is possible for the same command to be in one instance lawful and in another instance unlawful, according to the attendant circumstances.

(a) Lawful commands:

-In respect of a flying branch officer, if fully fit to fly, ordered to do so. (See also Note 4.3 to S.45)

-To attend the recording of summary of evidence, when the person has been charged with an offence. See *Subhash Chandra v. UOI*.

-To get hair cut.

-To obey a traffic signal or instructions given by a person on traffic control duty (even if of inferior rank).

-To do urgent work of national importance when the Central Govt. have issued appropriate instructions.

-To undertake duties and training in connection with civil defence.

(b) Unlawful commands:

-To sign for pay when not received.

-To take part in private theatricals.

-To undergo an illegal punishment.

4. For definition of superior officer, see S.4 (xxvii) AFA. A superior officer whose command has been restricted, either by the terms of his commission or by regulations, cannot give a lawful command to a person who is, by the terms of such restrictions, placed outside his control.

5.1 Disobedience must relate to the time when the command is to be obeyed. If the command demands a prompt and immediate compliance, the accused will have disobeyed it if he does not comply at once. If the command is one which has to be complied with at some future time, it must be shown that he failed to carry out the command at the proper time even though he had the opportunity of carrying it out.

5.2 Unless the command required immediate compliance, a person who, when he is given the command, says that he would not obey that command may be charged under S.40(c) AFA, but not under S.41 AFA unless he fails to take proper opportunity of carrying out the command.

5.3 Disobedience to an order of a general nature, as for example a standing order, should be charged under S.42(e) AFA and not under S.41 AFA. Disobedience to Regs may be charged under S.65 AFA.

5.4 Religious scruples, however bonafide, afford no justification for disobedience to a lawful command. But see para 571 Regs.

6. Disobedience of a lawful order given by a person who is not a superior officer within the meaning of S.4(xxvii) AFA may be punishable under S.65 AFA if the disobedience was prejudicial to good order and air force discipline; for instance, a civilian cannot give a 'lawful command' under this section to an airman employed under him; but it may well be the airman's duty as such to do the act indicated, and, if so, he may be punished for not doing it under S.65 AFA. The particulars of the charge should clearly show that the disobedience was prejudicial to good order and air force discipline because the accused had been placed under the orders of the civilian by a superior air force authority.

7. The particulars of the charge must set out the name of the superior officer and a charge for disobeying an order given by two different superior officers would be bad for duplicity. R.36(1) AFR.

8.1 **sub-sec (1)** - The essential ingredients of this offence are that the disobedience should show, a wilful defiance of authority and should be disobedience of a lawful command given personally in the execution of his office by a superior officer; in fact, it would ordinarily be such an offence as would fall under S.37 AFA if two or more persons joined in it. In order,

therefore, to convict an accused of an offence under this sub—sec, it must be shown that a lawful command was given by a superior officer; that it was given personally by such officer; that it was given by such officer in the execution of his office; and that the accused disobeyed it, not from any misunderstanding or slowness, but so as to show a wilful defiance of such superior officer's authority.

8.2 The disobedience must be wilful and deliberate, and distinguished from disobedience arising from forgetfulness or misapprehension (which might, however, be punishable under S.65 AFA). It is not disobedience in the sense of this section if an airman declines to sign his accounts on the grounds that they are incorrect; nor his failure to obey a command where obedience would be physically impossible.

8.3 In the execution of his office see Notes 4.1 and 4.2 to S.40AFA.

8.4 A court trying an accused for an offence under this sub-sec could, if it was not satisfied that the order was given in the execution of the superior's office, find the accused guilty of an offence under sub—sec (2) provided that the court is satisfied that in all other respects an offence under this sub-sec had been committed See S.138 (7) AFA.

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

10. For definition of active service, sec S.4 (i) AFA.

11.1 on conviction by court-martial - For definition of court-martial, see S.4(xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.

11.2 'Such less punishment' - See S.73 AFA for scale of punishment.

11.3 Sentence of imprisonment - See Ss. 164, 166 et seq; R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

S **DISOBEYING, IN SUCH MANNER AS TO SHOW WILFUL DEFIANCE OF**
41(1) **AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR**
 OFFICER IN THE EXECUTION OF HIS OFFICE

in that he,

at____on_____when personally ordered by Flt Lt _____to come to 'Savdhan',
did not do so, divesting himself at the same time of his belt and saying "I will serve
no more, you do what you please" or words to that effect.

No.1

S **DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER**
41(2)

in that he,

at_____on_____when ordered by_MWO _____to leave the parade ground,
did not do so.

No.2

S **DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER**
41(2)

in that he,

at_____on_____when ordered by No._____ Rank _____Name
_____of the same Unit to eat his food, did not do so.

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

- (a) being concerned in any quarrel, affray or disorder, refused to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or
- (b) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or
- (c) resists an escort whose duty it is to apprehend him or to have him in charge; or
- (d) breaks out of barracks, camp or quarters; or
- (e) neglects to obey any general, local or other order; or
- (f) impedes the provost—marshal or any person lawfully acting on his behalf or, when called upon, refused to assist in the execution of his duty a provost—marshal or any person lawfully acting on his behalf; or
- (g) uses criminal force to or assaults any person bringing provisions or supplies to the forces;

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.
2. A minor punishment under S.82 cannot be awarded for an offence under clause (f) or clause (g) of this section except in accordance with S.83 AFA. But see also S.83 (2) AFA.
3. For definition of affray, criminal force and assault, see Ss. 159, 349, 351, IPC.
- 4.1 **Clause (a)** - An affray differs from assault in that the former cannot be committed in a private place whereas the latter may take place anywhere; further an affray is an offence against the public peace while an assault is an offence against the person of an individual.
- 4.2 A person may be charged under this clause whether the officer who ordered him into

arrest was of inferior or superior rank, but where the officer was of superior rank, the offender may be charged under Ss. 40 or 41 AFA. Ordinarily only officers should be charged under this clause.

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

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

5.2 Custody as referred in this clause and in S.51 AFA is not restricted to the air force custody alone.

5.3 For definition of 'superior officer', see S.4(xxvii)AFA.

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

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

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

7.3 Camp - See Note 13.4 to S. 34 AFA.

8.1 **Clause (e)** - The orders specified in this clause mean standing orders or orders having a continuous operation or applicable continuously over a period of time to all officers, WOs and airmen present in a certain geographical area, such as Command, Station, Wing, Depot, Unit etc. Disobedience of a specific order in the nature of a command should be dealt with under S.41 AFA and non-compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under S.65 AFA.

8.2 Ignorance of the order is no excuse, if the order is one which the accused ought in the ordinary course to know. But a misapprehension reasonably arising from want of clarity in the order is a ground for exculpation. The existence of the orders and the fact of the neglect must be proved. The order contravened, or a certified copy where such copy is admissible under S.14I (4) AFA must be produced on oath to the court and the court will make a record in the proceedings of its having been so produced. A written order cannot be proved by oral testimony. Evidence must also be given to show that the order was duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents. Disobedience of Regs may be punished under S.65 AFA but if the Regs is published as an AFO, Station Standing Order or Station/Unit Routine Order, it acquires the character of a general, local or other order, and disobedience to it may be punished under this clause.

8.3 Every order emanating from Air HQ can be deemed to be an order issued by the CAS even though it has not been signed by him. An AFO directing AF personnel to wear crash helmet when riding two wheeled motor vehicles, even though such personnel may not be proceeding on duty is not invalid. See **GN Raju v OC, 48 Sqn**. So also specific order directing a railway servant to vacate premises in unauthorised occupation, being beyond the permissible period, was held to be valid order for purposes of disciplinary proceedings, in **Kapildeo Ojha v UOI**.

8.4 Concealment of venereal disease is to be dealt with under this clause if standing orders to that effect have been published that a person subject to AFA who is suffering from such disease must report sick without delay. Also see para 577 Regs.

8.5 A lawful order prohibiting persons subject to AFA from carrying lethal weapons within the camp, if disobeyed may be charged under this clause.

9.1 **Clause (f)** - For definition of 'provost-marshal', see S.4(xxv) A FA.

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

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

9.4 See also Note 2 above.

10.1 **Clause (g)** - For definition of 'the Forces' see S.4(xix) AFA.

10.2 See also Note 2 above 'on conviction by court-marshal' - For definition of 'court-martial',

see S.4(xvi) AFA. Disposal of the charge under S.82 or S.86 AFA is also permissible. It is not necessary that in all cases the offender must be tried by a court martial. But see also Note 2 above.

11.2 The maximum punishment in the case of offences specified in clauses (d) and (e) is 2 years. In other cases, it is 10 years.

11.3 'Such less punishment' - See S.73 AFA for scale of punishments.

11.4 Sentence of imprisonment - See Ss. 164, 166 et seq and R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

S 42(b) USING CRIMINAL FORCE TO A PERSON IN WHOSE CUSTODY HE IS LAWFULLY PLACED

in that he,

at _____, on _____, struck on the head of civil police constable No. _____ Name _____ of _____ Police Station, in whose custody he was lawfully placed.

No.1

S 42(e) NEGLECTING TO OBEY A LOCAL ORDER

in that he,

at _____, on _____, consumed liquor in his billet No. _____ contrary to para _____ of Appendix 'C' to Station Standing Orders of (Unit) issued on_(date).

No.2

S 42(e) NEGLECTING TO OBEY A GENERAL ORDER

in that he,

at _____, on _____, neglected to obey para _____ of Air Force Order dated _____ which required all IAF personnel to wear crash helmet whenever riding on driver's seat of a motor cycle, being a two—wheeled motorized conveyance.

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

(a) without having obtained a regular discharge from the Air Force or otherwise fulfilled the conditions enabling him to enroll or enter, enrolls himself in, or enters the said force or any part of the military or the naval forces of India; or

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

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

NOTES

1. For statements of offences under this section see Appendix 'A'. Also see para 698 Regs.
2. A minor punishment under S.82 cannot be awarded for an offence under this section except in accordance with S.83 AFA. But see also S.83(2) AFA.
- 3.1 The limitation of time for the commencement of trial stipulated in S.121(2) AFA does not apply to the offence under, this section. However in the case of desertion not on active service, where the accused is not an officer the limitation period of 3 years will apply if subsequently to the commission of the offence, the accused has served continuously in an exemplary manner for not less than 3 years with any portion of the Air Force. See S.121(2) & (4) AFA. In computing the period of time for limitation, see also S.121(3) AFA. For purposes of S.121 AFA an airman will be considered as having served in an exemplary manner, if he has not had any red ink entry in his conduct sheet for a continuous period of 3 years subsequent to the commission of the offence. See para 725 Regs. For list of red ink entry see para 1054 Regs.
- 3.2 An offence under this section committed by a person subject to AFA will be punishable even after he ceases to be subject to the Act. The ban under S.122 AFA does not apply. See S.122(3) AFA.
- 4.1 **Clause (a)** - For definition of 'Air Force', see S.4(iv) AFA.
- 4.2 This clause does not deal with the case of a sailor or OR of the Navy/Army who enrolls or enters the Air Force but covers the converse case of a person subject to AFA enrolling in the Army or Navy. Sailors or ORs of the Navy/Army who enroll in any portion of the Air Force should be dealt with under S.44 AFA.
- 4.3 As to forfeiture of service towards pension or gratuity on conviction for this offence, see P

and A Regs. and Pension Regs, where the conditions under which service so forfeited may be restored are also laid down.

4.4 Proof of fraudulent enrolment may be given either orally by a witness who was present when the accused was enrolled on the second enrolment; or by production by a witness, who can identify on oath the accused as the person named therein, of the original enrolment paper or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper in terms of S.140 (2) AFA.

4.5 For definition of 'Air Force', see S.4 (iv) AFA.

5.1 **Clause (b)** - For definition of 'the Forces', see S.4 (xix) AFA.

5.2 'so circumstanced' - The term implies that where he is subject to AFA, so that he is guilty of fraudulent enrolment under S.43 (a) AFA, or where, having previously served, he again enrolls without declaring the circumstances of his previous service, so that he commits an offence under S.44 AFA.

6.1 'on conviction by a court-martial' - For definition of 'court martial', see S.4(xvi) AFA. Disposal of the charge under S.82 or S.86 AFA is also permissible. It is not necessary that in all cases the offender must be tried by a court martial. But see also Note 2 above.

6.2 'such less punishment' - See S.73 AFA for scale of punishments.

6.3 Sentence of imprisonment - See Ss. 164, 166 et 'seq and R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

S 43(a) WITHOUT HAVING FULFILLED THE CONDITIONS ENABLING HIM TO ENROLL, ENROLLING HIMSELF IN A PART OF THE MILITARY FORCES OF INDIA

in that he,

at _____, on _____, when belonging to the regular air force, without having fulfilled the conditions enabling him to enroll, enrolled into the military forces of India for service with _____ Regiment.

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.
2. 'having become subject' it will be observed that the wording of this section differs from the wording of the other penal sections. This is essential since at the time the offence 'under this section is committed the person is not actually subject to AFA; as he does not become so subject until he has signed the enrolment paper (S.14 AFA). See also Note 5 to S.34 AFA.
3. A person charged with "fraudulent enrolment" under S.43(a) AFA should not be charged under this section with 'false answer' made on the occasion of such enrolment.
4. A person who knowingly makes a false answer to a question contained in the enrolment form is not subject to air force law at the time when he makes the false answer and he only becomes liable to be charged under this section if he subsequently becomes subject to air force law and remains 'so subject. He can however be charged in the civil courts for an offence under Chap XI, IPC, as appropriate, irrespective of whether he is subject to air force law or not.
5. The falsity of the answer must be proved in accordance with the normal rules of evidence or by the production of a document made admissible by Ss. 140 and 141 AFA by a witness who can state that such document relates to the accused. Thus:
 - (a) If the answer alleged to be false was that the accused had not previously served in the air force, the fact that he had so served may be proved by a witness producing the accused's record of service or a true copy thereof under S.141(1) AFA or stating that the accused is the person named in the document which he produces.
 - (b) If the answer alleged to be false was that the accused had not been previously convicted, his previous conviction may be proved by a witness producing a certificate under S.141(3) or (4) AFA stating that it relates to the accused.
 - (c) If the answer alleged to be false was that the accused had not previously served in the Army, the fact that he had previously served in it may be proved by a witness producing a letter or other document in accordance with the S.139 AFA or the accused's record of service in the Army or a copy thereof in accordance with Ss. 139 or 141(2) AFA and stating that the document which he produces relates to the accused.

(d) If the answer alleged to be false was that the accused had not previously served in the Navy, the fact that he had previously served in it may be proved by a witness producing a letter in accordance with S.139 AFA or someone authorised by them and stating that the letter which he produces relates to the accused.

(e) If the answer alleged to be false related to the accused's age, his correct age may be proved by a witness producing the accused's birth certificate and identifying the accused as the person named therein.

6. The answer must be wilfully false. For meaning of 'wilfully', see Note 4.1 to S.35 AFA.

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

8. Enrolling Officer - see R.7 AFR.

9. For prescribed form of enrolment - See First Schedule to AFR.

10.1 'on conviction by court-martial' - For definition of court martial, see S.4(xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under 'S.82 or 86 AFA is also permissible.

10.2 'Such less punishment' - See S.73 AFA for scale of punishments.

10.3 Sentence of imprisonment - See Ss. 164, 166 AFA et seq; R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

S 44 MAKING AT THE TIME OF ENROLMENT, A WILFULLY FALSE ANSWER TO A QUESTION SET FORTH IN THE PRESCRIBED FORM OF ENROLMENT WHICH WAS PUT TO HIM BY THE ENROLLING OFFICER BEFORE WHOM HE APPEARED FOR THE PURPOSE OF BEING ENROLLED

in that he,

at____,on____, when he appeared before Sqn Ldr_____ an Enrolling Officer, for the purpose of being enrolled as an airman in the regular air force, in reply to question No._____ contained in the enrolment form put to him by the said officer, stated in reply that he was unmarried, well knowing that he was already married.

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.
2. Only Officers and Warrant Officers may be charged under this section. Even where the alleged misconduct amounted to an offence under this section or any other section of AFA and, hence triable by a court martial, even then it is proper for taking action for administrative dismissal/removal under S.19 AFA. See Note 2.2 to S. 19 AFA.
3. For definition of 'Officer' and 'Warrant Officer', see S.4(xxiii) and (xxix) AFA.
4. 1 The offence under this section must be distinguished from the offence of disgraceful conduct of a cruel, indecent or unnatural kind under S.46(a) AFA. As a rule a charge should not be preferred under this section where such behaviour amounts to a specific offence under any other section of AFA. The conduct is not brought within the scope of this section by merely applying to it the statutory language; and a court is not warranted in convicting unless of the opinion that the conduct proved was unbecoming of the accused's position and the character expected of him as an officer or WO, having regard to its nature and to the circumstances in which it took place.

4.2 The words used in this section import such behaviour of action either of a service or social character which dishonours and disgraces the individual as an officer or warrant officer and seriously compromises his character; or such behaviour or action in an unofficial or private capacity which, in dishonouring or disgracing the individual's character personally, seriously compromises his standing as an officer or warrant officer.

4.3 The behaviour of a military character from an officer would include readiness to do one's duty under all circumstances with mental robustness and strength of will, combatible with the ethics of courageous fighting men of armed forces. For instance when an officer of flying branch is fully fit for the performance of his duties,' particularly flying duties to evade the same due to fear psychosis of or by making false statements would be unbecoming of the behaviour expected from the position and character of a combatant officer and would thus be punishable under this Section.

4.4 Where behaviour complained of is not punishable under this section, a charge may lie under S.65 AFA, ii such conduct is 'prejudicial both to good order and air force discipline.
5. There can be no attempt to commit this offence as unbecoming conduct would include the

act as well as an attempt to do such act.

6.1 'On conviction by court-martial' - For definition of court- martial, see S.4(xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial.

Disposal of the charge under S.82 or 86 AFA is also permissible.

6.2 The maximum punishment for an offence under this section is cashiering in the case of officers and in the case of WOs it is dismissal from the service. Cashiering can be awarded only to officers.

6.3 'Such less punishment' See S.73 AFA for scale of punishments.

6.4 Sentence of imprisonment See Ss. 164, 166 AFA et seq; R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

BEHAVING IN A MANNER UNBECOMING THE POSITION AND THE CHARACTER OF AN OFFICER

S 45

in that he,

at _____, on _____, at a formal social function in the Raj Bhavan, when in uniform, used offensive language to Smt. _____ wife of Shri _____ Member of Parliament and behaved in a riotous manner.

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

- (a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or
- (b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or
- (c) with intent to render himself or any other person unfit for service voluntarily causes hurt to himself or that person;

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.

2.1 **Clause (a)** - Indecent conduct which amounts to a civil offence should invariably be charged as such.

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

2.3 indecent - means offensive to common propriety, offending against modesty or decency grossly vulgar or obscene.

2.4 unnatural - means such disgraceful conduct as involves behaviour against the order of nature e.g., sodomy, bestiality, etc.

2.5 In the absence of any evidence of a definite act of indecency or attempted indecency, mere words that an indecent or unnatural act was committed are not sufficient to constitute an offence under this clause, even though a charge may probably lie under S.65 AFA.

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

2.7 In some cases the conduct of the accused may equally well be described as indecent or unnatural. In such cases the prosecution must elect with which type of conduct they will

charge him. Normally indecent or unnatural conduct between human beings should be charged as disgraceful conduct of an indecent kind; and indecent or unnatural conduct by a human being with an animal as disgraceful conduct of an unnatural kind.

2.8 To allege in a charge under this clause conduct of an indecent and unnatural kind would be bad for duplicity, since they are two separate offences. See R.36 AFR.

2.9 There can be no attempt to commit this offence. See Note 5 to S.45 AFA.

3.1 **Clause (b)** - to malingering is to pretend illness or infirmity which does not exist, in order to escape duty.

3.2 To feign disease or infirmity means that the accused person exhibits appearances resembling the genuine symptoms of disease or infirmity which to his knowledge are not due to such disease or infirmity but have been produced artificially for purposes of deceit.

3.3 Producing disease means wilfully to cause genuine disease to develop, e.g. by wilfully injecting microbes or taking poisonous drugs.

3.4 Similarly a person who refuses to undergo a surgical operation or to be inoculated or vaccinated does not incur any liability under this clause or S.41 AFA as any puncturing or cutting of the skin, mucous membrane or tissues amounts to a surgical operation; nor can he be punished for refusing to allow anaesthetize to be administered.

3.5 'intentionally' - In a case under this clause and clause (c), evidence must be given of the intent required therein but it would be sufficient to raise a presumption of that intention if the act in question was shown to have been done wilfully and not accidentally. See also Note 8.1 to S.34 AFA.

4.1 **Clause (c)** - intent see Note 3.5 above. It is usual to prefer an alternative charge under S.65 AFA to a charge under this clause alleging that the accused improperly or negligently rendered himself temporarily unfit for duty.

4.2 'any other person' in this clause means any other person subject to AFA and not a civilian.

4.3 'voluntarily causing hurt' - see Ss.319 and 321, IPC

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

5.1 'on conviction by court-martial' - For definition of court martial, see S.4(xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.

5.2 'such less punishment' - See S.73 AFA for scale of punishments

5.3 Sentence of imprisonment - See Ss.164, 166 AFA et seq; R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

S DISGRACEFUL CONDUCT OF AN INDECENT KIND
46(a)

in that he,

at _____ on _____, committed sodomy with LAC _____
of _____ .

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.
2. A minor punishment under S.82 cannot be awarded for an offence under this section except in accordance with S.83 AFA. But see also S.83 (2) AFA.
3. An airman other than a WO or NCO cannot be charged under this section.
4. For definition of 'officer', 'warrant officer' and 'non-commissioned officer', see S.4 (xxiii), (xxix) and (xx) AFA.
5. For definition of 'force' and 'criminal force' see Ss.349 and 350 IPC.
6. Using criminal force or ill-treatment provided for by this section need not necessarily be consequent on or connected with the superior status of the accused. The only essentials necessary to constitute an offence under this section, are
 - (a) that the accused used criminal force to or ill-treated a person subject to AFA subordinate to him in rank or position; and
 - (b) that the accused was acquainted with the identity of the person against whom he used criminal force or whom he ill-treated.
7. It is not an offence under this section for one NCO to use criminal force or to ill-treat another who is not his superior in rank or position. Where two NCOs of equal rank are concerned, evidence must be led to prove that the person against whom criminal force was used was junior to the accused. Where the two are of equal seniority or where one airman strikes another, the charge should be laid under S. 65 or S.71 AFA.
8. otherwise ill-treats - means ill - treats otherwise than by criminal force.
9. Where the person against whom criminal force is alleged to be used is a sentry, the charge should be preferred under S.36 (a) AFA and not under this section.
10. Before a person can be convicted of the offence it must be shown that he knew or ought to have known or had reason to believe the victim was of inferior rank or less seniority. If it is not possible to do this, a charge should be preferred under S. 65 or S.71 according to the circumstances.

11. As regards treatment of subordinates see para 566 Regs.

12. An accused charged under this section with using criminal force may be convicted of an attempt to use criminal force or assault under S.138(3) and (8) AFA.

13.1 'on conviction by court-martial - For definition of 'court-martial', see S.4 (xvi)

AFA. Disposal of the charge under S.82 or S.86 AFA is also permissible. It is not necessary that in all cases the offender must be tried by a court martial. But see also Note 2 above.

13.2 'such less punishment" See S. 73 AFA for scale of punishments.

13.3 Sentence of imprisonment - See Ss. 164, 166 et seq and R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

S 47 USING CRIMINAL FORCE TO A PERSON SUBJECT TO THE AIR FORCE ACT, 1950, BEING HIS SUBORDINATE IN RANK

in that he,

at _____, on _____, used criminal force to _____
NC(E) _____ by hitting him.

48. Intoxication. — (1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by court—martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and if he is not an officer, be liable, subject to the provisions of sub—section (2), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

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

NOTES

1. For statements of offences under this section, see Appendix 'A', if the offence has been committed when on active service or on duty, this fact should be included in the statement of offence. See S. 138(7) AFA as regards special finding.

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

3. Intoxication will be regarded as having the ordinary meaning attached to it in civil life. The fact that an offender is capable or incapable of performing his duty is not a decisive or exclusive test of drunkenness or sobriety. It is however one of the tests which should be applied by the court.

4.1 State of Intoxication - A person will be guilty of being found in such a state of intoxication as is contemplated in S.48 AFA if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit for or to be entrusted with his duty or any duty which he knew that he was likely to be called upon to perform, or behaves in a disorderly manner or in any manner likely to bring discredit to his service.

4.2 Medical examination is not always necessary, but evidence must be tendered to show that the intoxication was sufficient as to impair the rational and full exercise of the mental and physical faculties of the accused; that he was unfit for or to be entrusted with duty.

4.3 A witness who states in evidence that the accused was drunk should state his reasons for saying so. An airman suspected of being drunk should not be put through any drill or test for the purpose of ascertaining his condition. If, however a doctor has examined such an airman

for the purpose of ascertaining his condition, he may be called in the same way as any other witness to describe what he saw when the airman was brought before him and to state whether in his opinion, based on what he saw, the airman was drunk.

4.4 Nothing can justify an airman striking or offering violence to a superior, and great care should therefore be taken to avoid bringing drunken airmen in contact with their superiors. Mere abusive, and violent Language used by a drunk man, as the result of being taken into custody, should not be used a ground for framing a charge of using threatening or insubordinate language to a superior officer. Where, however, an airman under the influence of drink strikes a superior officer or is guilty of any other offence, it is the duty of the convening officer to consider carefully, according to the circumstances, whether it is necessary to charge the more serious offence.

4.5 See also paras 648 and 573 Regs.

5. Persons should not be charged jointly with the offence created by this Section.

6. For definition of 'officer', and 'active service', see S.4 (xxiii) and (i) AFA.

7.1 'on conviction by court-martial' - For definition of court-martial, see S.4 (xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.

7.2 'such less punishment' See S.73 AFA for scale of punishments.

7.3 Where the accused is an officer, the maximum punishment is cashiering, irrespective of whether he was on active service, on duty or not.

7.4 Sentence of imprisonment See Ss. 164, 166 AFA et seq R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

S 48 INTOXICATION

in that he,

at _____, on _____, was found in a state of
intoxication.

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

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

(b) wilfully or without reasonable, excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard

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

NOTES

1. For statements of offences under this section, see' Appendix 'A'. If the offence is committed wilfully this fact should be stated in the statement of offences.

2. For meaning of terms of 'guard', 'patrol' and 'post', see Notes 7.4, 14.3 and 7.3 to S. 34 AFA.

3. 'without proper authority' - These words are in the nature of an exception and it will rest on the accused, to show that he had the proper authority. The court may use their general air force knowledge with respect to whether any authority alleged by the accused to exist was or was not sufficient,

4. ' wilfully, i.e., deliberately' - It is wilful if it is done or made by a person with the intention of allowing the escape of a person committed to his charge or whom it is his duty to guard or keep.

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

4.3 If the charge is one of wilfully committing the offence, the court may, if it is not satisfied that the act was wilful, make a special finding under S. 138 (7) AFA that the accused acted without reasonable excuse.

5. any person committed to his charge, etc - The person committed to the accused's charge or whom it is the duty to guard need not be subject to air force law.

6. What constitutes 'escape' is 'a question of fact; but before a prisoner can be said to have

escaped it must be shown that he was out of the control and reach of his escort.

7. When an escort consists of a NCO and an airman, and the NCO wilfully allows the prisoner whom they are escorting to escape, the airman will also be guilty of an offence under sub-sec. (1) if he was a party to what the NCO did.

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

9.1 'on conviction by court-martial' For definition 'of court-martial, see S. 4(xvi) AFA. It is not necessary that in all cases 'the offender must be tried by a court-martial. Disposal of the charge under S. 82 or 86 AFA is also permissible.

9.2 'such less punishment' See S.73 AFA for scale of punishments,

9.3 If the offender acted wilfully, the maximum punishment is imprisonment for 14 years; in other cases it is two years.

9.4 Sentence of imprisonment See, Ss. 164, 166 AFA; et seq; R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

S 49(b) WITHOUT REASONABLE EXCUSE ALLOWING TO ESCAPE A PERSON COMMITTED TO HIS CHARGE

in that he,

at _____, on _____, when posted as sentry over _____
AC _____, an airman under close arrest, without reasonable excuse
allowed the said AC _____ to escape.

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

(a) unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation

(b) having committed a person to air force custody fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within forty—eight hours thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged;

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

NOTES

1. For statements of offences under this section see Appendix 'A'.

2. R. 22 AFR prohibits an accused not on active service being detained in air force custody pending trial (which includes open arrest) for longer than sixty days without the sanction of the CAS and for a period longer than 90 days' without the approval of the Central Government.

3. There is no specific duty in law to release an accused from close arrest and this section is not intended to fetter a CO's discretion in the matter. However the CO has a

duty to release without delay a person once he has decided to take no further disciplinary action against him.

4. **Clause (a)** In support of a charge laid under this clause for either of the offences therein created the prosecutor will have to prove the facts which either show or enable the court to infer that the accused could have brought the person under arrest or in confinement, to trial or brought his case before the proper authority for investigation. If these are proved the court may infer that it was unnecessary to keep the person in question in custody in the absence of an explanation by the accused. As to "the proper authority" see generally R.2 (d) AFR. See also para 650 Regs.

5.1 **Clause (b)** For definition of 'air force custody', 'officer' and 'offence', see S.4(vi), (xxiii), (xxii) AFA.

5.2 If it is practicable to deliver the report at the time of committal, the offence is technically complete if it is not delivered then; since it would be difficult to prove it could have been delivered at the time of committal, and unless there is some special reason for taking

immediate action in the matter or the interests of discipline require that the accused should be charged with not delivering the report at the time of committal, it is safer to allow the full 48 hours to elapse before taking any action against the accused.

5.3 The report referred to in this clause must be delivered to the person into whose custody the person arrested is committed.

5.4 The report is not required to be in any particular form. It shall be in writing and signed by the person making it.

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

6. As regards powers of arrest, delay' reports and ancillary matters, see Ss. 102 to S. 106 AFA, R.23 AFR and para 381-388 Regs.

7.1 'on conviction by court-martial'- For definition of court-martial, see S.4(xvi) AFA. it is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.

7.2 'such less punishment' See S. 73 AFA for scale of punishments.

7.3 Sentence of imprisonment See Ss. 164, 166 AFA et seq R. 144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

S 50(b) FAILING TO REPORT THE OFFENCE FOR WHICH A PERSON HAS BEEN PLACED IN CUSTODY, CONTRARY TO SECTION 50 (b) OF THE AIR FORCE ACT, 1950.

in that he,

at _____, on _____, having committed ____AC _____ into the custody of _____ Sgt _____ failed without reasonable cause to deliver within 48 hours of the committal to the said Sgt a report in writing signed by him (the accused) of the offence which the said airman was alleged to have committed.

51. Escape from Custody Any person subject to this Act who, being in lawful custody, escapes or attempts to escape, shall, on conviction by court martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

NOTES

1. For statements of offences under this section, see Appendix 'A'.

2.1 The term 'lawful custody' in this section means not only air force custody as defined in S.4(v) AFA but any lawful custody; so that a person 'subject to AFA may be convicted under this section when escaping or attempting to escape from a police officer who has under S. 106(2) AFA arrested him as a suspected deserter. Similarly

when a person is held by the Provost Marshal or a person legally exercising authority under him or on his behalf under S. 108 AFA, he may be charged with an offence under this section.

2.2 As air force custody includes open arrest, a person escaping or attempting to escape while in open arrest could be charged under this section.

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

2.4 Confinement to the camp is not lawful custody for the purposes of this section.

3. escapes - What constitutes an escape is a question of fact, but before a prisoner can be said to have escaped it must be shown that he was out of the control and reach of his escort. If a person breaks away from an escort but does not get away he may be charged with attempting to escape. Attempt to escape is a substantive offence under this section.

4. A person who escapes and who then remains absent without leave, or deserts, may be charged under this section in addition to being charged with absence without leave (S.39 (a) AFA), or desertion (S.38 AFA), as the case may be. The absence or desertion and the escaping from custody should be made the subject of separate charges.

5.1 on conviction by court-martial' For definition of court-martial see S.4(xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.

5.2 'such less punishment' See S.73 AFA for scale of punishments.

5.3 Sentence of imprisonment See Ss. 164, 166 AFA et seq; R.144 AFR and Seventh

Schedule to APR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

No.1

S 51 BEING IN LAWFUL CUSTODY, ESCAPING

in that he,

at _____, on _____, when proceeding under escort from _____ to _____, broke away from the said escort and escaped.

No.2

S 51 BEING IN LAWFUL CUSTODY, ESCAPING

in that he,

at _____, on _____, being in lawful air force custody at the Main Guard Room of _____, escaped.

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

- (a) commits theft of any property belonging to the Government or to any military, naval or air force mess, band or institution, or to any person subject to military naval or air force law ; or
- (b) dishonestly misappropriates or converts to his own use any such property ; or
- (c) commits criminal breach of trust in respect of any such property; or
- (d) dishonestly receives or retains any such property in respect of which any of the offences under Cls. (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence ; or
- (e) willfully destroys or injures any property of the Government entrusted to him; or
- (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person;

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

NOTES

1. For statements, of offence under this section, see Appendix 'A'.
 2. A minor punishment under S.82 AFA cannot be awarded for an offence under this section except in accordance with S.83 AFA. But see also S.83(2) AFA.
 3. A person charged before a court-martial with any one of the of fences specified in clauses (a), (b), (c) and (d) of this section may be found guilty of any other of those offences with which he might have been charged. S. 138(5) AFA.
- 4.1 **Clause (a)** - For definition of theft, see S. 378,IPC.
- 4.2 One of the essential ingredients of the offence of theft is that the property must be taken out of the possession of another person. It is not necessary that the property should have been owned by such person. When a person has the 'physical' or 'constructive' possession of property, dishonest removal of the same from the possession of such person without his consent constitutes theft.

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

4.4 If the stolen property has been recovered, it should be produced in court and identified by its owner and by any other witnesses who mention it in their evidence. If it has not been recovered its value or approximate value should be entered in the particulars of the charge and proved in evidence' so that the court, if it convicts the accused, may add an award of stoppages to its sentence. Where an offender is sentenced by court-martial to be placed under stoppages in respect of any property stolen, etc., by him, due allowance must be made, in enforcing such stoppages for money, or the value of any property found upon him and appropriated by way of restitution under S. 150 AFA.

4.5 any property - means any moveable property. For definition of moveable property, see S. 22, IPC. It should be borne in mind when considering the question of theft of service stores by finding that though they may be useless for the purpose for which they were intended they could be converted into salvage and that it is therefore much more difficult to draw the inference that they have been abandoned than it is in the case of civilian property. However, a person who honestly believed that the stores which he had taken had been abandoned would have had no intention to deprive the owner of them and would thus have a defence to a charge of theft, however mistaken he might have been as to abandoned property.

4.6 Possession See S. 27, IPC.

4.7 If the property belongs to some person or institution not included in the categories contained in this clause, the accused can only be charged under Ss. 71 or 52 (f) AFA or dealt with by the civil power.

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

4.9 Stealing from a person subject to air force law is regarded as a particularly disgraceful air force offence, considering that in the daily routine of barrack life, persons must constantly leave exposed their uniform and equipment as well as their private property, such as money, watches, etc., trusting to the honour of their comrades. Theft from a comrade should, unless there are peculiarly complicated circumstances, be dealt with by court-martial in preference to trial by the civil power; when there is no evidence of theft and an airman is charged with improper possession of a comrade's property, the charge will be laid under S. 65 AFA See para 694 Regs.

5.1 Clause (b) - For civil offence of criminal misappropriation, see S. 403, IPC. For definition of 'dishonestly', see S. 24, IPC. Also see S.23, IPC.

5.2 'any property' See Note 4.5 above.

5.3 'to misappropriate' means to set apart for, or to assign to the wrong person or a wrong use.

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

5.5 A mere error or irregularity in accounts or a mistaken misapplication of property does not by itself constitute an offence under this clause. There must be an intent to defraud on the part of the accused either for the benefit of himself or some other person. For example, a NCO in charge of an account, through neglect or carelessness gets the account into confusion with the result that some of the funds are lost, is not guilty of an offence under this clause. Neglect or failure to supervise that the account is maintained strictly according to service regulations frequently leads to loss of funds and property, and also exposes the subordinates to 'grave temptation in relation to their accounts.

5.6 To secure a conviction on a charge under this clause it is not necessary for the prosecution to prove that the accused intended permanently to deprive the Public Funds or other owner of the property, provided the court is satisfied that the accused or some other person benefited and that the owner of the property suffered. In other words, a person may still be guilty of the offence, even though he has repaid the money which he had misappropriated provided that at the time of such misappropriation he had 'a dishonest intent. The term dishonest misappropriation includes temporary as well as permanent misappropriation of that description. See Explanation 1 to S. 403, IPC.

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

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

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

6.1 **Clause (c)** - For definition of criminal breach of trust, see S. 405, IPC.

6.2 To constitute an offence under this clause, there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or

management of the property in respect of which the breach of trust is charged. There must be an entrustment which, in its most general significance, imports a handing over the possession for some purpose which may not imply the conferring of any proprietary right at all.

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

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

7.1 **Clause (d)** - 'dishonestly' See Ss. 23 and 24, IPC.

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

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

8.1 **Clause (e)** - wilfully destroys or injures - See Note 4.1 to S. 34 AFA A charge for destroying or injuring the property here mentioned must be laid under this clause and not under S. 71 AFA. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury appears to be the result of neglect. It will be for the court to determine whether the neglect was wilful and intended to injure the property, or was mere carelessness. In the latter case no offence under this clause would be committed.

8.2 'any property' See Note 4.5 above.

8.3 'entrusted' See Note 6.3 above.

9.1 **Clause (f)** - 'does any other thing' An act or omission which would fall under any other clause or any other section of A FA should not be made the subject matter of a charge under this clause. But in doubtful cases, the charge should be laid under this clause.

9.2 'With intent to defraud' - A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. S.25 IPC.

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

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

9.5 When it is material to prove an intent to defraud, evidence may be given of similar offences committed earlier by the accused.

9.6 Wrongful loss or wrongful gain See S.23, IPC.

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

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

10.1 'on conviction by court-martial' - For definition of 'court martial', see S.4(xvi) AFA Disposal of the charge under S.82 or S.86 AFA is also permissible. It is not necessary

that in all cases the offender must be tried by a court martial. But see also Note 2 above.

10.2 'such less punishment' See S.73 A FA for scale of punishments.

10.3 Sentence of imprisonment See S. 164, 166 AFA, et seq and R. 144 AFR. See Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

No.1

S 52(a) COMMITTING THEFT OF PROPERTY BELONGING TO THE GOVERNMENT

in that he,

at _____, on _____, committed theft of one typewriter, make Remington Rand, No. _____ the property belonging to the Government.

No.2

S 52(a) COMMITTING THEFT OF PROPERTY BELONGING TO A PERSON SUBJECT TO AIR FORCE LAW

in that he,

at _____, on _____, committed theft of a bicycle, make No _____, belonging to _____ AC _____ of _____, a person subject to air force law.

S 52(b) DISHONESTLY MISAPPROPRIATING PROPERTY BELONGING TO THE GOVERNMENT

in that he,

at _____, between _____ (date) and _____ (date), dishonestly misappropriated the undermentioned items of service clothing items, the property of the Government, of which he

was in charge as NCO i/c Clothing Stores, in the logistics Section of _____, Air Force.

(i) x x x x x x x (Value)

(ii) x x x x x x x (Value)

(iii) xxxxxxxxx (Value)

No.1

S 52 (c) COMMITTING CRIMINAL BREACH OF TRUST IN RESPECT OF PROPERTY BELONGING TO THE GOVERNMENT.

in that he,

at _____ on _____, being the NCO i/c POL Store of _____, A F and in that capacity entrusted with petrol stores of Unit, dishonestly misappropriated approximately 15 ltrs of petrol, property belonging to the Government.

No.2

S 52 (c) COMMITTING CRIMINAL BREACH OF TRUST IN RESPECT OF PROPERTY BELONGING TO AN AIR FORCE INSTITUTION

in that he,

at _____, Air Force on or about _____ having been entrusted with funds belonging to the Service Institute, Air Force, in his capacity as Manager of Station Canteen, committed criminal breach of trust for a sum of Rs. _____ (Rupees _____ only) by dishonestly misappropriating the said sum.

S 52 (d) DISHONESTLY RETAINING PROPERTY IN RESPECT OF WHICH AN OFFENCE UNDER S.52(a) OF THE AIR FORCE ACT, 1950 HAS BEEN COMMITTED, KNOWING THE COMMISSION OF SUCH OFFENCE

in that he,

at _____, on _____, was in unlawful possession of the property of the Government, which he knew to have been stolen.

Or

S 65

AN ACT PREJUDICIAL TO GOOD ORDER AND AIR FORCE DISCIPLINE

(Alternative Charge)

in that he,

at _____, on _____, was in unauthorised possession of _____, the property of the Government.

No.1

S. 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE AIR FORCE ACT, 1950, WITH INTENT TO CAUSE WRONGFUL LOSS TO A PERSON

in that he,

at _____, on _____, drove without authority service vehicle BA No. _____ being the property belonging to the Government, from _____ to _____, being a distance of about 175 Km with intent to cause wrongful loss to the Government.

No.2

S 52 (f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE AIR FORCE ACT, 1950, WITH INTENT TO CAUSE WRONGFUL GAIN TO A PERSON

in that he,

on _____, being the driver of service refueller vehicle BA _____, proceeding from Jodhpur to Naliya, at a place about 15 Km from Jodhpur, with intent to cause wrongful gain to himself, unauthorisedly drained out approx 300 ltrs of ATF, property belonging to the Government, from the said refueller.

No.3

S 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN SECTION 52(f) AIR FORCE ACT, 1950 WITH INTENT TO CAUSE WRONGFUL GAIN TO A PERSON.

in that he,

at _____, on _____, when detailed to make pre-payment issue of sugar, at the Unit Ration Stand up authorisedly issued 10 Kg of sugar to Cpl against a pre-payment voucher for only 5 Kg, with intent to cause wrongful gain to the said Cpl _____ .

No.4

S 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE 'f' OF SECTION 52 OF THE AIR FORCE ACT, 1950 WITH INTENT TO DEFRAUD.

in that he,

at _____, on _____, with intent to defraud, forged the signatures of _____ Fit Lt _____ () in State Bank of India, Travellers Cheque No. _____ and thereby obtained the sum of Rs. _____ from State Bank of India, _____ Branch.

No.5

S 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE 'f' OF SECTION 52 OF THE AIR FORCE ACT, 1950 WITH INTENT TO CAUSE WRONGFUL LOSS TO A PERSON.

in that he,

at _____, AF, on or about _____, having improperly filled fictitious particulars of an airman of IAF(T) 1752 Railway Warrant 51 No. PA/32 _____, caused the said warrant to be exchanged at Madras Egmore Railway Station for a check soldier ticket tenable for journey from _____ to _____ with intent to cause wrongful loss to the Air Force to the extent of Rs. _____ (Rupees _____).

No.6

S 52(f)

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE 'f' OF SECTION 52 OF THE AIR FORCE ACT, 1950 WITH INTENT TO CAUSE WRONGFUL LOSS TO A PERSON

in that he,

at _____, on _____, having received from _____ Sgt _____ of the same Unit, the sum of Rs. _____ (Rupees _____) for the purpose of despatching a money order, did not despatch the money order but with intent to cause

wrongful loss to the said Sgt _____ converted the said Rs.
_____ to his own use.

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

(a) commits extortion; or

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

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.

2.1 **Clause (a)** - For definition of 'extortion', see S.383, IPC. See also S.30, IPC.

2.2 Extortion and theft in the case of extortion, the consent is obtained by putting the person, who is in possession of property, in fear of injury to him or to any other, whereas in theft the offender's intention is always to take without that person's consent. Further, the property which is obtained by extortion is not limited, as in theft, to moveable property alone.

3.1 **Clause (b)** - Without proper authority See Note 3 to S.49AFA.

3.2 'Exacting' occurs when the taking of a fee, reward, service, etc., where none was due or before it was due, is done by a person in the colour of his office or in his position/character as a public servant. In addition, there has to be an element of compulsion to amount to exaction. The offence under this clause is wider as it covers not only property but also service. On the other hand extortion can be committed only with respect to some property or valuable security.

3.3 'any person' includes even a person not subject to AFA.

4.1 'On conviction by court-martial' For definition of court-martial, see S.4 (xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.

4.2 'such less punishment' - See S.73 AFA for scale of punishments.

4.3 Sentence of imprisonment See Ss. 164, 166 AFA et seq. 144 AFR; and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

S 53 (a) COMMITTING EXTORTION

in that he,

at _____, on _____, by threatening to make a false report to the CO of the Unit to the effect that _____ Cpl _____ visited _____ situated in 'Out of Bounds area, exacted Rs. _____ (Rupees _____) from the said airman.

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

(a) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instrument, tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him; or

(b) loses by neglect anything mentioned in Cl.(a), or

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

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.

2.1 **Clause (a)** - If there is no evidence of some positive act of pawning, selling arms, equipment, clothing etc., a charge of 'making away with' should not be preferred; the offence in such circumstances should be charged as one of 'losing by neglect' under sub-section (b) of this section. The particular mode of making away with should be alleged in the particulars although it does not affect the kind of offence, but only its gravity in relation to the amount of the sentence to be imposed on conviction.

2.2 Before a person can be convicted under clause (a) or clause (b) of this section, it must be shown that the arms, ammunition, equipment, instruments, tools, clothing or any other thing in respect of which the accused is being charged, was not only the property of the Government but was also either entrusted to him or was issued to him for his use. Evidence must be adduced at the trial that he had been issued with the articles either by

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

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

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

2.3 A charge under clause (a) or clause (b) of making away with or losing etc., property not mentioned in those clauses e.g. mess property or property of a comrade would be bad. But if the act amounted to theft, dishonest misappropriation or criminal breach of trust, it would be

punishable under Ss. 52 or 71 AFA; if the facts show wilful act or neglect, the person might in certain circumstances be charged with an offence under S.65 AFA.

2.4 The words 'any other thing' must be held to include any thing, which is a part of the equipment of the accused, provided that it is the property of the Government and was issued to him for his use or was entrusted to him. Armed Forces Identity Card is such a thing and if the accused made away with the AFIC issued to him for his use, or entrusted to him, he will be chargeable under this clause. A person subject to AFA, who loses such AFIC by neglect, will be chargeable under clause (b) of this section.

2.5 Whenever it is desired that the offender should on conviction of an offence under this clause or clause (b) be awarded stoppages under 5.73(m) in respect of the value of the articles which need to be made good to the Government/public, then the value must be stated in the particulars of the charge and proved as follows:

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

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

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

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

3.2 Where a court of inquiry (as laid down in S.107 AFA) has been held and has found a person to be deficient in certain articles, then upon his trial under this clause a certified copy of the record in the unit court-martial book showing that such articles were deficient is prima facie evidence that they were deficient and of their value, if stated. See S.141 (3) and (4) AFA. If no evidence, except the record of the entry in the court-martial book is obtainable, the

prosecution would be justified in proceeding on that alone, and if no evidence is given on the part of the accused to disprove the facts stated therein, the court may convict. Where, however, the accused gives; or produces evidence in contradiction of the declaration of the court of inquiry with regard to any of the articles in question, it will become necessary for the prosecution to produce other evidence in support of its case in so far as such articles are concerned for which purpose the court might, if necessary, grant an adjournment under R.89 AFR. If for any reasonable cause, such as lapse of time since the deficiency arose, no witnesses are available to rebut the evidence produced by the accused, the court must use its discretion: as to its finding in respect of the articles in question. In all cases where the record of the entry in the- unit court-martial book is not produced at the trial evidence must be produced to show that at some previous specified date the accused has been in possession of the articles alleged to be deficient. In cases of desertion; or absence- without leave the form will usually show as missing some articles which the person in fact brings back with him. The court must not, of course, convict him in respect of articles so returned if in serviceable-condition or those the value of which has not to be made good to the public.

3.3 The offence under this clause can be committed only with respect to the equipment mentioned in clause (a).

3.4 Losing by neglect the property of a comrade, or a decoration, is not an offence under this clause as that class of property or decoration is not mentioned therein.

3.5 See also generally Notes to clause (a) to this section.

4. **Clause (c)** - This clause relates only to any medal or decoration. It however does not include civilian decorations.

5.1 'on conviction by court-martial' For definition of court martial, see S.4 (xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.

5.2 'such less punishment' - See S.73 AFA for scale of; punishments.

5.3 The maximum punishment for an offence under clause (a) is 10 years imprisonment, while in the case of an offence under other two clauses it is 5 years.

5.4 Sentence of imprisonment See Ss. 164, 166 AFA et seq; R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

No.1

S 54 LOSING BY NEGLIGENCE ARMED FORCES IDENTITY CARD, THE PROPERTY OF THE GOVERNMENT ISSUED TO HIM FOR HIS USE.
(b)

in that he,

at _____, AF, during the month of _____, lost by neglect his Armed Forces Identity Card No. _____, the property of the Government, issued to him.

No.2

S 54 LOSING BY NEGLIGENCE ARMS AND AMMUNITION, BEING THE PROPERTY OF THE GOVERNMENT ENTRUSTED TO HIM FOR HIS USE
(b)

in that he,

on or about _____, while travelling by train from _____ to _____, lost by neglect service revolver No. _____ Make _____ and _____ rounds of ammunition, being the property of the Government entrusted to him.

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

(a) destroys or injures any property mentioned in Cl. (a) of Sec. 54, or any property belonging to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law, or serving with, or attached to, the Air Force; or

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

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

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

NOTES

1. For statements of offences under this section, see Appendix 'A'. If the offence is committed wilfully or without reasonable excuse, this fact should be stated in the statement of offence. See also S.138(7) AFA as regards special finding.

2.1 To constitute an offence under this section, the act etc., must be -either committed wilfully or without reasonable excuse.

2.2 Wilfully - See Note 4.1 to S.35 AFA

3.1 **Clause (a)** - 'destroys or injures' A charge for damaging or injuring the property here mentioned must be laid under this section and not under S.71 AFA. The prosecutor must adduce evidence, which will either prove, or enable the court to infer, that the destruction or injury was wilful and not accidental. If the injury appears: to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the property, or was mere carelessness. In the latter case no offence under this section would be committed, under the clause.

3.2 As regards value of property destroyed or injured, see Note 2.5 to S.54 AFA.

3.3 The term "any property mentioned in clause (a) of Section 54" as used in this clause must be held to mean a thing which is the property of the Government and is a part of the

equipment of a person. The qualifications that such thing should have been entrusted to the accused or issued to him for his use, are not necessary ingredients of an offence under this clause.

3.4 A combination of two or more items mentioned in S.54(a) AFA will be permissible in the statement of offence for a charge under Ss.54(a), 54(b) or 55(c)

AFA provided that the things included in the charge were made away with, lost, or, as the case may be, destroyed or injured by the same act.

4.1 **Clause (b)** - 'any property of the Government' - The scope of this clause is wider It is not confined to property mentioned in S.54(a) AFA.

4.2 The alleged act must result in damage or destruction by fire; or else a charge under this clause will not lie.

5.1 **Clause (c)** - 'making away with' See Note 2.1 to S.54 AFA.

5.2 For definition of 'animal', see S.47 IPC.

6.1 'on conviction by court-martial' For definition of court-martial, see S.4(xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.

6.2 'such less punishment' See S.73 AFA for scale of punishments.

6.3 If the offender acted wilfully, the maximum punishment is imprisonment for 14 years; if he acted without reasonable excuse the maximum punishment is imprisonment for seven years.

6.4 Sentence of imprisonment See Ss. 164, 166 et seq; R.144AFR and Seventh Schedule to APR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

No.1

S 55 WILFULLY DESTROYING PROPERTY BELONGING TO AN AIR FORCE MESS
(a)

in that he,

at _____, on _____, wilfully destroyed a mattress valued at Rs. _____, the property belonging to Officers' Mess of _____ by cutting it into pieces with a knife.

No.2

S 55 WITHOUT REASONABLE EXCUSE INJURING PROPERTY BELONGING TO
(b) THE GOVERNMENT

in that he,

at _____, on _____, at about _____, injured No. _____ Airmen's Mess Dining Hall building, property belonging to the Government, by breaking approximately _____ glass-panes of the windows of the said building, thereby causing damage of Rs. _____ (Rupees _____) to the Government.

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

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

(b) in making a complaint under section 26 or section 27 makes any statement affecting the character of any person subject to this Act, knowing or having reason to believe such statement to be false, or knowingly and wilfully suppresses any material facts;

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

NOTES

1. For statements of offences under this section, see Appendix 'A'

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

2.2 Before an accused can be convicted of a charge under this clause, it must be proved that the accusation was made against the person named in the particulars of the charge, that it was false and that the accused knew or had reason to believe that it was false.

2.3 'reason to believe' — See S.26 IPC.

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

3.2 To suppress knowingly and wilfully any material facts in connection with complaints for the redress of wrongs under Ss. 26 or 27 AFA is an offence under this clause.

3.3 'knowingly' See Note 16.1 to S.34 AFA.

3.4 'wilfully' — See Note 4.1 to S.35 AFA.

4.1 'on conviction by court-martial' - For definition of court-martial, see S.4(xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.

4.2 'such less punishment' See S.73 AFA for scale of punishments.

4.3 Sentence of imprisonment See Ss. 164, 166 AFA et seq; R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

S 56 (a) MAKING A FALSE ACCUSATION AGAINST A PERSON SUBJECT TO THE AIR FORCE ACT, 1950 KNOWING SUCH ACCUSATION TO BE FALSE.

in that. he,

at _____, on _____, during an interview with Wg Cdr _____ his Section Commander, used language to the following effect, that is to say "The Warrant Officer i/c Section takes no interest in his work and does not allow anyone to approach the said Wg Cdr _____ without a bribe", well knowing the said statement to be false.

S 56 (b) IN MAKING A COMPLAINT UNDER SECTION 26 AF Act, 1950 KNOWINGLY AND WILFULLY SUPPRESSING A MATERIAL FACT

in that he,

at _____, in an application dated _____ signed by him and addressed to the Station Commander titled "Application under Sec 26 AF Act for redress of grievance", while complaining that his CO refused to grant his (accused) request for _____ days casual leave to visit his _____, wilfully and knowingly suppressed the material fact that the said CO had granted _____ days casual leave to him.

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

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

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

(c) knowingly and with intent to injure any person, *or* knowingly and with intent to defraud, suppresses, defaces, alters, or makes away with any document which it is his duty to preserve or produce; or

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

(e) obtains for himself, or for any other person any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book, or records or by omitting any document containing a false statement or by omitting to make a true entry or document containing a true statement;

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

NOTES

1, For statements of offences under this section, see Appendix 'A'.

2.1 This section refers to strictly official documents.

2.2 Entries alleged to be false made on separate occasions must be made the subject of separate charges, but an accused who, for example, with intent to hide a deficiency of Rs.2000/- in imprest moneys, sits down and then and there makes 10 entries in an acquittance roll purporting to show that the Rs.2000/- has been paid to airmen could be charged in one charge with making these entries because it is all one transaction and they were all made on the same occasion. When an accused has made a number of false entries

in a document on different occasions but it is desired to avoid overloading the charge-sheet by charging them all individually the accused should be charged in separate charges with making one or two of the false entries (including the last one) and the evidence relating to the remainder tendered as showing that the false entries which are the subject of the charges were not made accidentally.

2.3 knowingly See Note 16.1 to S.34 AFA.

2.4 For definition of document see S. 29 IPC

2.5 'sign' - The word "sign" with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include mark, with its grammatical variations and cognate expressions. (See. S.3 (56), General Clauses Act).

3.1 **Clauses (a) and (b)** - A report (which must be in writing), return, certificate or other document mentioned herein must be one executed by the accused in his capacity as a person subject to AFA and not in some civil capacity. A trivial error in the report should not, in the absence of fraud or bad faith, be made the ground of a charge under these clauses.

3.2 The words 'other document' should be understood ejusdem generis. The particular document should be specified in the statement and particulars of the charge.

3.3 'made by him' making a document means creating or bringing it into existence e.g. writing or typing it as distinguished from sealing, signing or otherwise executing it.

3.4 In determining whether or not it was the duty of the accused to ascertain the accuracy of the report, etc., referred to in the charge, the court may use their general air force knowledge. See S. 133 AFA.

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

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

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

preserve the document.

5. **Clause (e)** - Other advantage or privilege must be of a similar kind. Obtaining pension or other such advantage may be for himself or any other person whether subject to AFA or not.

6.1 'on conviction by court-martial' For definition of court-martial see S.4 (xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S. 82 or 86 AFA is also permissible.

6.2 'such less punishment' See S. 73 AFA for scale of punishments.

6.3 Sentence of imprisonment See Ss. 164, 166 AFA et seq; R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

S 57 (a)

No.1

IN A DOCUMENT SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT

in that he,

at _____, in an application dated _____ addressed to Commanding Officer, AF, inter alia described Shri _____ as his brother well knowing that the said Shri was not his brother.

S 57 (a) IN A REPORT SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT.

in that he,

at _____, on _____, in the Orderly Officers' Report signed and submitted by him, stated that he had visited the Station Armoury at about _____ hrs on _____, well knowing such statement to be false, he not having visited the said Armoury at the date and time stated by him.

S 57 (e)

No.3.

OBTAINING FOR HIMSELF AN ALLOWANCE BY A STATEMENT WHICH TO BE AND WHICH HE KNEW TO BE FALSE

in that he,

at _____, on or about) _____, obtained for himself a sum of Rs. _____ (Rupee _____) from the Air Force Public Fund in settlement of a leave travel concession claim No. _____ for journey from _____ to _____ with respect to, himself and his wife, by falsely stating, in the said claim that the journey was performed by rail in first class, well knowing that such statement was false.

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

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

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

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.

2.1 **Clause (a)** - For definitions of 'document' and 'fraudulently', see Ss. 25 and 29, IPC.

2.2 'sign' - See Note 2.5 to S.57 AFA.

3.1 **Clause (b)** - The particulars must show that it was the duty of the accused to make or send the report or return, but where the position (appointment etc.,) of the accused is proved the court may use their general air force knowledge to infer his duty. If the report or return was one for which the superior officer had no right to call, it is not an offence to refuse to make or send it.

3.2 The report must be in writing; this clause does not relate to a verbal report.

3.3 The neglect must be culpable, i.e., something more than mere forgetfulness or mistake. See Notes 6 and 7 to S. 65 AFA.

4.1 'on conviction by court-martial' - For definition of court-martial, see S.4 (xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AF A is also permissible.

4.2 'such less punishment' - See S. 73 AFA for scale of punishments.

4.3 Sentence of imprisonment See Ss. 164, 166 AFA et seq; R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

S 58 (a) WHEN SIGNING A DOCUMENT RELATING TO SUPPLIES FRAUDULENTLY LEAVING IN BLANK A MATERIAL PART FOR WHICH HIS SIGNATURE IS A VOUCHER

in that he,

at _____, on _____, being the Senior Logistics Officer of _____ when signing Contractor's Advise Inspection Note and Bill (Form IAFF (Q) 423), for the month of _____ fraudulently left blank the column No. 7 titled 'quantity approved' while rendering the certificate.

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

- (a) being duly summoned or ordered to attend as a witness before a court—martial, wilfully or without reasonable excuse, makes default in attending ; or
- (b) refuses to take an oath or make an affirmation legally required by a court—martial to be taken or made; or
- (c) refuses to produce or deliver any document in his power or control legally required by a court—martial to be produced or delivered by him ; or
- (d) refuses when a witness to answer any question which he is by law bound to answer ; or
- (e) is guilty of contempt of court—martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.
2. This section does not apply to summaries of evidence or a court of inquiry or a formal investigation.
3. There is no restriction, debarring a court-martial from trying any of the offences specified in this section when committed in respect of itself. In all cases reported by court-martial under R. 129 AFR and in many other cases the members are, however, individually disqualified, under R. 45 AFR, from sitting at the second trial so that the result is practically the same.
4. If a person subject to AFA is tried for any of the offences specified in this section when committed in respect of a court-martial other than a court-martial held under AFA, the charge should be framed under S. 65 AFA as such a court is not a court-martial for the purposes of AFA; See S.4(xvi) AFA See R. 129 AFR and Notes thereto for manner of dealing with similar offences when committed by civilians or persons amenable to naval or military law.
5. As a rule, courts should accept an apology sufficient to vindicate their dignity without resorting to extreme measures.

6.1 **Clause (a)** - For the manner in which a person may be summoned or ordered to attend as a witness at a court-martial, see S. 134 AFA and R. 115 AFR.

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

6.3 'wilfully' See Note 4.1 to S. 35 AFA.

7.1 **Clause (b)** - For definition of 'oath', see S. 51, IPC. 'Oath' includes solemn affirmation.

7.2 The offence is not complete unless there is proof of a refusal both to take the oath or to make the affirmation.

7.3 'legally required by a court-martial', see S. 130 AFA.

7.4 The offence under this clause and clause (e) can be committed not only by witnesses but also by members of the court, judge advocate, officer attending for purposes of instruction, interpreter, shorthand writer.

7.5 For form of oath for members, witnesses, etc., see Rr. 54 and 118 AFR-.

8.1 **Clause (c)** - As regards -privileges of witnesses with respect to official documents, see Ss. 123-124, IEA. Also see S. 162, IEA.

8.2 See generally para 601 Regs as regards production of official documents or giving oral evidence as to their contents. When a witness is directed by summons to produce a document which is in his possession or power, he must bring it to court, notwithstanding any objection that he may have with regard to its production or admissibility. After this has been done it rests solely with the court to hear the objection or the claim as to privilege, and to decide whether it should be allowed.

8.3 For definition of 'document' see S.25 IPC.

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

9.2 If a witness refuses to answer a question which he is bound to answer, it should be pointed out to him that by refusing he is committing an offence against this section and he should be given a further opportunity of answering. Failure to give him this opportunity, however, will not mean that the witness will not have committed the offence.

9.3 **Clause (e)** - A court-martial begins to sit from the time the members take their seats for the purposes of trial, even before they are sworn/affirmed, and anything which would be a

contempt after the court was sworn/affirmed, would be a contempt once the members have so taken their seats

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

10.3 See also Note 7.4 above.

11.1 'on conviction by court-martial' For definition of court-martial see S.4 (xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S. 82 or 86 AFA is also permissible.

11.2 'such less punishment' - See S. 73 AFA for scale of punishments.

11.3 Sentence of imprisonment - See Ss. 164, 166 AFA et seq; R. 144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A' 

SPECIMEN CHARGES

S 59 (b) REFUSING TO TAKE AN OATH OR MAKE AN AFFIRMATION LEGALLY REQUIRED BY A COURT MARTIAL TO BE TAKEN OR MADE

in that he,

at _____, on _____, when appearing as a witness before a General Court Martial refused to take an oath or make an affirmation legally required by it to be taken or made before giving evidence at the said court martial.

60. False evidence - Any person subject to this Act who having been duly sworn of affirmed before any court—martial or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court—martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishments as is in this Act mentioned.

NOTES

1. For statement of offences under this section, see Appendix 'A'.
2. A minor punishment under S. 82 AFA cannot be awarded for an offence under this section, except in accordance with S.83 AFA. But see also S.83(2) AFA.
3. The offence specified in this section is in many respects similar to the offence of giving false evidence under S. 191, IPC.
- 4.1 The courts referred to in this section are
 - (i) Court-martial, as defined in S.4(xvi) AFA.
 - (ii) A court of inquiry on illegal absence under S. 107 A FA.
 - (iii) A court of inquiry on recovered prisoners of war. S. 189 (2) (d) AFA and R. 156 (3) AFR.
 - (iv) Any other court of inquiry when the officer assembling the court has directed that the evidence be recorded on oath or affirmation. S.189 (2) (d) AFA and R. 156 (3) AFR. -
- 4.2 Statement at a summary of evidence cannot be given on oath. If, therefore, false evidence is given at a summary of evidence the charge should be framed under S. 65, AFA.
- 4.3 'Court-martial' - When a person gives false evidence before a naval or military court-martial, he should be charged under S. 65 or S. 71, AFA.
- 4.4 A person who gives evidence and subsequently says that his evidence was untrue, should not be charged with an offence against this section unless there is another witness who can confirm that what the accused said on the first occasion was untrue, since without such corroboration it would be impossible to know with certainty on which occasion the accused was speaking the truth. It is not permissible to prefer charges under this section, laid in the alternative, in respect of each statement made by the accused on the basis that they are inconsistent and one must therefore be untrue.
5. For definition of oath, see S.51, IPC.
6. The proceedings of the court-martial or court of inquiry before which false evidence is

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

7.1 'on conviction by court-martial' - For definition of 'court martial', see S.4 (xvi)

AFA. Disposal of, the charge under S.82 or S.86 AFA is also permissible. It is not necessary that in all cases the offender must be tried by a court martial. But see also Note 2 above.

7.2 'such less punishment' - See S. 73 AFA for scale of punishments.

7.3 Sentence of imprisonment - see Ss. 164, 166 et seq and R.144 AFR-and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

No 1.

HAVING BEEN DULY SWORN BEFORE A COURT MARTIAL MAKING A FALSE STATEMENT WHICH HE KNEW TO BE FALSE

S 60

in that he,

at Chandigarh, on _____ having been duly sworn as a witness at the trial by Court Martial of _____ () of _____, stated when giving evidence that he had never been issued with a flying overall, an item of service equipment, a statement which he knew to be false.

No.2

HAVING BEEN DULY SWORN BEFORE A COURT COMPETENT UNDER THE AIR FORCE ACT, 1950 TO ADMINISTER AN OATH OR AFFIRMATION, MAKING A FALSE STATEMENT WHICH HE DID NOT BELIEVE TO BE TRUE; -

S 60

in that he,

at _____, on _____, having been duly sworn as a witness before a Court of Inquiry assembled by Commanding Officer of _____ vide Entry No. _____ in Station Routine Order of _____ made the following false statement, which he did not believe to be true, namely

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.
2. The offence under this section cannot be committed by an aircraftman.
3. This section is a corollary of S. 25 AFA which provides that the pay of any person subject to AFA shall be paid without any deductions other than those authorised by or under AFA or any other Act. For deductions authorised by or under AFA, see Ss. 91, 92 AFA.
4. S.91 (c) AFA also makes provision for penal deductions to be made from the pay and allowances of an officer to make good any sum which has unlawfully been retained or withheld by him but recovery under that clause does not require disciplinary action. However, as there is no similar provision in S. 92 AFA, a WO or NCO must be tried and convicted for the offence before he can be placed under stoppages.
- 5.1 'on conviction by court-martial' For definition of court-martial, see S.4(xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.
- 5.2 'such less punishment' - See S. 73 AFA for scale of punishments.
- 5.3 Sentence of imprisonment See Ss. 164, 166 AFA et seq; R. 144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE.

S.61 HAVING RECEIVED THE PAY OF A PERSON SUBJECT TO THE AIR FORCE ACT, UNLAWFULLY REFUSING TO PAY THE SAME WHEN DUE,

in that he,

at _____, on _____, being the Paying Officer and having received Rs. _____ as pay for the month of _____ for disbursement to, No. _____ Rank Name _____ of the same Unit, unlawfully refused to pay the same to the said at the Pay Parade.

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

- (a) wilfully or without reasonable excuse damages destroys, or loses any aircraft or aircraft material belonging to the Government ; or
- (b) is guilty of any act or neglect likely to cause such damage, destruction or loss ; or
- (c). without lawful authority disposes of any aircraft or aircraft material belonging to the Government ; or
- (d) is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person ; or
- (e) during a state of war, wilfully and without proper occasion, or negligently, causes the sequestration, by or under the authority of a neutral State, or the destruction in a neutral State, of any aircraft belonging to the Government

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.
2. A minor punishment under S.82 AFA cannot be awarded for an offence under this section, except in accordance with S. 83 AFA. But see also S.83(2) AFA.
3. Each of the offences under this section can be committed in circumstances involving a higher degree of punishment (i.e., if the accused acts wilfully) or in circumstances involving a less degree of punishment. (i.e., the accused did not act wilfully, or he acted without reasonable excuse). See also S. 138 (7) AFA for special finding.
4. The section is wide enough to cover the acts and omissions of ground crew and passengers and is not limited to persons actually flying the aircraft.
5. For definition of 'aircraft' and 'aircraft material', see S.4(ii) and (iii) AFA.
6. **Clause (a)** - Wilfully or without reasonable excuse, see Note 4 to S. 49 AFA.

7.1 **Clauses (b) and (d)** - Neglect to be punishable under this section must be blameworthy and deserving of punishment. If it is intentional it is clearly blameworthy and deserving of punishment, but an error of judgment involving no lack of zeal, carelessness or intentional failure to take the proper action is not neglect within the meaning of this section and should not be made the subject of a charge under it.

7.2 Neglect always consists of a failure by a person to discharge a duty which is imposed upon him in some way. Thus in ascertaining whether an accused was guilty of blameworthy neglect within the meaning of this section, three questions must be answered

(i) What duty, if any, was imposed upon him;

(ii) if a duty was imposed on him, did he fail to discharge that duty

(iii) if he failed to discharge it, do the surrounding circumstances excuse or aggravate his failure.

7.3 The degree of blameworthiness depends upon the answers to the first and third questions and varies greatly from case to case. Thus a duty to take a very high degree of care is rightly imposed upon a person in charge of an aircraft or who is responsible for its maintenance or who is handling explosives or highly inflammable material, because of the possible danger to life. In such cases a comparatively trivial act or omission may amount to negligence so blameworthy as to justify the accused being convicted and severely punished.

8. **Clause (e)** - sequestration of aircraft means the seizure of aircraft by a neutral State with a view that it shall not be available for further use in operations.

9.1 'On conviction by court—martial' For definition of 'court—martial' see S. 4(xvi) AFA. Disposal of the charge under S. 82 or S. 86 AFA is also permissible. It is not necessary that in all cases the offender must be tried by a court-martial. But see also Note 2 above.

9.2 'such less punishment - See S. 73 AFA for scale of punishments.

9.3 Sentence of imprisonment See Ss. 164, 166 et seq and R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

S 62(b) A NEGLECT LIKELY TO CAUSE DAMAGE TO AN AIRCRAFT BELONGING TO GOVERNMENT

in that he,

at _____, on _____, when as engine fitter carrying out a before-flight servicing of Gnat aircraft No. _____ it was his duty to ensure that the air intake of the port engine of the said aircraft was free from obstructions, so negligently carried out his duties as to fail to inspect the said air intake for obstructions and to remove there from an obstruction consisting of a pair of steel nippers, which neglect was likely to cause damage to the said aircraft belonging to the Government.

No.1

S 62 (d) NEGLECT IN RELATION TO AIRCRAFT CAUSING LOSS OF LIFE

in that he,

at _____, on _____, so negligently placed the chocks on aircraft _____ as to allow the said aircraft to roll backwards and fatally knock down _____ AC _____.

No.2

S 62 (d) A NEGLECT IN RELATION TO AIRCRAFT CAUSING LOSS OF LIFE

in that he,

at _____, on _____, before carrying out the servicing of rocket fire control instruments in Type _____ aircraft No. _____ in pen No _____ neglected to ensure that the rocket pads in the said aircraft were empty, which neglect resulted in the firing of the rockets by him, causing the death of _____ WO _____ of _____, AF.

63. Other offences relating to aircraft and flying.— Any person subject to this Act who commits any of the following offences, that is to say, —

(a) signs any certificate in relation to an aircraft, or aircraft material belonging to the Government without ensuring the accuracy thereof ; or

(b) being the pilot of an aircraft belonging to the Government, flies it at a height less than such height as may be specified by the Chief of the Air Staff except while taking off or landing, or in such other circumstances as may be specified by the Chief of the Air Staff ; or

(c) being the pilot of an aircraft belonging to the Government flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.
2. A minor punishment under S.82 AFA cannot be awarded for an offence under this section, except in accordance with S. 83 AFA But see also S. 83(2) AFA.
3. For definition of 'aircraft' and 'aircraft material', see S. 4 (ii) and 4 (iii) AFA.
4. **Clause (a)** - This clause is wide enough to cover acts and omissions of ground crews. It will usually be applicable in connection with the signing of form 700, which contains many entries signed by many persons responsible for maintaining aircraft. A typical example of an offence under this clause is when a tradesman signs an incorrect certificate in the Form 700 as to how much fuel he has put into the aircraft. In a case of that nature it may be desirable to charge the offender with neglect likely to cause damage to aircraft belonging to the Govt under S. 62 (b) AFA and also to lay a charge under this clause.
- 5.1 **Clause (b)** - This section applies to pilots who fly Govt. aircraft at a height below that specified by the CAS except while taking off or landing or under the circumstances as may be specified by the CAS It may be desirable to add an alternative charge alleging an offence under S. 65 AFA of improperly and without reasonable excuse flying the aircraft at whatever low level alleged. The reason for laying an alternative charge is that a pilot may well in bad weather have been justified owing to low cloud in flying below the specified height, and yet whatever the conditions, he may not have been justified in flying at the level alleged (e.g. 50 feet). The alternative charge will only be considered if the court is satisfied that the pilot was

justified in the circumstances in flying below the specified height.

5.2 When a witness gives evidence of his seeing a low-flying aircraft, and as to its identification and the height at which he saw it flying, he may refresh his memory from any note which he made at the time or while the matter was still fresh in his memory, about its height or its identification, numbering of letter.

5.3 If the low-flying occurred over a place where the pilot has had previous associations, i.e. over his home or his school, evidence may be produced on this matter to suggest a motive for associating the accused with the alleged low-flying although this in itself would never be sufficient to justify a conviction.

6. **Clause (c)** — ‘any person’ such person may be a member of the crew or a passenger, or a person on the ground or in another aircraft. Such person need not necessarily be one subject to AFA.

7.1 ‘on conviction by court-martial’ For definition of ‘court-martial’, see S.4 (xvi) .AFA Disposal of the charge under S.82 or S.86 AFA is also permissible. It is not necessary that in all cases the offender must be tried by a court martial. But see also Note 2 above.

7.2 ‘such less punishment’ - ‘See S. 73 AFA for scale of punishments.

7.3 Sentence of imprisonment See ‘Ss 164, 166 AFA et seq, R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

S.63(b) BEING THE PILOT OF AN AIRCRAFT BELONGING TO THE GOVERNMENT, FLYING IT AT A HEIGHT LESS THAN SUCH HEIGHT AS IS SPECIFIED BY THE CHIEF OF THE AIR STAFF

in that he,

at _____, on _____, being the pilot of _____ aircraft No. _____ belonging to, the Government,; improperly and without permission flew the said aircraft at a height of less than ft AGL which was the height specified by the Chief of the Air Staff vide para _____ of _____ Manual.

S.63 (e) BEING THE PILOT OF AN AIRCRAFT BELONGING TO THE

**GOVERNMENT FLYING IT SO AS TO CAUSE-UNNECESSARY
ANNOYANCE TO ANY PERSON**

in that he,

on __, at _____, about being the pilot of Chetak helicopter No. _____
, an aircraft belonging to the Government, flew the said aircraft over
river _____, in the vicinity of _____ so as to cause unnecessary
annoyance to the persons taking bath in the said river.

64. Disobedience of lawful command of captain of aircraft. Any person subject to this Act who, whatever his rank, commits any of the following offences, that is to say,

(a) while he is in an aircraft disobeys any lawful command given by the captain of the aircraft, whether such captain is subject to this Act or not, as respects all matters relating to the flying or handling of the aircraft, or affecting the safety thereof ; or

(b) being the captain of a glider aircraft towed by another aircraft disobeys any lawful command given by the captain of the towing aircraft, whether the latter is subject to this Act or not, as respects all matters aforesaid

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.
2. A minor punishment under S.82 AFA cannot be awarded for an offence Under this section, except in accordance with S.83 AFA But see also S.83(2) AFA.
3. The words 'whatever his rank' have apparently been used in this section to stress the fact that the captain of the aircraft or of the towing aircraft, as the case may be need not be superior in rank.
4. For definition of 'aircraft', see S.4(ii) AFA.
5. The section covers aircraft belonging to the Government as well as other aircraft.
6. 'lawful command' See Note 3 to S. 41 AFA.
- 7.1 'on conviction by court-martial' For definition of 'court-martial', see S.4 (xvi) AFA. Disposal of the charge under S.82 or S.86 AFA is also permissible. It is not necessary that in all cases the offender must be tried -by a. court martial. But see also Note 2 above.
- 7.2 'such less punishment' - See S. 73 AFR for scale of punishments.
- 7.3 Sentence of imprisonment See Ss. 164, 166 et seq and R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



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

NOTES

1. For statements of offences under this section, see Appendix 'A'.
2. S.67 AFA (Attempt) applies to this section.
3. Any act or omission which amounts to an offence under Ss.34-64 to 71 should normally be charged under whichever of those sections as appropriate. An offence should not be charged under this section merely to enable the CO to dispose of the case summarily under S.82 AFR. In a proper case, however an alternative charge may be added under this section.
4. A charge under this section must recite its actual words, i.e. there must be charged an 'act' or an 'omission' which is 'prejudicial to good order and air force discipline'. But, of course, an act or omission is not brought within the scope of this section by merely applying to it the statutory language; and a court is not warranted in convicting unless of the opinion that the act or omission proved, was prejudicial both to good order and to air force discipline, having regard to its nature and to the circumstances in which it took place.
5. The word 'act' denotes as well a series of acts as a single act; the word 'omission' denotes as well a series of omissions as a single omission. See Ss. 32 and 33, IPC.
6. An 'omission' to be punishable under this section must amount to neglect which is wilful or culpable. If wilful, i.e., deliberate it is clearly blameworthy. If it is not wilful, it may or may not be blameworthy, and the court must consider the whole circumstances of the case and, in particular, the responsibility of the accused. A high degree of care can rightly be demanded of a person who is in charge of a motor vehicle or public money or property, or who is handling fire arms or explosives, where a slight degree of negligence may involve loss or damage to life. In such circumstances a small degree of negligence may be blameworthy. On the other hand,- neglect which results from mere forgetfulness, error of judgement or inadvertence in relation to a matter which does not rightly demand a very high degree of care, would not be judged blameworthy so as to justify conviction and punishment. The essential thing for the court to consider is whether in the whole circumstances of the case as they existed at the time of the offence the degree of neglect proved is such -as, having regard to their general air force knowledge of the amount of care which ought to have been exercised, renders the neglect substantially blameworthy and deserving of punishment.
7. Negligently - Negligence has been defined by judicial pronouncements as 'the omission to do something which a reasonable man guided upon those considerations which ordinarily

regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. In other words it is 'doing some act which a person of ordinary care and skill would not do under the circumstances'. See also Note 7 to S. 62 AFA.

8. Good order as used in this section these words are wide enough to include good order in the sense in which the words would be understood in civil life and applicable to civilians, and in the same sense in which they would be understood in air force life as applicable to members of the Air Force. Conduct to the prejudice of good order is not necessarily to the prejudice of air force discipline, e.g. an officer in civilian clothes, who creates a disturbance while at a place away from his unit where his identity is not known, may be guilty of conduct to the prejudice of good order, but not necessarily of air force discipline. On the other hand, conduct which is prejudicial to air force discipline is also prejudicial to good order in the air force sense as applicable to members of the Air Force.

9. Air Force discipline - it is the duty of all ranks to uphold the good reputation of the service. Any act or omission therefore which amounts to a failure in that duty by an individual may well prejudice air force discipline, although it has no direct bearing on the discipline of the unit to which the offender belongs.

10. Before an accused can be convicted of an offence against this section the court must not only be satisfied that the accused was guilty of the act, conduct or neglect alleged in the particulars but that the act, conduct or neglect of which the accused is guilty was to the prejudice of both good order and air force discipline. Even if all the allegations in the particulars are proved the court must acquit if it is not satisfied on this last matter. In this connection it should be noted that the words are 'to the prejudice of,', which means that the prosecution do not have to show that good order and air force discipline were actually affected, but only that the act, or omission of which the accused is guilty was calculated to prejudice good order and air force discipline.

11. Observance of 'good order and air force discipline' is expected from all persons subject to the AFA at all times, be they on duty or on leave. Hence, if a person subject to the AFA while on leave commits an act or omission prejudicial to air force discipline, as applicable to him while on leave, and if such act or omission is also prejudicial to good order, then such act or omission would be punishable under S. 65 AFA.

12. The following are a few instances of offences not uncommonly charged under this section

- (a) Improperly wearing badges of rank, etc., to which not entitled.
- (b) Negligent performance of duties connected with money or stores resulting in a deficiency or loss.
- (c) Being asleep when on duty.
- (d) Negligently handling a rifle.

- (e) Making use of a document purporting to be a genuine pass well knowing it was not genuine.
- (f) Being in improper possession of public property or of property belonging to a comrade (where there is no evidence of actual theft).
- (g) Improperly using Government transport and petrol for private purposes.
- (h) Borrowing money from persons under his command, gambling, and other cases of disobedience of regulations, which are not published as regimental orders (see Note 8.2 to S.42 (e) AFA).
- (i) Negligently wounding or injuring self or others.
- (j) Improperly using or obtaining railway warrant.
- (k) Sending an anonymous letter to his CO or other superior authority.
- (l) Neglect of duty when a sentry, or guard, etc.
- (m) Causing disturbance in the billet, mess etc.
- (n) Stating a falsehood to a superior officer.
- (o) Using criminal force to a comrade.
- (p) Giving a cheque and failing to arrange for it to be honoured on presentation.

13. Whether or not persons can be charged jointly under this section will depend on the particular facts of each case and the precise nature of the offence.

14.1 'on conviction by court-martial' For definition of court-martial, see S.4 (xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.

14.2 'such less punishment' - See S.73 AFA for scale of punishments.

14.3 Sentence of imprisonment See Ss. 164, 166 AFA et seq R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGES

No.1

S.65 AN ACT PREJUDICIAL TO GOOD ORDER AND AIR FORCE DISCIPLINE

in that he,

at _____, on _____, was in improper possession of HMT watch Sl. No._____, being the property of _____ LAC_____.

No. 2

S. 65 AN ACT PREJUDICIAL TO GOOD ORDER AND AIR FORCE DISCIPLINE

in that he,

at _____, on _____, improperly and without authority took and drove away service vehicle No. BA _____ from _____ to the vicinity of _____ for his own private purposes, thereby causing damage to the said vehicle to the extent of Rs. _____.

No. 3

S. 65 AN ACT PREJUDICIAL TO GOOD ORDER AND AIR FORCE DISCIPLINE

in that he,

at _____, between _____ and _____, when being caterer of the SNCOs' Mess of the said Station, so negligently carried out his duties as caterer as to be unable to account on _____ (date) for goods or cash amounting to Rs. _____ belonging to the said Mess.

No. 4

S.65 AN ACT PREJUDICIAL TO GOOD ORDER AND AIR FORCE DISCIPLINE

in that he,

at _____, on _____, at about _____ when on duty as Duty Air Traffic Control Officer was asleep.

No.5

S. 65 AN OMISSION PREJUDICIAL TO GOOD ORDER AND AIR FORCE DISCIPLINE

in that he,

at _____, between ____ (date of cheque) and _____(date cheque returned by Bank), having delivered to the Officers' Mess of the said Station, a cheque No. _____ dated _____ in payment of his (accused's) Mess bill and drawn on _____ (Bank), without reasonable excuse omitted either to ensure that he had sufficient funds in the hands of the said Bank to meet the said cheque when presented, or to make arrangements for the said cheque to be honoured when presented.

No.6

S .65 AN ACT PREJUDICIAL TO GOOD ORDER AND AIR FORCE DISCIPLINE

in that he,

at _____, on or about _____, improperly wrote and sent to his Commanding Officer an anonymous letter in which he stated, inter alia, as follows :—
.....

No. 7

S .65 AN ACT PREJUDICIAL TO GOOD ORDER AND AIR FORCE DISCIPLINE

in that he,

at _____, on _____, improperly wore the badges of rank of a Flying Officer and Indian Air Force flying badge to neither of which he was entitled.

No. 8

S.65

AN ACT PREJUDICIAL TO GOOD ORDER AND AIR FORCE DISCIPLINE

in that he,

at _____, on _____, having reported to the Air Force Central medical Establishment, New Delhi, pursuant to valid order, improperly refused to undergo medical examination, which was to determine his suitability for continued employment in flying duties.

S.65

No. 9

AN ACT PREJUDICIAL TO GOOD ORDER AND AIR FORCE DISCIPLINE

in that he,

on _____, during the rail journey from _____ to _____, on _____ Express, said to his co-passengers " _____ " or words to such effect", which were disparaging of the Indian Air Force.

No. 10

S.65

AN ACT PREJUDICIAL TO GOOD ORDER AND AIR FORCE DISCIPLINE

in that he,

at _____, on _____, improperly and without reasonable excuse refused to accept an official communication bearing reference No. dated _____, when personally handed over by _____.

66. Miscellaneous offences, Any person subject to this Act who commits any of the following offences, that is to say,

(a) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or

(b) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or

(c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or

(d) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazar, carrying a rifle, sword or other offensive weapon ; or

(e) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service ; or

(f) commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving

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

NOTES

1. For statements of offences under this section, see Appendix 'A'.

2. A minor punishment under S. 82 AFA cannot be awarded for an offence under clauses (a) to (c) of this section, except in accordance with S. 83 AFA. But see also S. 83(2) AFA.

3.1 **Clause (a)** - The offence under this clause can be committed only by a person who is in command.

3.2 The term 'post' has a wider meaning than as used in S.34 (h) or (k) AFA

3.3 For definition of riot and trespass, see Ss. 146 and 441, IPC.

3.4 See also Note 2 above.

4.1 **Clause (b)** - The offence under this clause is similar to the offences under Chapter XV, IPC.

4.2 Intentionally - See Note 8.1 to S. 34 AFA.

4.3 See also Note 2 above.

5.1 **Clause (c)** - This offence is the same as the civil offence under S. 309, IPC.

5.2 A person should not be charged with attempted suicide unless the circumstances of the case made it clear that he seriously intended to take his life.

5.3 Where the action falls short of a deliberate intent to end his life, the accused could be charged under S.46(c) or 65 AFA (if appropriate), the charge alleging that the accused rendered himself temporarily unfit for duty by reason of his conduct.

5.4 At the summary of evidence and the trial evidence must be given by a medical officer as to the probable effect of the action which the accused took and he should also express his opinion as to the state of mind of the accused at the time of the commission of the alleged offence.

5.5 See also Note 2 above.

6.1 **Clause (d)** - The offence under this clause can be committed only by an NCO or aircraftsman.

6.2 Camp - See Note 13.4 to S. 34 AFA.

6.3 'Cantonment' is not restricted to those stations, which have been declared to be cantonments for the purposes of the Cantonments Act, 1924. Airmen are considered to be in a cantonment for the purpose of AFA when they are quartered in any station or locality as a permanent or semi-permanent arrangement.

6.4 Without proper authority - See Note 3 to S. 49 AFA.

7.1 **Clause (e)** - Gratification - This term is not restricted to a pecuniary gratification or a gratification estimable in money. The offence is complete if the gratification is given with the intention indicated and it is not necessary that the enrolment or other object should be actually procured. An attempt to obtain a gratification (e.g., by asking for it) is punishable equally with the actual receipt of one. An attempt to give a gratification (e.g., an offer of bribe) is an abetment of the offence by way of instigation and is punishable under S. 68 or 70 AFA

as the case may be.

7.2 'any other advantage or indulgence' - Such advantage etc., must be ejusdem generis.

8.1 **Clause (f)** - Offence - For definition, see S.4(xxii) AFA. The word 'offence' here means an offence, which would be punishable, if committed in India as a civil offence.

8.2 It is frequently of the highest importance to conciliate the inhabitants of the country where service personnel happen to be, and to induce them to bring provisions and supplies. From this point of view an offence, which in other circumstances would be trivial, may require severe punishment, as for instance, if a trifling theft has the effect of disturbing the confidence of the inhabitants and endangering the supplies to the Air Force. A person should not be charged under this clause when the offence is committed in India. Elsewhere it is better that a charge should be preferred under S. 71 AFA and not under this clause. The charge must set out the specific acts of violence or the specific offence alleged to have been done or committed.

9.1 'on conviction by court-martial' For definition of 'court-martial', see S.4 (xvi) AFA Disposal of the charge under S. 82 or S. 86 AFA is also permissible. It is not necessary that in all cases the offender must be tried by a court martial. But see also Note 2 above.

9.2 'such less punishment ' - See S.73 AFA for scale of punishments.

9.3 Sentence of imprisonment - See Ss. 164, 166 et seq and R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



67. Attempt. — Any person subject to this Act who attempts to commit any of the offences specified in Sec. 34 to 66 inclusive, and in such attempt does any act towards the commission of the offence shall, on conviction by court—martial, where no express provision is made by this Act for the punishment of such attempt, be liable,

if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned ; and

if the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term which may extend to one—half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

NOTES

1. For statements of offences under this section, see Appendix 'A'.
2. Attempts to commit the offences specified in Ss. 34 to 66 AFA are, except where such attempts are specifically provided for (e.g. an attempt to desert), triable under this section. Attempts to commit civil offences are not triable under this section but are triable under S.71 read with S.511, IPC. The term 'offence' as used in this section should be understood accordingly.
3. This section enables a person to be charged in an appropriate case with attempting to commit any of the offences created by Ss.34-66 AFA which a person can attempt to commit. A person charged with attempting to commit an offence cannot be convicted by special finding of attempting to commit.
4. 'does any act towards the commission of the offence' - there is a difference between the preparation antecedent to an offence and the actual attempt. To constitute an attempt to commit an offence there must be an intent to commit the offence, a commencement of the commission and an act done towards the commission. The act relied on as constituting the attempt must be an act not merely preparatory to the commission of the contemplated offence, but must bear the relationship of being 'proximate to' or 'immediately and not merely remotely connected with' the contemplated offence. An act is said to be done towards the commission of the offence. When the offence remains incomplete only because something yet remained to be done, which the person intending to commit the offence is unable to do by reason of circumstances independent' of his own volition. These words must not be construed to include all acts, however, remote, which tend towards the commission of the offence. The thing done may be too small or it may proceed too short a way towards the accomplishment of the offence for the law to notice it as an attempt. It must in every case be a question depending upon the circumstances whether a particular act done (with the

requisite intention towards the commission of the offence is sufficiently proximate to its commission to constitute an attempt or is so remote as to merely constitute preparation for its commission.

5 A person charged before a court-martial with any offence under AFA may be found guilty of the attempt to commit that offence if the evidence so warrants S.138 AFA.

6.1 on conviction by court-martial - For definition of court-martial, see S.4 (xvi) AFA. it is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.

6.2 'such less punishment' - See S.73 AFA for scale of punishments.

6.3 Sentence of imprisonment - See Ss. 164, 166 AFA et seq ; R. 144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

**S.67 read with
S.52 (a) AF Act,
1950**

**ATTEMPTING TO COMMIT THEFT OF PROPERTY BELONGING TO
THE GOVERNMENT AND DOING AN ACT TOWARDS THE
COMMISSION OF THE SAME**

in that he,

at____, on _____, attempted to commit theft of service ration items by hiding himself in the ration, stand when it was being closed and locked for the day.

68. Abetment of offences that have been committed - Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 66 inclusive, shall, on conviction by court—martial, if the act abetted is committed In consequence of’ the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

NOTES

1. For statements of offences under this section, see Appendix ‘A’.
2. For definition of ‘abetment’, see S.107, IPC.
3. Abetment of a civil offence is not triable under this section or Ss.69 or 70 but under S. 71 AFA.
4. A person subject to AFA who abets a person not subject to the said Act (e.g., civilian, or those subject to AA or NA, etc) in doing -a thing which would have been an offence under AFA had the person doing it been subject thereto is not punishable under Ss.68 to 70. Such cases will, however, generally fall within the terms of S.71 AFA.
5. A person charged before a court-martial - with any offence under AFA may be convicted of having abetted the commission of that offence. S. 138(8) AFA.
- 6.1 ‘on conviction by court-martial - For definition of court-martial, see S.4(xvi) AFA. it is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.
- 6.2 ‘such less punishment’ - See S. 73 AFA for scale of punishments.

For Statement of Offence See Appendix 'A'



SPECIMEN CHARGE

S. 68

ABETMENT OF AN OFFENCE SPECIFIED IN SEC40(c) OF THE AIR FORCE ACT, 1950, IN CONSEQUENCE OF WHICH ABETMENT THE OFFENCE WAS COMMITTED.

in that he,

at____, on____, abetted _____ LAC _____ of _____ in using criminal force to _____ Sgt _____ by holding the said Sgt _____ when the said LAC _____ hit him (Sgt _____) on the legs with a hockey stick.

69. Abetment of offences punishable with death and not committed — Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub—section (1) of sections 38 shall on conviction by court— martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

NOTES

1. For statements of offences under this section, see Appendix 'A'.
2. This section deals with punishment for abetment of offences punishable with death where the offence has not been committed in consequence of the abetment and no specific provision for such punishment has been prescribed by AFA.
3. See generally Notes to S. 68 AFA.
- 4.1 'on conviction by court-martial' - For definition of court-martial, see S.4(xvi) AFA It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.
- 4.2 'such less punishment' - See S.73 AFA for scale of punishments.
- 4.3 Sentence of imprisonment - See Ss. 164, 166 AFA et seq; R.144 AFR and Seventh Schedule to AFR. for committal warrants.

For Statement of Offence See Appendix 'A'



70. Abetment of offences punishable with imprisonment and not committed — Any person 'subject to this Act who abets the commission of any of the offences specified' in sections 34 to 66 inclusive, and punishable with imprisonment, shall, on conviction by court—martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of; the longest term provided for that offence or such less punishment as is in this Act mentioned.

NOTES

1. For statements of offences under this section, see Appendix 'A'.
- 2 'Civil offence' means an offence triable by a criminal court S 4(xii) AFA For definition of 'criminal court', see S 4(xvii) AFA It there fore 'follows that a person subject to AFA who while stationed in any country other than India commits an act or omission which is an offence under the civil law of that country but which if committed in India would not amount to a 'civil offence', cannot be charged under this section though a charge may properly be framed under S. 65 AFA, if the facts so warrant.
3. See generally Notes to S. 68 AFA.
 - 4.1 on conviction by court-martial' For definition of court-martial, see S.4(xvi) AFA. It is not necessary that in all cases the offender must be tried by a court-martial. Disposal of the charge under S.82 or 86 AFA is also permissible.
 - 4.2 'such less punishment' - See S.73 AFA for scale of punishments.
 - 4.3 Sentence of imprisonment - See Ss. 164, 166 AFA et seq; R.144 AFR and Seventh Schedule to AFR for committal warrants.

For Statement of Offence See Appendix 'A'



71. Civil offences — Subject to the provisions of section 72 any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say, —

(a) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in' this Act mentioned ; and

(b) in any other case, he shall be liable to suffer any punishment other than whipping, assigned for the offence by any law in force in India, or imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

NOTES

1. For statements of offences under this section, see Appendix 'A'.

2. A minor punishment under S.82 AFA cannot be awarded for an offence under this section, except in accordance with S.83 AFA.

3.1 'Civil offence' means an offence triable by a criminal court (S.4(xii) AFA). For definition of 'criminal court', see S.4(xvii) AFA. It therefore follows that a person subject to AFA who while stationed in any country other than India commits an act or omission which is an offence under the civil law of that country but which if committed in 'India would not amount to a 'civil offence', cannot be charged under this section though a charge may properly be framed under S.65 AFA, if the facts so warrant.

3.2 This section means in effect that a person who is subject to air force law is also liable to the whole or almost the whole of the Indian penal laws, wherever he may be. There are certain offences which cannot from their very nature ever be committed outside India but they are of no practical importance as far as air force law is concerned.

3.3 In **UOI V. Harjeet Singh Sandhu**, the Supreme Court held that where the trial is under Sec 69 of the Army Act, 1950 (Corresponds to Sec 71 AFA) for a 'civil offence' punishable under the provisions of another Act, then that Act in its entirety would become operative and as such procedural safeguards, if any, provided therein would also be attracted and their non-compliance would vitiate the entire trial.

4. Where an offence has been committed by a serving airman in relation to Government property at the camp or other place where he is stationed, the proper person to deal with the matter is his commanding officer so that the offence may be dealt with under air force law and it is ordinarily unnecessary for the civil police to interfere.

5. For definition of India, see Art 1 (3) constitution. For purposes of AFA the definition of the term 'India' as contained in S.18 of IPC does not apply. See S. 4 (xxx) AFA. See also Note 2.2 to S.72 AFA.

6. Subject to the provisions of S.72:-S.72 AFA prohibits trial by court martial of three civil offences viz. murder, culpable homicide not amounting to murder of a person not subject to military, naval or air force law (e.g., a civilian), or rape in relation to such a person, unless the said offence was committed

(a) while on active service (See Ss.4(i) and 9 AFA and Notes thereto); or

(b) at any place outside India; or

(c) at a frontier post specified by the Central Govt. by notification in this behalf.

The test is where the offence was committed and not where the trial is held. If the offence was committed at a place and in the conditions which permit of the offence being tried by court-martial, the court—martial may be held anywhere (S.123 AFA) where courts-martial may be convened.

7. Whether persons can be charged jointly under this section will depend on the nature of the offence and the circumstances of the case.

8. Certain Acts of Parliament require that, before proceedings can be instituted in the criminal courts, the consent of the appropriate Govt. must be obtained (e.g., under S.13(3) of the Official Secrets Act, 1923). It is not, however, necessary, before a person is charged with an offence under this section alleging that the civil offence is against such an Act, to obtain such a consent.

9. For adjustment of jurisdiction between a criminal court and a court-martial where both 'have jurisdiction in respect of the same civil offence, see Ss. 124-125 AFA and Notes thereto. Also see R.167 AFR and para 683 Regs. See also Criminal Courts and Courts Martial (Adjustment of Jurisdiction) Rules, 1975.

10. See S.138(6) AFA and Notes thereto, which enables a court-martial when trying a person for a civil offence to find him not guilty of that offence but guilty of any other offence of which he might have been found guilty under the Cr. PC.

11.1 For offences falling under clause (a), except only those offences for which an obligatory punishment is provided under the law in force in India (e.g., death or imprisonment for life or murder), a court-martial may award any of the following punishments :-

(i) any punishment, other than whipping, assigned to the offence under the law in force in India; .and

(ii) in addition to the above, one or more of the punishments specified in S.73 AFA.

11.2 For offences falling under clause (b), courts-martial may award

(i) the punishment, other than whipping, assigned to the offence under the law in force in India, or

(ii) imprisonment which may extend to seven years ; or

(iii) if the offender is under the rank of WO and the offence was committed on active service, field punishment up to 3 months, and

(iv) in addition to any of the above, one or more of the punishments specified in S. 73 AFA.

11.3 Fines are awardable (as penalties authorised under the law in force in India) under both clauses of this section.

12.1 'on conviction by court-martial' - For. definition of 'court-martial', see S.4(xvi) AFA. Disposal of the charge under S.82 or S.86 AFA is also permissible. It is not necessary that in all cases the offender must be tried by a court martial. But see also Note 2 above.

12.2 'such less punishment' - See S.73 AFA for scale of punishments.

12.3 Sentence of death, see S.163 AFA and R. 147 to 151 AFR.

12.4 Sentence of imprisonment - See Ss. 164, 166 et seq and R.144 AFR. and Seventh Schedule to AFR for committal warrants.

13.1 As regards action to be taken when an airman is charged before a civil court, see para 682 Regs.

13.2 As regards procedure for taking over cases of concurrent jurisdiction, see para 683 Regs and AFO 227/77,

13.3 Defence of airmen charged with criminal offences see para 685 Regs.

13.4 Conviction of officers and airmen by civil courts to be reported to superior authorities- see para 687 Regs.

13.5 Copies of judgements, with translation of vernacular judgements, are supplied free of charge on application by the head of the unit or department concerned. See para 688 Regs.

13.6 See generally paras 681-688 Regs as regards charges by civil power.

For Statement of Offence See Appendix 'A' 

SPECIMEN CHARGES

No.1

S. 71 COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MURDER PUNISHABLE UNDER SEC 302 OF THE INDIAN PENAL CODE, 1860.

in that he,

at _____, on _____, by causing death of _____ Cpl _____ committed murder.

No.2

S. 71 COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, VOLUNTARILY CAUSING HURT, PUNISHABLE UNDER SEC 323 OF THE INDIAN PENAL CODE, 1860.

in that he,

at _____, on _____, voluntarily caused hurt to _____ by hitting on the head.

No.3

S. 71 COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, CAUSING DEATH BY A RASH OR NEGLIGENT ACT NOT AMOUNTING TO CULPABLE HOMICIDE; PUNISHABLE UNDER SEC 304A OF THE INDIAN PENAL CODE, 1860.

in that he,

at _____, on _____, by rashly or negligently driving service vehicle No. _____ caused death of _____.

No.4

S. 71 COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, CAUSING DEATH BY RASH OR NEGLIGENT ACT, NOT AMOUNTING TO CULPABLE HOMICIDE, PUNISHABLE UNDER SEC 304A OF THE INDIAN PENAL CODE, 1860.

in that he,

at _____, on _____, by rashly or negligently driving motor car No. _____ caused such bodily injuries to _____ in consequence of which the said _____ died on _____.

No.5

S. 71 COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, USING CRIMINAL FORCE TO A WOMAN INTENDING TO OUTRAGE HER MODESTY, PUNISHABLE UNDER SEC 354 OF THE INDIAN PENAL CODE, 1860.

in that he,

at _____, on _____, used criminal force to Smt _____, wife of (daughter) of _____ intending thereby to outrage her modesty.

No.6

S. 71 COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, CHEATING BY IMPERSONATION, PUNISHABLE UNDER SEC 412 OF THE INDIAN PENAL CODE, 1860.

in that he,

when on active service, at _____, on _____, cheated _____ by obtaining a sum of Rs _____ (Rupees _____) from him, pretending himself to be an officer in the Indian Air Force, well knowing that he was not such an officer.

No.7

S. 71 COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, USING CRIMINAL FORCE TO A PERSON ON GRAVE AND SUDDEN PROVOCATION GIVEN BY THAT PERSON, PUNISHABLE UNDER SEC 358 OF THE INDIAN PENAL CODE, 1860.

in that he,

at _____, on _____, at about _____ hrs while in conversation with

_____ Pass No._____ Chowkidar, slapped the said
_____ on grave and sudden provocation given by the
said_____

No.8

**S. 71 COMMITTING A CIVIL OFFENCE, THAT IS TO SAY,
VOLUNTARILY ASSISTING IN CONCEALING PROPERTY WHICH
HE HAD REASON TO BELIEVE TO BE STOLEN PROPERTY,
PUNISHABLE UNDER SECTION 414 OF THE INDIAN PENAL
CODE, 1860.**

in that he,

at _____, on _____, voluntarily assisted in concealing
HMT wrist watch No._____ by placing it behind a cupboard,
having reason to believe that the said wrist watch was stolen property.

No.9

**S. 71 COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, CAUSING
GRIEVOUS HURT TO A PERSON BY DOING AN ACT SO RASHLY
OR NEGLIGENTLY AS TO ENDANGER HUMAN LIFE OR THE
PERSONAL SAFETY OF OTHERS PUNISHABLE UNDER SEC.338
OF THE INDIAN PENAL CODE, 1860.**

in that he,

at _____, on _____, by rashly or negligently driving service vehicle
No. _____ as to endanger human life or the personal safety of
others, caused grievous hurt to the following persons: -

(a)

(b)

(c)

72. Civil offences not triable by court-martial —A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court—martial, unless he commits any of the said offences —

(a) while on active service, or

(b) at any place outside India, or

(c) at a frontier post specified by the said Government by notification in this behalf.

NOTES

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

2.1 'India' - see Note 5 to S.71 AFA.

2.2 Reading S.69 AA with the definitions contained in Ss.3(ii) and (viii) AA, prior to the amendment in 1975, it was held by the J&K High Court in **State v Ram Laxhan** that an offence triable by an ordinary court of criminal justice in J&K is not a civil offence as contemplated by the AA. The provisions in AA and AFA in this regard are identical. Thus it came to be that an offence against the Ranbir Penal Code in force in J&K cannot be tried by a court of ordinary criminal justice in any part of India other than J&K and hence offences under that Code committed by service personnel do not qualify as civil offences and cannot, therefore, be tried by court-martial. To remedy this situation and to ensure that the provisions as to civil offences contained in AFA and AA do not make any distinction between the State of J&K and the rest of India, both the Acts were amended by the Air Force and Army Laws (Amendment) Act, 1975.

2.3 The following 'Explanation', which was part of this section, was omitted by the Air Force and Army Laws (Amendment) Act, 1975.

'Explanation - In this section and in section 71, "India" does not include the state of Jammu and Kashmir.'

3.1 For definition of murder, see S.300, IPC

3.2 Culpable homicide not amounting to murder - see S.299, I PC.

3.3 Rape - See S. 375, IPC.

3.4 For definition of 'active service', see S.4(i) AFA. See also S.9 AFA.

4. See also Note 6 to S. 71 AFA.

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CHAPTER VII



PUNISHMENTS

CHAPTER VII
PUNISHMENTS

73. Punishment awardable by courts-martial - Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by courts martial according to the scale following, that is to say,

- (a) death;
 - (b) transportation for life or for any period not less than seven years, in respect of civil offences;
 - (c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years;
 - (d) detention for a term not exceeding two years in the case of airmen;
 - (e) cashiering, in the case of officers;
 - (f) dismissal from service;
 - (g) reduction to the ranks or to a lower rank or classification, in the case of warrant officers and non—commissioned officers;
- Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as an airman;
- (h) forfeiture of seniority of rank, in the case of officers, warrant officers and non commissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service;
 - (i) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;
 - (j) severe reprimand or reprimand, in the case of officers, warrant officers and non-commissioned officers;
 - (k) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service;

(l) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal;

(m) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

NOTES

1.1 The punishments referred to in this section are the only punishments awardable by a court-martial on conviction for an offence specified in any of the Ss.34 - 70 AFA. In case the charge is under S.71 AFA, a court-martial can also award any punishment, other than whipping, assigned for the offence under any law in force in India. For instance, a fine is not specified as a punishment in this section but a court-martial exercising jurisdiction under S.71 AFA can award a fine and such fine is recoverable under Ss.91 (f), 92(h) or 172 AFA, if the civil offence in question is punishable with a fine under the law in force in India.

1.2 Censure in the form of Severe Displeasure, Displeasure etc., are not punishments awardable under this section.

1.3 Punishment(s) listed in this section are awardable only if the accused has been convicted by a court-martial not otherwise. For punishments that may be awarded without the intervention of court-martial see Ss.82 and 86 AFA.

1.4 Where a person has been convicted, and the sentence of a Court Martial as promulgated, does not include 'dismissal' or 'cashiering', a punishment of 'dismissal', or 'cashiering' cannot subsequently be awarded under S.73 AFA for the same offence or for an offence on the same facts. But, where the conviction and sentence for an offence, either by a Court Martial or Civil Court, necessarily show that it is undesirable for the accused to continue in service, there may legally be no objection to his 'dismissal' or 'removal' by using the powers of the employer contained in Ss.19 or 20 AFA. For example, an airman awarded a sentence of imprisonment by a Court-Martial or criminal court may be dismissed/removed under S19 or 20 AFA if his conviction or sentence renders him undesirable to continue in the Air Force.

1.5 See para 754 Regs as to the principles to be observed by a court—martial in awarding sentence. These should be treated as a guide only and it may be necessary to pass more severe sentence if, for example, the offence is committed on active service, or where attention has been called in local orders to the prevalence of the offence and such orders have been proved to the satisfaction of the court.

1.6 S.75 AFA specifies the particular instances in which more than one punishment may be awarded.

2. For definition of 'Court-martial', see S.4 (xvi) AFA. As to jurisdiction and powers of GCM,

SGCM and DCM, see Ss.118 - 119 AFA.

3. As to disposal of property produced before a court-martial or regarding which an offence has been committed, see Ss.149 and 150 AFA.

4. As to manner of recording sentences, see Seventh Schedule to AFR, Form F.2 (b).

5.1 **Clause (a)** - A sentence of death can only be passed by a GCM with the concurrence of at least two-thirds of the members or by a SGCM with the concurrence of all the members; see S.131(2) and (3) AFA. A certificate to the effect that the death sentence was passed with the concurrence of _____ members unanimously, as the case may be, should be endorsed in the proceedings.

5.2 In awarding a sentence of death the court must add a direction that the accused shall suffer death by being hanged by the neck until he be dead, or by being shot to death; see S.163 AFA.

5.3 An officer sentenced to death or imprisonment must first be sentenced to be cashiered. S.76 AFA.

5.4 A person who is sentenced by a court martial to death continues to be subject to AFA till the sentence is executed. S.122(6) AFA.

5.5 Apart from S.71 AFA, the offences where a sentence of death can be awarded are specified in Ss.34, 37 and 38(1) AFA.

5.6 Death penalty is constitutional. See **Bachan Singh v. State of Punjab**.

5.7 As regards custody of person under sentence of death, see R.147 AFR.

5.8 For forms of Warrants, see Seventh Schedule to AFR, Forms G5 to G7, G 11 and other forms. Also see R.149 AFR.

6.1 **Clause (b)** - Reference to transportation for life is to be construed as a reference to imprisonment for life. Transportation 'for any period for not less than 7 years' as referred in this clause shall be deemed to have been omitted. See S.53A IPC.

6.2 Imprisonment for life means imprisonment for the whole of the remaining period of the convicted person's natural life. In the absence of an order of commutation passed by the appropriate court either under S55 IPC or under S.433 (b) Cr. P.C., a prisoner undergoing imprisonment for life will not be entitled to be released after having served 14 years of imprisonment. See **Naib Singh v. State of Punjab**.

6.3 For calculating fractions of terms of punishment, imprisonment for life is to be reckoned as equivalent to imprisonment for twenty years (S.57 IPC), though for other purposes it is treated as imprisonment for the whole of the remaining period of the convicted man's natural

life. In practice, the sentence of imprisonment for life is treated as a sentence for a certain number of years only.

6.4 Imprisonment for life is a punishment which a GCM or SGCM can award only in cases of charges under S.71 AFA where such a punishment is assigned for that offence under the law in force in India or where the offence is punishable with death as under Ss.34, 37 or 38(1) AFA and the court considers that sentence to be too severe in the circumstances 'of the case. Imprisonment for life cannot be awarded for any of the remaining offences as the maximum punishment laid down for such offences is imprisonment for fourteen years or cashiering/dismissal.

6.5 In case of officers, a sentence of cashiering must precede sentence of imprisonment for life; see S.76 AFA.

6.6 Though under S.79 AFA, a WO or NCO is deemed to be reduced to the ranks if sentenced to imprisonment for life, imprisonment, detention, field punishment or dismissal from the service, it is desirable to specify the reduction in the sentence. See also S.179 AFA.

6.7 As to the date from which a sentence of imprisonment for life is to be reckoned, see S.164 AFA.

6.8 As to execution of sentences of imprisonment for life, see Ss.165, 167 and 169 AFA and Notes thereto. For forms of Warrants, see Seventh Schedule to AFR, Form G 4 and other forms.

6.9 For suspension of a sentence of imprisonment for life or imprisonment see Ss.180 to 188 AFA and Notes thereto.

7.1 **Clause (c)** — Imprisonment is either (i) rigorous, that is, with hard labour; or (ii) simple. The terms 'rigorous' and 'simple' should invariably be used in sentences passed under AFA. If a court inadvertently passes a sentence of 'imprisonment' without specifying whether it is rigorous or simple, the sentence is treated as one of 'simple imprisonment'. Sentences of simple imprisonment are inexpedient and inconvenient of execution.

7.2 Sentences of imprisonment, unless for one or more years exactly, should, if for one month or upwards, be recorded in months. Sentences consisting partly of months and partly of days should be recorded in months and days. See para 755 Regs.

7.3 A sentence of imprisonment, whether revised or not, and whether the accused is already undergoing sentence or not, commences on the day on which the original proceedings were signed by the presiding officer. S.428 Cr PC allows the period of detention/custody undergone by a convicted person during the investigation, inquiry or trial of the same case and before the date of conviction, to be set off against the term of imprisonment. The provision for set off contained in S.428 Cr PC does not have any applicability in respect of persons convicted and sentenced by court martial. **Ajmer Singh v. UOI.**

7.4 Conversion of rigorous imprisonment into simple imprisonment is commutation.

7.5 An officer sentenced to death, imprisonment for life or imprisonment must first be sentenced to be cashiered. S.76 AFA.

7.6 As to the automatic reduction to the ranks as a result of this sentence, see Note 6.6 above.

7.7 As to execution of sentences of imprisonment, see Ss.166 to 169 AFA. For forms of warrant see Seventh Schedule to AFR Form G.2, G.3 and other forms. Advantage should be taken of S.166 (3) AFR to award short sentences of imprisonment, not exceeding three months, to be undergone in air force custody to persons whom it is desired to retain in the service.

7.8 For suspension of sentences, see Ss.180 to 188 AFA and Notes thereto.

8.1 **Clause (d)** The maximum period for which detention may be awarded is two years. It is also the maximum power of DCM.

8.2 As regards combination of punishments, see S.75 AFA.

8.3 For manner of recording detention when awarded, see para 755 Regs.

8.4 For date of commencement of detention, see S.164 AFA.

8.5 As to automatic reduction to the ranks as a result of this sentence, see Note 6.6 above.

8.6 For execution of sentence of detention, see S.170 AFA and R.153 AFR. For forms of Warrants, see Seventh Schedule to AFR, Form G 1 and other forms.

8.7 For suspension of sentence, see Ss. 180 to 188 AFA and Notes thereto.

9.1 **Clauses (e) and (f)** - Cashiering is the more ignominious form of dismissal; and normally an officer who has been cashiered cannot hold an appointment under the Government. In case of an officer, a sentence of cashiering must precede the sentence of death, imprisonment for life or imprisonment. S.76 AFA.

9.2 Only one out of the two punishments specified in clauses (e) and (f) can be awarded. See' S.75 AFA. The punishment under clause (l) of this section, can be awarded only when either of the punishments under clause (e) or (f) has been awarded.

9.3 Dismissal under S.73(f) AFA is a punishment awardable by a court-martial whereas dismissal under Ss.19 or 20 AFA is an administrative measure. Merely because dismissal is a punishment under S.73(f) AFA it cannot be said that the administrative action under Ss.19 or 20 AFA in the form of dismissal cannot be taken by the competent authority. See Note 2.2 to S.20 AFA.

9.4 The expression 'service' in clause (f) has been held to mean service in the AF and not any other service such as the Army, Navy etc. Thus cashiering and dismissal awarded as a punishment under S.73 AFA or administrative dismissal under Ss.19 or 20 AFA will not have the effect proprio vigore of terminating a lien on appointments in the Army or Naval service.

9.5 Dismissal 'cannot be commuted to discharge under S.157 AFA.

9.6 As to automatic reduction to the ranks as a result of this sentence, see Note 6.6 above. The decision whether a cashiered or dismissed officer shall receive a pension or gratuity, is in the discretion of the Government. Para 16(a) Pension Regs.

9.7 For date on which the sentence of cashiering or dismissal takes effect, see R.146 AFR. See also S.122 (5) AFA as regards continued subjection to AFA during the term of sentence of imprisonment.

9.8 Para 481 Regs makes provision for the forfeiture of gallantry decorations, campaign and commemorative medals, clasps in the event of a person subject to AFA being cashiered or dismissed.

10.1 **Clause (g)** - Service in the ranks or in a lower rank or classification will

reckon from the date of signing the original sentence, whether the original sentence was a revised sentence or was mitigated by the confirming officer from a more severe sentence. See S.164 AFA and para 293 (b) (ii) Regs.

10.2 Although the definition of NCO includes an acting NCO, a court martial does not deal with acting rank.

10.3 Reduction of a WO or NCO under this clause, to the ranks or to a lower rank or grade is a punishment awardable by a court-martial whereas a similar reduction under S.20 (4) AFA is an administrative measure resorted to on grounds of inefficiency or unsuitability. See para 294 Regs.

10.4 For definition of WO and NCO, see S.4 (xxix) and (xx) AFA.

10.5 As to automatic reduction to the ranks as a result of this sentence, see Note 6.6 above.

10.6 As regards 'Proviso', see Note 5 to S.11 AFA.

11.1 **Clause (h)** - The punishment under this clause cannot be awarded to an airman below the rank of Cpl.

11.2 A sentence of forfeiture of seniority of rank may be combined with a sentence of forfeiture of service for the purpose of promotion.

11.3 The effect of a sentence of forfeiture of seniority of rank is that the seniority of the person in his rank alone is affected, not the period of service in the rank e.g., Flt Lt 'A'

commissioned on 01 Jan 81 and who is substantive Fit Lt wef 01 Jan 86 is awarded by a GCM on 01 Jun 87 forfeiture of 1 year of seniority of rank. As a result of this sentence, confirmed and promulgated, Fit Lt A will be junior to all Flt Lts who became substantive before 01 Jan 87. However Fit Lt A will be due to be promoted to the substantive rank of Sqn Ldr on 01 Jan 92, if otherwise he is due to be promoted, along with his batch mates.

11.4 Forfeiture of service for the purpose of promotion - This sentence can be awarded in respect of all or any part of his service. The forfeiture does not affect the seniority of the officer etc., in the rank he holds at the time the sentence is passed. The effect of this sentence would be that all future promotions depending upon length of service will be retarded by the period forfeited under this clause. This would not preclude a court martial from awarding the punishment of forfeiture of seniority of rank in the form of sentencing an officer to take precedence in the rank held by him in his Branch as if his name had appeared a specified number of places lower in the Air Force List, in cases where dates of appointment of a large number of officers are identical and the forfeiture of even one day's service for the purposes of promotion might in its effect constitute too severe a punishment for the offence which nevertheless would not be adequately met by a severe reprimand.

11.5 The effect of the punishment of forfeiture of service for the purpose of promotion will depend upon the promotion rules then in force. Thus in the case of those whose promotion does not depend upon the specified length of service, forfeiture of service may not affect their promotion.

11.6 A court-martial may forfeit only past seniority in the substantive rank held.

11.7 For form of awarding sentence, see Sixth Schedule to AFR, Form F.2 (b).

11.8 For definition of officer, WO and NCO see S.4 (xxix), (xxiii) and (xx) AFA.

12.1 **Clause (i)** - As to forfeiture of service towards pension or gratuity on conviction for desertion or fraudulent enrolment, see Pension Regs, wherein the conditions under which service so forfeited may be restored are also laid down.

12.2 'Prescribed' means prescribed by rules made under AFA. No other 'purpose' has so far been prescribed under this clause.

12.3 Forfeiture of service for the purpose of pension will have the effect of reducing the qualifying service by the period for which forfeiture has been awarded. This will be the effect, even in the absence of provisions in the Pension Regs or similar other regulations to the effect that the period for which forfeiture is awarded under this clause will not qualify in reckoning the qualifying period for pension.

12.4 This clause does not include gratuity. Forfeiture of service for pension awarded under this clause will not have any effect on the qualifying service for gratuity.

12.5 It is permissible to award forfeiture of service for the purpose of pay as well as pension

etc. under this clause.

12.6 Clause (i) - As regards reckonable service for pay and increments, see also Rr. 234 & 235 of P&A Regs (AF).

13.1 **Clause (j)** - Severe reprimand or reprimand - Although acting rank is not recognised in the sentence of court-martial, an aircraftman holding any such rank, being an NCO (S.4(xx) AFA), may nevertheless be sentenced by a court-martial to be severely reprimanded or reprimanded.

13.2 Severe reprimand constitutes a 'red ink' entry, see para 1054 Regs.

13.3 This punishment cannot be awarded to an airman below the rank of Cpl.

13.4 Either severe reprimand or reprimand can be awarded; not both.

14.1 **Clause (k)** - This punishment can only be awarded by a court-martial where an offence is committed on active service; for definition of 'active service', see Ss.4(i) and 9 AFA. It is immaterial where the trial takes place.

14.2 This sentence may be awarded in addition to other punishments. Care must be taken in awarding a sentence of forfeiture of pay and allowances in days to ensure that the total period in days does not exceed three calendar months e.g., when Feb intervenes.

14.3 The forfeiture commences from the date of award and applies to all pay and allowances but see S.95 AFA. Any other stoppages of pay and allowances which the officer may be under, are suspended during the period of the forfeiture.

15.1 **Clause (l)** - As cashiering or dismissal takes effect from the date specified in R.146 AFR, this punishment will hardly be effective unless action has already been taken under S.94 AFA for withholding the pay and allowances of the accused, in which case the pay and allowances so withheld will automatically be forfeited under S.91(b) or S. 92(b) AFA read with P & A Regs if the accused was in custody; forfeiture under this clause will then cover only arrears of pay and allowances prior to the date the accused was placed in custody.

15.2 See also Note 9.2 above.

16.1 **Clause (m)** - An award to compensate for loss or damage is termed 'stoppages'. Such an award can only be made if the particulars of the charge allege that the act or omission of the accused occasioned a loss or damage and, is proved on record. R.36 (6) AFR.

16.2 If a court wishes to award compensation to the injured party as well as to cause the offender to lose all arrears of pay and allowances, etc., it should sentence him to stoppages under this clause and to forfeiture of all arrears of pay and allowances, etc. under clause (l). The stoppages will first be satisfied from any pay and allowances or other public money due to him, and the remainder (if any) will be forfeited to the State under the sentence.

16.3 A court-martial acting under this clause will simply sentence the offender to stoppages to a certain extent. The recovery which is automatic will take place under the provisions of Ss.91 or 92 AFA, whichever is applicable, and the P & A Regulations. The officer enforcing the sentence will be guided by Ss.95 and 96 AFA; i.e., he will (unless the offender is sentenced to dismissal or is an officer) stop half his pay and allowances in any one month and the whole of any gratuity or other public money (not pay and allowances) due to him, until the compensation awarded in the sentence is complete. No portion of the pay and allowances of a person sentenced to dismissal is protected and the whole of such a person's pay and allowances can, if necessary be withheld.

16.4 Irrespective of the currency in which the wording of a charge may assess the loss or damage, any stoppage that is imposed by a court-martial must be awarded in the Indian currency. The only exception to this rule is where the accused's rate of pay is expressed in any Regulations/Instructions in any other currency.

16.5 The stoppages awarded should not in any case exceed the proved loss or damage occasioned by the offence.

16.6 Stoppages under this clause may be ordered to be recovered in instalments by a competent authority under Ss.157 or 161 (2) or 177 AFA.

16.7 See also para 756 Regs.

17. In addition to the punishment listed in this section prescribed field punishment can also be awarded to those under the rank of WO. See also S.77 AFA and R.152 AFR.

18. In **Sardar Singh V. UOI**, the Supreme Court held that "The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh; it should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review".

19. In **UOI V. RK Sharma**, the Supreme Court held that a High Court under Art. 226 or 227 and the Supreme Court under Art. 32 should not interfere with the punishment so imposed merely on compassionate grounds such as it being disproportionately harsh; except in ex facie cases of perversity or irrationality

74. Alternative punishments awardable by court-martial - Subject to the provisions of this Act, a court-martial may, on convicting a person subject to this Act of any of the offences specified in sections 34 to 70 inclusive, award either the particular punishment with which the offence is stated in the said section to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in section 73 regard being had to the nature and degree of the offence.

NOTES

- 1.1 This section is to be read in conjunction with S.75 AFA. Further Ss.34 to 70 AFA specifically provide for awarding either the maximum punishment or 'such less punishment' as is mentioned in AFA.
- 1.2 'Subject to the provisions of this Act' - S.75 AFA specifies the particular instances in which more than one punishment may be awarded.
2. For definition of 'court-martial' and 'offence', see S.4(xvi) and (xxii)AFA.
3. Field punishment is deemed for the purpose of commutation to stand next below dismissal in the scale of punishments (S.78 AFA) and may be awarded in lieu where permissible.
4. The punishments awardable by a court-martial on conviction for a civil offence under S.71 AFA are set out in that section.
5. In **UOI V. RK Sharma**, the Supreme Court held that Sec 72 of the Army Act, 1950 (Corresponds to Sec 74 of the AFA) merely provides that the Court-Martial may on convicting a person, award either the punishment which is provided for the offence or any of the lesser punishments set out in the scale in Sec 71 (Corresponds to Sec 73 AFA). Sec 72 does not set out that in all cases, a lesser punishment must be awarded. In other words, merely because a lower punishment is not granted, it would not mean that the punishment was violative of Sec 72.

75. Combination of punishments - A sentence of a court-martial may award in addition to, or without any one other punishment, the punishment specified in Cl. (e) or Cl. (f) of section 73 and any one or more of the punishments specified in Cls. (g) to (m) of that section.

NOTES

1. Combination of punishments is legal and permissible under AFA. This section vests a power in the court-martial to choose and award a combination of the punishments enumerated in S.73 AFA depending upon the nature and degree

of the offence and subject to the limitations imposed by this section. Thus a court-martial may award either in addition to or without any one other punishment/the punishments specified in clause (e) or clause (f) of S.73 AFA and any one or more of the punishments specified in clause (g) to (m) of that section. See **R Shanmugam v. OC.65 Coy, RC Chaurasia v. UOI** and **SC Patnaik v. UOI**.

2. It should be noted that field punishment and forfeiture of pay and allowances (not of arrears of pay and allowances under S.73(l)), can only be awarded for an offence committed on active service. Further, field punishment cannot be awarded to an offender unless he is below the rank of WO.

3. The following combined sentences are legal:

(i) Cashiering, imprisonment, stoppage and forfeiture of all arrears of pay and allowances in the case of an officer.

(ii) Imprisonment, dismissal, reduction (WO and NCO), stoppage and forfeiture under S.73 (1) AFA.

(iii) Field punishment, dismissal, reduction (NCO), stoppage and forfeiture under S.73 (l) AFA.

(iv) Forfeiture of seniority of rank, forfeiture of service for promotion (when applicable), severe reprimand, forfeitures and stoppage, in the case of an officer, WO or NCO.

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

5. The punishments specified in this section may be awarded for civil offences tried under S.71 AFA, either in lieu of, or in addition to, those assigned by the ordinary law to the offence of which the accused has been convicted. See Note 11 to S.71 AFA..

76. Cashiering of officers - An officer shall be sentenced to be cashiered before he is awarded any of the punishments specified in Cls. (a) to (c) of Sec. 73.

NOTES

1. Care must be taken to comply with this provision. A sentence of death, imprisonment for life or imprisonment and cashiering is incorrect as the sentence of cashiering must precede the sentence of death or imprisonment. If such a punishment is awarded the confirming officer should vary it under R.80 AFR. However, in the case of an officer, a sentence of dismissal and imprisonment is no sentence at all being unknown to law; such a sentence, if passed by a court-martial, should be sent back for revision.
2. Cashiering - See Note 9 to S.73 AFA. For date of effect of cashiering, see R.146(1) AFR.
3. For definition of 'officer', see S.4 (xxiii) AFA.

77. **Field punishment.** (1) Where any person subject to this Act and under the rank of warrant officer commits any offence on active service, it shall be lawful for a court martial to award for that offence any such punishment as is prescribed as a field punishment.

(2) Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb and shall not include flogging.

NOTES

1.1 For definition of 'Warrant Officer', see S.4 (xxix) AFA.

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

1.3 Active service - See Ss.4 (i) and 9 AFA.

2. Whenever an accused was at the date of his offence on active service this fact should always be stated in the charge-sheet so that the court may be in a position to give effect to this section. Nevertheless, when the service personnel in the country where the court sits are all on active service, the court may take judicial notice of such fact though not expressly averred.

3. Field punishment can only be awarded to an NCO or aircraftman.

4.1 Field punishment should always be awarded in days or months.

4.2 A court-martial cannot award field punishment for a period exceeding three months; 'month' is a calendar month. Where field punishment is awarded in days, it must be ensured that the maximum period is not exceeded. e.g., allowance must be made for months having less than 31 days.

4.3 The term of field punishment commences from the date of award.

4.4 For the prescribed forms of field punishment, see. R.152 AFR.

5. An NCO awarded field punishment by a court-martial is deemed to be reduced to the ranks. S.79 AFA.

78. Position of field punishment in scale of punishments - Field punishment shall for the purpose of commutation be deemed to stand next below dismissal in the scale of punishments specified in Sec. 73.

NOTES

1. Field punishment can be commuted to reduction to the ranks or to a lower rank or grade, or to any, punishment lower than reductions in the scale contained in S.73 AFA. Only sentences of death, imprisonment for life, imprisonment or dismissal can be commuted to field punishment, provided the offender is under the rank of WO and the offence is committed on active service.

2. Commutation - See Note 4.3 to S.157 AFA.

79. Result of certain punishments in the case of a warrant officer or a non-commissioned officer - A warrant officer or a non commissioned officer sentenced by a court-martial to transportation, imprisonment, detention, field punishment or dismissal from the service shall be deemed to be reduced to the ranks.

NOTES

1. Although under this section a WO or NCO holding substantive rank, when sentenced to imprisonment for life, imprisonment, detention, field punishment or dismissal, is ipso facto reduced to the ranks it is desirable to specify the reduction in the sentence. A court-martial cannot sentence a person holding an acting rank to reduction to the ranks; but an acting NCO, being an NCO in terms of S.4(xx) AFA loses his acting rank under this section upon being sentenced to any of the punishments therein mentioned. See Note 10.2 to S.73 AFA.
2. If any of the punishments mentioned in this section is remitted, that by itself would not amount to remission of the consequent punishment of reduction to the ranks. If it is decided to avoid such consequent punishment of reduction to the ranks, the reduction must also be remitted; see S.179 AFA.
3. For definition of court-martial, WO and NCO, see S.4(xvi), (xxix) and (xx) AFA.
- 4.1 Transportation - See Note 6.1 to S.73 AFA.
- 4.2 Field punishment - See Notes 2 to 5 to S.77 AFA.

80. Retention in the ranks of a person convicted on active service -When, on active service, any enrolled person has been sentenced by a court—martial to dismissal, or to transportation, imprisonment or detention, whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks and such service shall be reckoned as part of his term of transportation, imprisonment or detention, if any.

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NOTES

1.1 Active service - See Ss.4(i) and 9 AFA.

1.2 'Any enrolled person' - means a person subject to AFA under S.2(b) AFA. WOs and NCOs though originally enrolled are not liable to be retained to serve in the ranks under this section.

1.3 Transportation - See Note 6.1 to S.73 AFA.

2. A person can only be retained to serve in the ranks under this section - while he is on active service, and the order must be made before the sentence of dismissal has taken effect; see R.146 AFR. The dismissal is not avoided but is merely suspended so long as the person is retained to serve in the ranks. If it is subsequently desired to retain the person in the service, dismissal must be remitted.

3. For prescribed officer, see R.161 AFR.

81. Punishment otherwise than by court martial - Punishments may also be inflicted in respect of offences committed by persons subject to this Act without the intervention of a court-martial and in the manner stated in Secs. 82 and 86.

NOTES

1. For definition of 'offences' and 'court-martial', see S.4(xxii) and (xvi) AFA.
2. The proceedings under Ss.82 and 86 AFA are summary proceedings. The officer disposing of the case summarily under these sections is not a 'court' nor does the IEA apply to such proceedings. Further, unlike a trial by court-martial, the accused has no right to be represented by counsel/defending officer or even assisted by the friend of the accused.

82. Punishment of persons other than officers and warrant officers -Subject to the provisions of Sec.84, a commanding officer or such other officer as is, with the consent of the Central Government, specified by the Chief of the Air Staff, may, in the prescribed manner, proceed against a person subject to this Act otherwise than as an officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments that is to say, -

- (a) detention up to twenty-eight days;
- (b) confinement to the camp up to fourteen days;
- (c) extra guards or duties not exceeding three in number;
- (d) deprivation of acting rank;
- (e) forfeiture of badge pay;
- (f) severe reprimand or reprimand;
- (g) fine up to fourteen days' pay in any one month;
- (h) penal deductions under Cl. (g) of Sec. 92;
- (i) admonition;
- (j) Any prescribed field punishment up to twenty-eight days, in the case of a person on active service.

NOTES

- 1.1 For definition of 'commanding officer', see S.4 (xii) AFA and Notes thereto.
- 1.2 For definition of 'officer' and 'warrant officer', see S.4 (xxiii) and (xxix) AFA.
- 1.3 For definition of the 'Chief of the Air Staff', see S.4 (xiv) AFA.
- 1.4 For definition of 'offence', see S.4 (xxii) AFA.
- 2. 'Subject to the provisions of S.84' - S.84 imposes certain restrictions and limits as regards the exercise of powers under this section.
- 3.1 Prescribed manner - See R.24 AFR and paras 661-680 Regs.
- 3.2 'to the extent prescribed' - See R.29 and 30 AFR. Censure in the form of severe

displeasure etc., are not punishments awardable under this section.

3.3 For the duties of a CO as to investigation of a charge for an offence and disposal of the charge, see S.103 AFA and Rr.24-25 AFR.

3.4 Every charge must be heard in the presence of the accused. Witnesses are not sworn or affirmed, but the accused must have full liberty to cross-examine, to call witnesses and to make any statement.

3.5 Competent superior authority can issue instructions of a suitable nature for the guidance of those called upon to exercise discretion under Ss.82 or 86AFA. But if this advice or guidance circumscribes or restricts the discretion or makes it mandatory for the commanding officer/competent authority to act only in a particular manner, then it would be open to challenge.

3.6 A CO may dismiss the charge, and he should do so if, in his opinion, the evidence does not show that some offence under AFA has been committed, or if, in his discretion he thinks that the charge ought not to be proceeded with. See R.24(2) AFR.

4. 1 Where a person has been convicted or acquitted of an offence by a court-martial or by a criminal court or summarily dealt with or the charge has been dismissed, he is not liable to be summarily punished or tried by court-martial for the same offence or for an offence which is substantially the same; S. 120 AFA. For example, if he has been acquitted or convicted of, or summarily punished for, absence without leave, and the absence amounted to desertion, he cannot afterwards be tried for desertion.

4.2 A person convicted by a court-martial of an offence cannot afterwards be sentenced under this section by his CO to stoppage for damage caused by that offence.

4.3 A person is also not liable to be tried for an offence which has been pardoned or condoned by competent air force authority, or which was committed more than three years before the date of his trial, unless the offence was mutiny, desertion or fraudulent enrolment. See S.121 AFA and R.61 AFR.

5. "Or such other officer" see R.30 AFR. AFO 49/81 (Paras 1 to 3) read as follows:

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

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

of Headquarters Section or Flight).

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

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

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

6. Award of a minor punishment is complete as soon as the officer holding the trial has pronounced the punishment to the accused person and the accused person is marched out from his presence. When a commanding officer, or other officer having power to dispose of an offence summarily, has once awarded a punishment for an offence, he cannot afterwards increase the punishment for that offence. (R.32 AFR). However, the CO or other officer awarding the punishment may decrease the punishment awarded before it has been carried out. Thus punishments which take effect immediately e.g., deprivation of acting rank, reprimand, admonition etc., are not liable to be decreased.

7. As regards review of minor punishments, see R.33 AFR and also para 711 Regs.

8.1 **Clause (a)** - field punishment, detention, confinement to the camp, extra guards or duties, forfeiture of badge pay and fine will not be awarded to a person who is of the rank of NCO or was of such rank at the time of committing the offence for which he is punished; S.84(4) AFA. The term 'non-commissioned officer' as defined in S.4(xx) AFA includes an acting NCO.

8.2 Detention commences from the date of award and ends at sunset of the day the sentence expires. Its execution cannot be postponed or suspended.

8.3 Detention, confinement to the camp and extra guards or duties may be awarded separately or conjointly but the execution of detention will precede confinement to the camp and extra guards or duties. S.84 (2) AFA.

8.4 No award including detention and confinement to the camp shall exceed in the aggregate forty two days, S.84 (3) AFA. Also see S.84 (2) AFA.

8.5 As to deduction from pay and allowances entailed by award of field punishment or for AWL, see S.92 (a) and P & A Regs.

9.1 **Clause (b)** - Confinement to the camp is not custody for the purpose of S.51 AFA.

9.2 An airman undergoing the punishment of confinement to the camp is commonly known as defaulter. Ordinarily the orders applicable to defaulters will be contained in the Stn/Unit Standing Orders. Accordingly, the defaulters will be required to report at intervals to the Guard Room or other specified place. They will also attend parades and take all duties in regular turn.

9.3 See also Notes 8.1 to 8.4 above.

10.1 **Clause (c)** - This punishment is generally awarded for minor offences on those duties. The punishment that can be awarded is 'extra guards' or 'extra duties' and not 'extra guard duties'.

10.2 See also Notes 8.1, 8.3 above.

11. **Clause (d)** - This punishment can be awarded only if the accused is holding an acting rank, whether paid or unpaid.

12. **Clause (e)** - Only one rate of badge pay can be forfeited at one time.

13.1 **Clause (f)** - This punishment cannot be awarded to any person below the rank of NCO. It can be awarded to an acting NCO. See S.84 (5) AFA.

13.2 Either severe reprimand or reprimand can be awarded; not both.

13.3 An award of severe reprimand constitutes a red ink entry. See para 1054 Regs.

14. 1 **Clause (g)** - This punishment may be awarded alone or in conjunction with any other punishment under this section; but see also Note 8.1 above.

14.2 Fine is to be awarded in terms of pay for a specified number of days, and not in terms of a quantified amount. Where a person is tried two or more times during a calendar month, the total fine which may be imposed upon him during all such summary trials taken together shall not exceed 14 days pay.

14.3 Recovery can be effected under S.92 (h) AFA.

15.1 **Clause (h)** - Under this clause the CO or other officer awarding punishment is authorised to award stoppage to meet any expenses, loss, damage or destruction caused by the offender to the Central Government or to any building or property; but the deductions so ordered shall not exceed in any month one half of his pay and allowances for that month. See Ss.92 (g) and 95 AFA.

15.2 See also para 810 Regs.

15.3 This punishment can not be awarded to NCOs as well as to those below NCOs.

16. **Clause (i)** - This punishment can be awarded to NCO as well as to those below NCOs.

17.1 **Clause (j)** - For prescribed forms of field punishments, see R.152 AFR.

17.2 This award can only be made for an offence committed on active service.

17.3 It cannot be awarded conjointly with that of detention or confinement to the camp. S.84 (1) AFA.

17.4 Field punishment cannot be awarded to a person who is or was, at the time of committing the offence, a NCO; see Note 8.1 above.

17.5 As to forfeiture of pay and allowances; see Note 8.5 above.

17.6 For purposes of mitigation and commutation, field punishment shall be deemed to be higher in scale than detention; see R.33 (3) AFR.

83. Requirement of sanction in certain cases – (1) Subject to the provisions of sub-section (2), the punishments mentioned in Sec. 82 shall not be inflicted in respect of an offence under any of the Secs. 34, 35 and 36 when committed on active service or under any of the Secs. 37, 38, 40 42 (f) and (g) 43, 47, 52, 60, 62, 63, 64, 66 (a), (b) and (c) and 71 except with the previous sanction in writing of an officer having power to convene a district court-martial.

(2) The said punishments may be awarded without such sanction in the case of any offence, other than an offence under Sec. 34 or Sec. 71, committed by persons who have not been enrolled as combatants.

NOTES

1.1 This section imposes a restriction on the award of minor punishment by a CO or other officer exercising power under S.82 AFA. The restriction applied only to offences under any of the sections mentioned in sub-section (1) of this section. In all such cases the punishing authority has to obtain previous sanction in writing of the officer having power to convene a DCM.

1.2 As regards NCs (E) the restriction applied only if the offence was under Ss. 34 or 71 AFA; not otherwise.

2.1 The requirement under this section of prior sanction is only where it is proposed to award a minor punishment; such permission is not required for dismissing a charge.

2.2 Any minor punishment awarded in violation of this section is illegal and non est in law. Such punishment does not bar subsequent trial of the accused.

3. While referring a case to superior authority for prior permission in terms of this section, a summary of evidence, though not a legal requirement should yet be desirably attached as it enables superior authorities to know the facts and the attendant circumstances of the case.

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

5. See also R.24 (3)(b) AFR and R.25 (I) (b) AFR.

6. An officer having power to convene a court-martial may order a court-martial, in a case where no application for trial has been made, provided that the case was referred to him for sanction under S.83 AFA (R.28).

84. Limit of punishments under Sec. 82 - (1) An award of punishment under Sec. 82 shall not include field punishment in addition to one or more of the punishments specified in Cls. (a) and (b) of that section.

(2) In the case of an award of two or more of the punishments specified in Cls (a), (b) and (c) of the said section the punishment specified in Cl. (b) or Cl.(c) shall take effect only at the end of the punishment specified in Cl. (a).

(3) When two or more of the punishments specified in the said Cls. (a) and (b) are awarded to a person conjointly, or when already undergoing one or more of the said punishments, the whole extent of the punishments shall not exceed in the aggregate forty-two days.

(4) The punishments specified in Cls. (a), (b), (c), (e), (g) and (j) of Sec. 82 shall not be awarded to any person who is of the rank of non-commissioned officer or was, at the time of committing the offence for which he is punished, of such rank.

(5) The punishment specified in Cl. (f') of the said section shall not be awarded to any person below the rank of a non-commissioned officer.

NOTES

1. For definition of 'non-commissioned officer', see S.4 (xx) AFA. For purposes of sub-section (4) and (5) of this section an acting Cpl, whether paid or unpaid, shall be deemed to be an NCO.

2. Field punishment - See Note 17 to S. 82 AFA.

3. See Notes 8.1, 14.1 and 17.3 to S. 82 AFA.

85. Punishments in addition to those specified in Sec. 82 — The Chief of the Air Staff may, with the consent of the Central Government, specify such other punishments as may be awarded under Sec. 82 in addition to or without any of the punishments specified in the said section, and the extent to which such other punishments may be awarded.

NOTES

1. No other punishments have been specified so far under this section.
2. For definition of 'Chief of the Air Staff', see S.4(xiv) AFA.

86. Punishment of officers and warrant officers —An officer having power to convene a general court-martial or such other officer as is, with the consent of the Central Government, specified by the Chief of the Air Staff may, in the prescribed manner, proceed against an officer below the rank of squadron leader or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say, -

(a) forfeiture of seniority, or in case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a court-martial

(b) severe reprimand or reprimand

(c) stoppage of pay and allowance until any proved loss or damage occasioned by the offence of which he is convicted is made good but subject to the right of the accused specified in Cl. (a)

(d) forfeiture of pay and allowances for a period not exceeding three months for an offence under Cl (e) of Sec. 42 in so far as it consists of neglect to obey flying orders or under Sec. 62 or Sec. 63.

NOTES

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

1.2 For definition of 'court—martial' and 'offence', see S.4(xvi)

and (xxii) AFA.

1.3 For definition of 'Chief of the Air *Staff*', see S.4(xiv) AFA.

2.1 such other officer ' - In pursuance of S.86 AFA, the CAS has, with the consent of the Central Government, specified that any air officer in command of a unit or formation may proceed under the said Section, against an officer, below the rank of Squadron Leader or a warrant Officer, who is for the time being serving under the command of that air officer and award one or more of the punishments as stated in that section (AFO 32/97).

3.1 This section obviates the necessity for trying by court-martial certain officers and WOs who commit an offence which is not of a serious nature but which cannot at the same time be overlooked.

3.2 The requirement of sanction in terms of S. 83 does not apply to summary trial under this section.

3.3 An officer having power to convene a court-martial, may order a court-martial in a case where no application for trial has been made, provided that the case was referred to him for summary disposal under S.86 AFA and also for sanction under S. 83 AFA. Where the case was not referred for summary disposal under S. 86 AFA an application for trial must be received before the officer having power to convene a court martial may order a GCM.

4. Prescribed manner See R, 31 AFR and Forms D1, D2 in Fourth Schedule to AFR.

5. No summary trial can legally be held under S. 86 AFA unless a summary of evidence has been recorded against the accused, and a copy each of the charge-sheet and the summary of evidence has been delivered to the accused not less than forty-eight hours before such summary trial. The copies of the charge-sheet and summary of evidence are to be supplied to the accused free of charge, and should be given as soon as practicable after their preparation. The responsibility for doing this rests upon the commanding officer of the accused. While referring the case for summary trial under this section, it is desirable that the CO should obtain from the accused a certificate to the effect that he is willing to dispense with the personal attendance of witnesses at the summary trial. If the accused declines to give such a certificate, the summary trial may be prolonged and may involve taking down evidence of witnesses. Hence in such cases the officer empowered to hold the summary trial, may decide not to dispose of the charge under this section.

6. Except when the summary trial is held by an air officer specified by the CAS (vide AFO 32/97), in all other cases there is no requirement for the accused necessarily to be posted or attached to the unit of the officer holding summary trial, merely for the purposes of such trial. However, the charge-sheet must in all cases be signed by the CO of the accused.

7. Competent superior authority can issue instructions of a suitable nature for the guidance of those called upon to exercise discretion under Ss. 82 or 86 AFA. But if this advice or guidance circumscribes or restricts the discretion or makes it mandatory for the CO or competent authority to act only in a particular manner, then it would be open to challenge.

8. The provisions of Ss. 120 and 121 AFA are applicable to summary disposal under S.86 AFA in the same manner as for court-martial.

9. **Clause (a)** - See Notes to Cl. (h) of S.73 AFA. If the authority dealing summarily with the case proposes to award this punishment he shall ask the accused "Will you accept my award, or do you elect to be tried by court-martial?"

10. **Clause (b)** - See Notes to clause (j) of S. 73 AFA.

11.1 **Clause (c)** - See Notes to clause (m) of S.73 AFA. If the authority dealing summarily with the case proposes to award this punishment he shall ask the accused "will you accept my award or do you elect to be tried by court-martial?"

11.2 See also Ss. 91(e) and 92(e) AFA.

12. **Clause (d)** - This punishment can be awarded only for an offence under Ss. 62 or 63 AFA, or for an offence under S.42 (e) in so far as consists of neglect to obey flying orders.

13. As regards review of punishments under this section, see S.88 AFA.

14. Transmission of proceeding - See S.87 AFA.

87. Transmission of proceedings — In every case in which punishment has been awarded under Sec. 86 certified true copies of the proceedings shall be forwarded, in the prescribed manner by the officer awarding the punishment, to a superior air force authority as defined in Sec. 89.

NOTES

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1. Prescribed manner - See R.31(5) AFR. The original proceedings are also required to be forwarded to the superior air force authority, if a punishment has been awarded.
2. Superior air force authority - See S. 89 AFA.

88. Review of proceedings — If any punishment awarded under Sec. 86 appears to a superior air force authority as defined in Sec. 89 to be illegal, unjust or excessive, such authority may cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case.

NOTES

1.1 A punishment is wholly - 'illegal' if (i) the finding of guilty cannot be upheld; or (ii) the only punishment awarded is of a kind which cannot be awarded for the offence charged (e.g., stoppage of pay and allowances for an offence which is not alleged to have occasioned any loss); or (iii) where the punishment awarded is of a kind which the authority dealing with the case is not authorised to award.

1.2 Where the punishment is wholly illegal it must be cancelled and appropriate directions made by the superior military authority.

2.1 A punishment is 'excessive' when it is in excess of the punishment authorised by law for the offence i.e., where it is of a kind which the authority dealing with the case is authorised to award for the offence charged but is greater in amount than he is authorised to award. For example if an authority under S. 86 AFA were to award stoppages greater than the amount of the loss proved to have been occasioned by the offence or forfeiture of seniority of rank for a period in excess of twelve months.

2.2 In such cases the superior air force authority specified in S.89 AFA can vary the punishment by reducing the amount of punishment to an amount which is authorised by law.

3. Where the punishment though not in excess of the punishment authorised, appears to be unjust or severe, the superior air force authority has the power to remit the whole or part of the punishment. If the whole of the punishment is remitted there will be nothing left except the finding which will stand good and the accused will suffer the forfeitures or penalties which are consequential on conviction.

4. 'make such other direction, as may be appropriate in the circumstances of the case' These words would enable the superior air force authority to mitigate or commute the punishment where it is unjust or excessive.

5. No time limit has been laid down within which review under this section may be carried out. See also para 711 Regs. It is not desirable from the point of view of air force discipline to exercise the power of review under this section long after the award, unless the punishment is illegal or other strong grounds existed for belated interference.

6. Superior air force authority - See S.89 AFA.

89. Superior air force authority, For the purposes of Secs. 87 and 88 a "Superior air force authority" means

(a) in the case of punishments awarded by a commanding officer, any officer superior in command to such commanding officer

(b) in the case of punishments awarded by any other authority, the Central Government, the Chief of the Air Staff or other officer specified by the Chief of the Air Staff.

NOTES

1. For definition of 'commanding officer' and 'Chief of the Air Staff', see S.4(xv) and (xiv) AFA.
2. No officer has been specified by the CAS under clause (b) of this section.

90. Collective fines — (1) Whenever any weapon or part of a weapon forming part of the equipment of a unit or detachment is lost or stolen, the officer commanding such unit or detachment may, after obtaining the report of a court of inquiry, impose a collective fine upon the warrant officers, non—commissioned officers and men of such unit, or upon so many of them as, in his judgement, should be held responsible for such loss, or theft.

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

NOTES

1. This section authorises the imposition of a collective fine on a unit or detachment for the purpose of enforcing collective responsibility. Such a collective fine must be distinguished from a joint fine based on individual responsibility. The intention of the section is not to permit the imposition of the punishment by fine on persons against whom there is suspicion but insufficient proof to warrant their conviction by court martial. This section is, in a sense, an exception to the general scheme of AFA under which individual responsibility is the basis for punishment or for penal deduction. The powers granted by this section are therefore, of an administrative and not judicial character.

2. A collective fine cannot be imposed upon officers.

3. The imposition of a collective fine under this section upon persons of a unit is not a bar to trial by court-martial of any person of that unit, whose individual act or omission may have contributed to the loss.

4. Whenever a weapon or part of a weapon referred to in this section is lost or stolen, a court of inquiry is mandatory.

5. The amount of the fine to be imposed is regulated by S.90(2) and R. 157 AFR; the fine must be assessed as a percentage on the pay of the individuals on whom it falls.

6. For definition of 'Unit', commanding officer' and 'warrant officer', see S.4(xxviii), (xv) and (xxix) AFA.

7. See also para 1418 and 1419 Regs.

CHAPTER VIII

Penal Deductions

91. Deductions from pay and allowances of officers

The following penal deductions may be made from the pay and allowances of an officer that is to say,—

- (a) all pay and allowances due to an officer for *every* day he absents himself without leave, unless a satisfactory explanation has been given to his commanding officer and has been approved by the Central Government;
- (b) all pay and allowances for every day while he is in custody or under suspension from duty on a charge for an offence of which he is afterwards convicted by a criminal court or a court-martial or by an officer exercising authority under section 86.
- (c) any sum *required* to make good the pay of any person subject to this. Act which he has unlawfully retained or unlawfully refused to pay;
- (d) any sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of an offence as may be determined by the court—martial by whom he is convicted of such offence, or by an officer exercising authority under Sec. 86;
- (e) all pay and allowances ordered by a court-martial or an officer exercising authority under section 86 to be forfeited or stopped;
- (f) any sum required to pay a fine awarded by a criminal court or a court-martial exercising jurisdiction under Sec. 71;
- (g) any sum required to make good any loss, damage, or destruction of public or service property which, after due investigation, appears to the Central Government to have been occasioned by the wrongful act or negligence on the part of the officer;
- (h) all pay and allowances forfeited by order of the Central Government if the officer is found by a court of inquiry constituted by [the Chief of the Air Staff] in this behalf, to have deserted to the enemy, or while in enemy hands, to have served with, or under the orders of, the enemy or in any manner to have aided the

enemy, or to have allowed himself to be taken prisoner by the enemy through want of due precaution or through disobedience of orders or wilful neglect of duty, or having been taken prisoner by the enemy, to have failed to rejoin his service when it was possible to do so;

(i) any sum required by order of the Central Government to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

NOTES

1.1 S. 25 AFA enjoins that the pay of any person subject to AFA due to him as such under any, regulation for the time being in force shall be paid without any deduction other than the deductions authorised by or under AFA or any other Act.

1.2 It is illegal to make deductions which are not authorised and unlawful withholding of pay is an offence under S. 61 AFA.

1.3 The term 'pay' means the rate of pay with increases, if any, for length of service, to which a person subject to AFA is entitled by reason of his rank, appointment, trade group or trade classification and includes additional remuneration such as qualification pay, proficiency pay and various forms of additional pay which is admissible only on fulfillment of certain conditions. Regulations may provide for the withdrawal of such additional remuneration if the conditions governing them, are not fulfilled. All other emoluments are 'allowances'. Also see Note 1 to S. 25 AFA.

2. This section and S.92 AFA enunciate the penal deductions that may be made from the pay and allowances of an officer and a person other than an officer respectively, and by implication exclude other penal deductions but they do not prohibit deductions not penal.

3. Though this section and S.92 AFA are permissive, some of the penal deductions authorised there under have been made mandatory by P & A Regs. Penal deductions under clauses (a), (d), (e) and (f) of this section have been made mandatory and those under clauses (b), (c), (g), (h) and (i) permissive; see paras 577-578 of P & A Regs. Also see para 16 P & A Regs.

4. As to remission of penal deductions, see S.98 AFA and R. 164 AFR.

5.1 **Clause (a)** - for definition of 'officer' and 'commanding officer', see S.4 (xxiii) and (xv) AFR.

5.2 If pay has been discontinued under P & A Regs or has not been drawn during a period of absence without leave, such pay is liable to be forfeited under this clause on the issue of an order by the Central Govt. If pay has been drawn during such a period, the issue constitutes an over-issue and the amount is recoverable as a public claim. It is unnecessary for an

officer to be found guilty of absence by any court or tribunal before any deductions for the period of absence can be enforced under this clause.

6.1 **Clause (b)** - Pay and allowances are issuable to an officer though he is in custody or under suspension from duty on a charge for an offence unless such pay and allowances or any part thereof are directed to be with-held under S. 94 AFA; in which case they can be forfeited on his subsequent conviction for that offence. Even though pay and allowances are not so with-held their issue during such period may constitute an over-issue and the amount may be recovered as a public claim.

6.2 'Custody' includes custody by the civil authorities.

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

7. **Clause (c)** - It is an offence under S.61 AFA to detain pay unlawfully, etc., but it would not appear necessary for' an officer to be convicted of an offence under that section before a deduction may be made under this clause. See S.61 AFA and Notes thereto.

8.1 **Clause (d)** - 'occasioned by' - In order to put an officer under stoppages by way of penal deductions, under either this clause or clause (g), it is not sufficient to show merely that the loss, etc., was facilitated or made possible by his offence, act, or neglect. It is necessary to show that the loss, etc., was 'occasioned by' in the sense of being the natural and reasonable consequence of the particular offence of which he is convicted. In the case, however, of the continuing wrongful act of improperly using Govt. property, e.g., a motor vehicle, any loss or damage happening to such property during the continuance of such user may be held to be occasioned thereby. Where the loss etc., was merely facilitated or made possible by the offence, it is possible to effect 'its recovery as a public claim.

8.2 The term 'expenses' and 'loss etc., in this clause are not limited to public funds and property but would also extend to recognised non-public funds and NPF property as well as loss of wages and doctor's expenses etc., incurred by an individual (servicemen or a civilian) as the direct result of the offence of which the delinquent is convicted. But occasion will rarely arise when it is advisable for a court-martial to exercise its power of awarding a penal deduction to compensate a civilian, who has always his proper legal remedy of bringing a civil action for recovery of damages. Stoppages, however, should be awarded where a charge of theft of or damage to the property of a civilian is dealt with by court-martial or summarily.

8.3 As regards averment in the particulars of the charge of the amount of the loss etc., see R.36(6) AFR.

8.4 The principle is that stoppage is intended, not for punishment, but to compensate for the loss etc., sustained.

8.5 A person is not liable for the ordinary expenses of his prosecution, capture or conveyance or indirect expenses of a similar kind. Nor would he be liable under this clause for damage to a policeman's clothes, because the policeman fell down and damaged them while in pursuit

of the person endeavouring to escape. Where a person refused to march, being able to do so, and a taxi has to be hired for his conveyance he may be held liable for the expense thus incurred by his contumacy; but he would not be liable if intoxicated and incapable of walking.

8.6 Where an officer has been convicted for an offence by a court-martial which did not award any stoppage, no penal deductions can subsequently be ordered under this clause, administratively for compensation for damage caused through that offence.

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

9.1 **Clause (e)** - for definition of 'court-martial' and 'officer', see S.4 (xvi) and (xxiii) AFA.

9.2 A court-martial can award forfeiture or stoppage under clause (k), (l) or (m) of S.73 AFA.

9.3 An officer exercising authority under S.86 AFA may award stoppage or forfeiture under clause (c) or (d) of that section.

10.1 **Clause (f)** - For definition of 'criminal court' and 'court— martial', see S.4 (xvii) and (xvi) AFA.

10.2 Fine is not one of the punishments specified in S.73 AFA and is only awardable by a court-martial when exercising jurisdiction under S.71 AFA.

10.3 When the fine awarded by court-martial cannot be recovered wholly by deductions from the pay and allowances of an officer, action may also be taken for its recovery under S.172 AFA.

11.1 **Clause (g)** - for definition of 'officer', see S.4(xxiii) AFA.

11.2 'Public property' in this clause means not only property of the Govt. but also any property belonging to the community at large as distinct from that which is private property. Captured enemy property is public property.

11.3 The words 'of public or service property' qualify 'loss' and 'damage' as well as destruction. Furniture etc., hired by the Air Force authorities for air force use may be treated as 'public' or 'service' property. Service property includes property belonging to Officers' Mess and Unit run canteen.

11.4 It must be shown to the satisfaction of the Central Govt. that there has been a loss etc., occasioned by (in the sense referred to in Note 8.1 above) some wrongful act or negligence on the part of the officer; and as a general rule an officer is first afforded an opportunity of advancing any reasons why a deduction should not be made from his pay and allowances.

11.5 Negligence has the same meaning as 'omission' in S.65 AFA; see Notes to S.65 AFA. Also see para 1687 Regs.

11.6 In no case should the sum awarded under this clause exceed the amount of loss,

damage or destruction occasioned by the wrongful act.

11.7 The Central Govt. can legally impose a penal deduction on an officer under this clause notwithstanding that he has been previously dealt with under S.86 AFA or by a court—martial for the wrongful act or neglect; but they may not increase a penal deduction awarded by court-martial or other authority, or order such deduction where the loss etc., was averred in the particulars but the court-martial or other authority did not award any stoppage. A mere invitation to an officer to make a payment towards any loss or damage occasioned by his wrongful act or neglect however, does not bar the Central Govt. from making an order under this clause.

12.1 **Clause (h)** - for definition of 'officer' and 'Chief of the Air Staff', see S.4(xxiii) and (xiv) AFA.

12.2 For definition of 'enemy', see S.4 (xviii) AFA.

12.3 Court of Inquiry - See R.154 (1) AFR.

12.4 When there is reason to believe that an officer has been taken prisoner by his own voluntary action, or wilful neglect of duty, or that he has served with or under or has aided the enemy etc., a provisional court of inquiry will be assembled at the earliest moment to investigate the circumstances; see para 809 Regs. The CAS or any officer authorised by him may then under S.97 AFA order the pay and allowances of such person to be withheld pending the result of such inquiry.

12.5 When a court of inquiry is assembled on a prisoner of war, evidence shall be recorded on oath or affirmation. See R. 156(3) and (5) AFR.

12.6 As to provision for dependents of prisoners of war from remitted deductions or from pay and allowances, see Ss.99-100 AFA and R.165 AFR.

12.7 For the duration for which a person is deemed to be a prisoner of war, see S.101 AFA.

13.1 **Clause (i)** - This clause, like clause (i) of S.92 AFA was enacted mainly in order to prevent any financial hardship being caused to the wife or children by the provisions of S.28 AFA under which the pay and allowances of a person subject to AFA cannot be attached in satisfaction of any decree of a civil court. In other words, if in a suit for maintenance or payment of alimony a civil court grants a decree in favour of the wife or children, the amount decreed can be deducted from the pay and allowances of a person and paid to the wife or children under this clause. However it is not the intention that deductions should be ordered under this clause or clause (i) of S.92 AFA only to give effect to a decree for maintenance granted by a civil court.

13.2 Sum ordered to be paid under this clause for maintenance of wife or children is independent of any pending legal proceedings in a court of law.

13.3 See also Notes to S.28 AFA.

92. Deductions from pay and allowances of airmen— Subject to the provisions of Sec. 95, the following penal deductions may be made from the pay and allowances of an airman, that is to say, —

(a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of transportation or Imprisonment awarded by a criminal court, or a court—martial, or of detention, or field punishment awarded by a court—martial or an officer exercising authority under Sec. 82;

(b) all pay and allowances for every day while he is in custody on a charge for an offence of which he is afterwards convicted by a criminal

court or a court-martial, or on a charge of absence without leave for which he is afterwards awarded detention or field punishment by an officer exercising authority under Sec.82;

(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him;

(d) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence such sum as may be specified by order of the Central Government or by such officer as may be specified by that Government;

(e) all pay and allowances ordered by a court—martial or by an officer exercising authority under Sec. 82 or Sec. 86 to be forfeited or stopped;

(f) all pay and allowances for every day between his being recovered from the enemy and his dismissal from the service in consequence of his conduct when being taken prisoner by, or while in the hands of, the enemy;

(g) any sum required to make good such compensation for any expenses, loss, damage or destruction caused by him to the Central Government or to any building or property as may be awarded by his commanding officer;

(h) any sum required to pay a fine awarded by a criminal court, a court—martial exercising jurisdiction under Sec. 71 or an officer

exercising authority under Sec. 82 or Sec. 90;

(i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

NOTES

1. See Notes 1 and 2 to S.91 AFA.

2. Penal deductions under clauses (a), (b), (c) and (f) of this section have been made mandatory; see paras 582 and 256, P & A Regs. In cases falling under clauses (a), (b) and (c) the pay and allowances are to be forfeited automatically and no discretion is given to the CO to decide whether or not to enforce wholly or partially the forfeiture, but as to remission of such deductions, see S.98 AFA and R.164 AFR. See also Note 3 to S.91 AFA.

3. As to remission of penal deductions, see S.98 AFA and R.164 AFR.

4.1 **Clause (a)** - For definition of 'criminal court', 'court-martial' and 'officer', see S.4(xvii), (xvi) and (xxiii) AFA.

4.2 It is unnecessary for an airman to be found guilty of absence by a court-martial or by his CO before a forfeiture of pay and allowances for the period of absence can be enforced under this clause.

4.3 Transportation - See Note 6.1 to S.73 AFA.

4.4 An airman who is awarded confinement to camp under S.82 AFA does not suffer deductions under this clause.

4.5 An airman automatically forfeits his P & A while a prisoner of war and such P &

A cannot as a rule be restored to him unless a court of inquiry assembled to inquire into his conduct finds that he was not taken prisoner through neglect or misconduct on his part or that he was otherwise blameless, and the authority prescribed in R.164(e) AFR remits the forfeiture; see S.99-101 AFA, Rr. 156 ;and 165 AFR and para 809 Regs; see also para 256 P & A Regs.

4.6 S.93 AFA prescribes how days of absence etc., are to be calculated for the purposes of this clause and clause (b).

4.7 When the sentence of imprisonment for life or imprisonment is suspended by competent authority under S.180 AFA no forfeiture under this clause can take place for the period it is so suspended.

4.8 Field punishment - See Note 4 to S.77 AFA.

5.1 **Clause (b)** — For definition of ‘offence’, ‘criminal court’ and ‘officer’ see S.4(xxii), (xvii) and (xxiii) AFA.

5.2 Effect cannot be given to this provision unless the P & A of a person in custody on a charge for an offence have been ordered to be withheld under S.94 AFA. Once they have been so withheld the deductions are carried out automatically on conviction for that offence. See also Note 6.1 to S.91 AFA.

5.3 An airman under arrest but not in confinement will incur no forfeiture of P & A. (para 258 P & A Regs). See also Note 6.1 to S.91 AFA.

5.4 An airman who has been sentenced to any punishment other than detention or field punishment under S.82 AFA for the offence of AWL, or an airman who is awarded detention or field punishment under S.82AFA for an offence other than that of AWL will not forfeit his P & A while in custody under this clause.

5.5 Upon a charge for desertion or absence without leave, a finding that the accused did the act charged but was insane at the time when he did the same, does not amount to a conviction, as it negatives ‘intention’, and no forfeiture of P & A results. See Notes 2, 4, 5.1 and 5.2 to S.144 AFA.

6.1 **Clause (c)** - For definition of ‘offence’, see S.4 (xxii) AFA.

6.2 The deduction under this clause is only authorised where sickness is caused by an offence of which a person has been found guilty. It, therefore, does not extend to sickness caused by immorality or intemperance, when there is no conviction (either by a court-martial or by summary disposal) for an offence by which the sickness was caused. The medical officer must attend the investigation of the offence whether before the court-martial or the officer disposing of the case summarily, and give evidence in substantiation of the facts contained in his certificate. Also see para 1340(j) Regs

7. **Clause (d)** - For definition of ‘officer’, see S.4 (xxiii) AFA.

8.1 **Clause (e)** - For definition of ‘court-martial’ and ‘officer’, see S.4 (xvi) and (xxiii) AFA.

8.2 Forfeiture of P & A. or arrears of P & A and any public money due at the time of dismissal can only be awarded by a court-martial under clauses (k) and (l) of S.73 AFA. Such punishments cannot be awarded under Ss.82 or 86 AFA. A CO or specified officer can, however, award deprivation of acting rank, forfeiture of badge pay, fine or penal deductions under S.82 AFA.

8.3 Stoppage or compensation cannot be awarded by a court-martial unless the grounds for awarding it are stated in the particulars of the charge and the loss etc., proved in evidence; see R.36 (6) AFR and Notes thereto. Also see Note 2.5 to S.54 AFA, Note 16.1 to S.73 AFA and Note 8 to S.91 AFA.

8.4. A deduction cannot be effected in anticipation of stoppage.

8.5 As to the limit of deductions; see S.95 AFA.

8.6 See also Notes to clause (e) to S.9 1 AFA.

9.1 **Clause (f)** - For definition of 'enemy', see S.4(xviii) AFA.

9.2 A person subject to AFA other than an officer forfeits his P & A while a prisoner of war under clause (a) read with para 256 P & A Regs. See Note 4.5 above. Clause (f) authorises forfeiture of pay and allowances due to such person between the date of his being recovered from the enemy and the date of his dismissal from the service if the court of inquiry assembled under S.97 AFA and para 809 Regs to inquire into his conduct finds that he was taken prisoner through neglect or misconduct on his part. Also see S.101 AFA.

10.1 **Clause (g)** - For definition of 'commanding officer', see S.4(xv) AFA.

10.2 For the meaning of words 'expenses' and 'loss' etc., see Note 8.2 to S.91 AFA.

10.3 'caused by' These words have the same meaning as the expression occasioned by'. See Note 8.1 to S.9 1 AFA.

10.4 'any building or property': The building or property need not be public building or property; the words include the buildings or property of persons subject to AFA or civilians, whether there is any claim against the public or not. Thus, a co may order a person to pay damages for a broken window, or such other minor damage done by him. A case of serious damage is, of course, not one which a CO should dispose of summarily.

10.5 Service property - See Note 11.3 to S.91 AFA.

10.6 A WO may be awarded stoppage by his AOC under this clause, when disposing of a charge under S.86 AFA.

10.7 Where a person has been convicted by a court-martial for an offence, his CO cannot subsequently award compensation for damage caused through that offence. The penal deductions under this clause are purely executory following CO's award under S.82(h) AFA.

10.8 See also para 810 Regs.

10.9 As to the limit of deductions, see S.95 AFA.

11.1 **Clause (h)** - For definition of 'criminal court', 'court—Martial' and 'officer' see S.4(xvii), (xvi) and (xxiii) AFA.

11.2 The deductions permissible on account of fine under this clause cannot, except where the accused is sentenced to dismissal, exceed in any one month one half of his pay and allowances for that month.;S.95 AFA.

11.3 In addition to deduction under this clause, a fine awarded by a court-martial can also be recovered under the provisions of S.172 AFA.

12.1 **Clause (i)** - Prescribed officer - CAS. See R.152 AFR.

12.2 See Notes to S.91(i) AFA, which apply mutatis mutandis to this clause.

12.3 As to limit of deductions, see S.9 5 AFA.

93. Computation of time of absence or custody.— For the purposes of Cls. (a) and (b) of Sec 92,-

(a) no person shall be treated as absent or in custody for a day

unless the absence or custody has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;

(b) any absence of custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any air force duty which was thereby thrown upon some other person,

(c) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody;

(d) a period of absence, or imprisonment, which commences before and ends after, midnight may be reckoned as a day.

NOTES

1. This section explains how a 'day' of absence or custody referred to in clauses (a) and (d) of S.9 2 AFA is to be computed.

2.1 This section prescribes six hours as the minimum period of absence that will count as a day of absence unless *two* conditions are fulfilled, first that the absentee was prevented by his absence from fulfilling any air force duty, and second, that the duty was thereby thrown upon some other person. Six clear hours must, therefore, elapse, and they must be reckoned consecutively.

2.2 If the absence or custody amounts to six hours but not to twenty four hours, one day's pay is forfeited unless the absence exceeds twelve consecutive hours and falls partly on one natural day (reckoned from midnight to midnight) and partly on another, in which case such absence or custody is reckoned for the whole of each natural day during any portion of which the person was absent or in custody.

2.3 Where the absence is more than six hours and less than 12 hours but is spread over two calendar days, it will be treated as absence for 1 day.

2.4 The following illustration amplifies the position: -

For instance, if a person absented himself from 2200 h on 01 Jun 87 and returned at 0230 h on 02 Jun87, he would forfeit no pay as his absence did not amount to six hours or upwards; but if he was bound to go on guard or perform some other air force duty and

in consequence of his absence some other person had to go on guard or perform that duty, then he would forfeit one day's pay.

Again, if a person absents himself at 2200 h on 01 Jun 87 and remains absent until 0400 h on 02 Jun 87, he would forfeit one day's pay, and if he remained absent until 0200 h on 08 Jun 87, he would forfeit eight days' pay, for in the latter case he would be absent for over twelve consecutive hours and the period of absence on the 1st and 8th June would each reckon as absence for one whole day.

94. Pay and allowances during trial.— In the case of any person subject to this Act who is in custody or under suspension from duty on a charge for an offence, the prescribed officer *may* direct that the whole or any part of the pay and allowances of such person shall be withheld, pending the result of his trial on the charge against him, in order to give effect to the provisions of Cl.(b) of Ss. 91 and 92.

NOTES

1. For definition of 'offence', see S.4(xxii) AFA.
2. Prescribed officer, see R, 163 AFR.
3. P & A of a person are payable to him even though he is in custody or under suspension from duty on a charge unless the said P & A or any part thereof are withheld by the prescribed authority under this section pending the result of his trial on that charge; unless they are so withheld, the provisions of' Ss: 91 (b)AFA or 92(b) AFA, as the case may be, will remain ineffectual.
4. An order under this section cannot have retrospective effect and can only be with respect to P & A which have not yet become payable.
5. When an airman is under suspension orders under this section cannot be passed to withhold his P & A during suspension, as clause (b)of S.92 AFA does not include 'suspension'.

95. Limit of certain deductions. — The total deductions from the pay and allowances of a person made under Cls. (e) and (g) to (i) of Sec. 92 shall not, except where he is sentenced to dismissal, exceed in any one month one—half of his pay and allowances for that month.

96. Deduction from public money due to a person —Any sum authorised by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

NOTES

1. 'Any public money due to him other than a pension' -The word pension would seem to include a gratuity, if such gratuity was in lieu of pension, not otherwise. A pensioner, not being subject to AFA, is outside the scope of this section. Sums in the credit of an individuals provident fund or other accounts consisting of deducted wages, are not public money.

2. 'without prejudice to any other mode of recovering same' - for instance, though a fine awarded by a court-martial exercising jurisdiction under S.71 AFA is recoverable under clause (f) of S.9 1 AFA or clause (h) of S.9 2 AFA it can also be recovered under the provisions of S.172 AFA.

97. Pay and allowances of prisoner of war during inquiry into his conduct —
Where the conduct of any person subject to this Act when being taken prisoner by, or while in the hands of, the enemy, is to be inquired into under this Act or any other law, the Chief of the Air Staff or any officer authorised by him may order that the whole or any part of the pay and allowance of such person shall be withheld pending the result of such inquiry.

NOTES

1. For definition of 'enemy', 'chief of the Air Staff', and 'officer', see S.4 (xviii), (xiv) and (xxiii)AFA.

98. Remission of deductions — Any deduction from pay and allowances authorised by this Act may be remitted in such manner, and to such extent, and by such authority, as may from time to time be prescribed.

NOTES

1. Prescribed officer See R. 164 AFR. The most common case is that of an airman absent without leave for a period not exceeding five days In such a case, unless he is convicted by a court-martial his CO may remit the forfeiture of pay and allowances which his absence entails under S.9 2(a) AFA.

2. and to such extent - The remission may be partial, but there is nothing to prevent a further remission being made subsequently.

99. Provision for dependants of prisoner of war from remitted deductions — In the case of all persons subject to this Act, being prisoners of war whose pay and allowances have been forfeited under Cl. (h) of Sec. 91 or Cl. (a) of. Sec. 92, but in respect of whom a remission has been made under Sec. 98, it shall be lawful for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependants of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

NOTES

1. Prescribed authorities - See R. 165 AFR.

2. If the officer who assembles the court is not one of the prescribed authorities, he should forward the proceedings with his recommendation, to one of those authorities. A court of inquiry on a prisoner of war who is still absent may be assembled in order to assist the authorities prescribed in Rr. 164 and 165 AFR in determining respectively whether remission of forfeiture of P & A shall be ordered, and what provision under this section shall be made for the dependents 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.

100 Provision for dependants of prisoner of war from his pay and allowances It shall be lawful for proper provision to be made by the prescribed authorities for any dependants of any person subject to this Act, who is a prisoner of war or is missing, out of his pay and allowances.

NOTES

1. This section applies where the P & A of a person who is a prisoner of war or is missing have not been forfeited e.g., in the case of a person, other than an officer, who is missing or in the case of an officer who is a prisoner of war or is missing and in whose case a court of inquiry under AFA or Regs has not been held or a court of inquiry has been held but the court found the officer blameless.
2. Prescribed authorities See R. 165 AFR.
3. Under this section, unlike, S.99 AFA provision can be made for a person's dependents even when such person is found missing.

101. Period during which a person is deemed to be a prisoner of war For the purposes of Secs 99 and 100, a person shall be deemed to continue to be a prisoner of war until the conclusion of any inquiry into his conduct such as is referred to in Sec. 97, and if he is cashiered or dismissed from the service in consequence of such conduct, until the date of such cashiering or dismissal.

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CHAPTER IX



ARREST AND PROCEEDINGS BEFORE TRIAL

CHAPTER IX

Arrest and Proceedings before Trial

102. Custody of offenders (1) Any person subject to this Act who is charged with an offence may be taken into air force custody.

(2) Any such person may be ordered into air force custody by any superior officer.

(3) Any officer may order into air force custody any officer, though he may be of a higher rank, engaged in a quarrel, affray or disorder.

NOTES

1. As to arrest See R. 22 and 23 AFR and Chapter XIII Regs (Sections I and II).

2. 'Arrest' in its natural sense means the apprehension or restraint or the deprivation of one's personal liberty. In a legal sense arrest consists in taking into custody of another person under authority empowered by law for the purpose of holding or detaining him to answer a charge. The terms 'custody' and 'arrest' are not synonymous. In every arrest there is custody but the converse is not true. A custody may amount to arrest in certain cases but not in all. For example, summoning of an airman from the billet by the orderly officer for the purpose of inquiry or interrogation will not by itself imply that the airman is under arrest.

3.1 **Sub-section (1)** - For definition of 'offence' and 'air force custody', see S.4(xxii) and (v) AFA.

3.2 The expression 'air force custody' is here restricted to the air force custody of persons when charged with offences and does not apply to persons in air force custody when undergoing sentence.

3.3 'charged with an offence' The charge referred to here is not the formal written charge (R.34 AFR) preferred by the CO when it is decided to send the case for trial but a complaint or accusation that an offence has been committed and which gives rise to the preliminary investigation.

4 **Sub-section (2)** - For definition of 'superior officer', see S.4 (xxvii) AFA.

5.1 **Sub-section (3)** - For definition of 'officer', see S.4 (xxiii) AFR.

5.2 As to offences in relation to this sub-section, see S.42 (a) AFA.

6. As regards custody of accused during trial, see para 751 Regs.

7. In **Bhwneshwar Singh V. Uol**, the SC held that the basic object of Secs 101-103 of the Army Act (Corresponds to Secs 102-104 AFA) read with Rule 27 of the Rules appears to be

to dispose of court-martial cases expeditiously and to minimise the period of pre-trial detention. The object is both salutary and laudable.

103. Duty of commanding officer in regard to detention - (1) It shall be the duty of every commanding officer to take care that a person under his command when charged with an offence is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him without the charge being investigated, unless investigation within that period seems to him to be impracticable with due regard to the public service.

(2) Every case of a person being detained in custody beyond a period of forty-eight hours and the reason thereof, shall be reported by the commanding officer to the air or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

(3) In reckoning the period of forty-eight hours specified in sub-section (1), Sundays and public holidays shall be excluded.

(4) Subject to the provisions of this Act, the Central Government may make rules providing for the manner in which and the period for which any person subject to this Act may be taken into and detained in air force custody, pending the trial by any competent authority for any offence committed by him.

NOTES

1.1 **Sub-section (1)** - For definition of 'commanding officer' and 'offence', see S.4(xv) and (xxii) AFA.

1.2 This sub-section which applies in the case of officers as well as airmen means that the investigation must be commenced within the time specified, though it may be impossible to complete it within the time. As to exclusion of Sunday and public holidays, see Sub-section (3).

1.3 'without the charge being investigated' - means hearing of a charge under R.24 AFR, whether or not the CO has ordered any other type of investigation, such as court of inquiry.

1.4 A CO who unnecessarily detains a person in arrest or confinement, renders himself liable to a charge under S.50(a) AFA.

2.1 **Sub-section (2)** - For definition of 'commanding officer', 'air officer' and 'court-martial' see S.4 (xv), (ix) and (xvi) AFA.

2.2 The report should be made by letter and should refer specifically to the case, and state the reasons justifying the detention of the accused in custody without investigation. The absence of an important witness would justify a remand; with a specific intimation that his case will be investigated as soon as the absent witness is available.

3. **Sub-section (3)** - Sundays and other public holidays are excluded when computing and period of forty-eight hours referred to in Sub-section (1) though they are not so excluded for any other purpose e.g., time reckoned for the purposes of punishment or of any deduction of pay.

4.1 **Sub-section (4)** - For definition of 'air force custody' and 'offence', see S.4 (v) and (xxii) AFA.

4.2 For rules see R. 22 and 23 AFR.

104. Interval between committal and court-martial - In every case where any such person as is mentioned in Sec. 102 and as is not on active service remains in such custody for a longer period than eight days, without a court-martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by his commanding officer in the manner prescribed; and a similar report shall be forwarded every eight days until a court-martial is assembled or such person is released from custody.

NOTES

I. The intention of this Section is to bring the accused to trial as soon as possible and to avoid delay in disposing of cases under A F A.

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

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

2.3 'such custody', is custody pending trial. Both close and open arrest are included.

3.1 'prescribed' - See R.23 AFR.

3.2 'special report' - means Delay Report - For form, see Second Schedule to AFR.

4. The object of this section is that all intervals beyond eight days must be justified by submission of special reports until a court martial has been ordered to assemble or the person concerned released. R.22 AFR has been framed under S.103 (4) AFA, in order to render unlawful any detention beyond two/three months without a court-martial having been ordered to assemble unless the sanction of the CAS or approval of the CG, as the case may be, has been obtained. Delay Reports need not be rendered when the accused is on active service.

5. In **Bhwneshwar Singh V. Uol**, the SC held that the basic object of Secs 101-103 of the Army Act (Corresponds to Secs 102-104 AFA) read with Rule 27 of the Rules appears to be to dispose of court-martial cases expeditiously and to minimise the period of pre-trial detention. The object is both salutary and laudable.

105. Arrest by civil authorities -- Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to air force custody of such person upon receipt of a written application to that effect signed by his commanding officer.

NOTES

1. For definition of 'offence', 'air force custody' and 'commanding officer', see S.4(xxii), (v) and (xv) AFA.

2. This section enjoins the civil authorities e.g., a magistrate or a police officer to assist in the arrest and delivery to air force custody of a person accused of an offence under AFA if within their jurisdiction, upon a requisition signed by his CO.

3. As regards an offender taken into custody away from his unit, see paras 645 and 383 Regs.

4.1 As regards apprehension/surrender certificate, see para 384 Regs.

4.2 The following specimen may be used. Inappropriate alternative should be deleted before signature

CERTIFICATE OF APPREHENSION/SURRENDER OF DESERTER/ ABSENTEE

I certify that No _____ Rank _____ Name _____ of Unit _____
surrendered himself to/ was apprehended by _____ of _____ at _____
on the _____ day of _____ 20__ as a deserter or absentee without leave.
He was wearing civilians clothes/air force uniform.

Date

Signature

4.3 As to who should sign the certificate, see S.141 (5) and (6) AFA and Notes thereto.

106. Capture of deserters (1) Whenever any person subject to this Act deserts, the commanding officer of the unit or detachment to which he belongs, shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, into air force custody.

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act, and to be a deserter or to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

NOTES

1. This section lays down the procedure to be followed for apprehending deserters or suspected deserters and for dealing with persons so arrested. For detailed instructions as to action to be taken by the CO, see para 381 Regs.

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

2.2 air force custody - see S.4 (v) AFA.

3.1 civil authorities used in contra-distinction, to military, naval and air force authorities.

3.2 This section is a special application of the powers granted to the civil authorities under S.105 AFA.

4. Sub-section (2) - This sub-section does not make the man's desertion a civil offence punishable by a criminal court.

107. Inquiry into absence without leave (1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries, and if satisfied of the fact of such absence without due authority or other sufficient cause, the Court shall declare such absence and the period thereof, and the said deficiency, if any ; and the commanding officer of the unit to which the person belongs shall enter in the court-martial book of the unit a record of declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

NOTES

1.1 'court of inquiry' - for definition see R. 154 (1) AFR.

1.2 For procedure of courts of inquiry held under this section, see R.155 AFR.

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

3.1 in the event of a person subject to AFA being absent without leave for a period of 30 clear days, a court of inquiry must be assembled at once, unless before such court of inquiry has been assembled it has come to the knowledge of the person's CO that he has been apprehended or has surrendered or that he was involuntarily absent (e.g., in prison). In that case no court of inquiry will be held and the fact of his absence and of the deficiency (if any) of his clothing, etc., must be proved by oral evidence at any subsequent court-martial.

3.2 In calculating the period of 30 days, the day on which the person became absent and the day on which the court of inquiry assembles must both be excluded. If the court of inquiry assembles a day too soon, the record of its declaration is not admissible in evidence, as an entry has not been made in the service books in accordance with S. 141(3) AFA. The person, however, should be declared illegally absent and charged with absence as from the day on which absence commences. See also para 385 Regs.

4. 'Oath or affirmation See R. 155(4) and 118 AFR for prescribed manner. Evidence must be taken on oath or affirmation.

5. The declaration of the court of inquiry should contain the date and place from which the person absented himself, the date of the deficiency (if any) of clothing, etc., and the place where it occurred. Under R.155 AFR and this section the witness will be sworn/affirmed, but not the members of the court of inquiry. As to the form of declaration, see Notes to R.155

AFR, the actual values of missing articles will be stated. For form of declaration, see para 385 Regs.

6.1 'the property of the Government entrusted to his care' i.e., Government property issued to him for his use or entrusted to his care for air force purposes.

6.2 Before declaring any deficiency of arms, etc., the court of inquiry will satisfy itself by evidence that the absentee was in, possession of the missing articles within a reasonable period before the date of absenting himself. It will record the values of the unexpired wear of all articles of Govt. property, found to be deficient.

7.1 In order to make the record admissible in evidence it must be a record in the service books of the unit to which the person belonged at the time of the holding 'of the court of inquiry and entered by the then CO (S.141 (3) AFA). The actual proceedings of the court of inquiry (which ought, under R. 155(5) AFR to be destroyed as soon as its declaration is recorded in the Service books) are not admissible in evidence.

7.2 The record of the finding of the court of inquiry will be admissible, notwithstanding that the person had already surrendered or been apprehended, provided that such surrender or apprehension had not come to the knowledge of his CO when the court of inquiry assembled.

8. As soon as the declaration of illegal absence has been made and recorded the person is struck off the strength of the unit as a deserter, but he does not thereby cease to belong to the Air Force in which he is enrolled; see para 387 Regs.

9. When a person, who has been 'struck off' as a deserter rejoins, the CO, if satisfied that the evidence does not justify a charge of desertion, may legally deal with the case as one of absence without leave.

10. As to disposal of deserter's property, see The Army and Air Force (Disposal of Private Property) Act, 1950.

11.1 As to period of limitation for trial see S.1 21 A FA.

11.2 As to liability of offender who ceases to be subject to AFA see S.122 AFA.

12. See also Note 6.4 to S.141 AFA and Note 3.2 to S.143 AFA.

108. Provost-marshals- (1) Provost-marshals may be appointed by the Chief of the Air Staff or by any prescribed officer.

(2) The duties of a provost-marshal are to take charge of persons confined for any offence to preserve good order and discipline, and to prevent breaches of the same 'by persons serving in, or attached to, the Air Force.

(3) A provost marshal may at any time arrest and detain for trial any person subject to this Act who commits, or is charged with, an offence, and may also carry into effect any punishment to be inflicted in pursuance of the sentence awarded by a court-martial, or by an officer exercising authority under Sec. 82 but shall not inflict any punishment on his own authority.

Provided that no officer shall be so arrested or detained other than on the order of another officer.

(4) For the purposes of sub-section (2) and (3), a provost-marshal shall be deemed to include a provost-marshal appointed under the Army Act or the Navy Act and any person legally exercising authority under him or on his behalf.

NOTES

1.1 For definition of a 'provost-marshal', see S.4 (xxv) AFA. So far as his duties and powers are concerned, a 'provost-marshal' is also deemed to include a provost-marshal appointed under naval and air force law or any person legally exercising authority under him or on his behalf; see sub-section (4). The status, duties and powers of the provost-marshal appointed under this section will not be affected even if he is designated as Provost-Marshal (Air), for administrative concern.

1.2 For definition of 'Chief of the Air Staff', see S.4 (xvi) AFA.

1.3 For definitions of 'Air Force' and 'offence', see S.4 (iv) and (xxii) AFA.

1.4 For definitions of 'officer' and 'court—martial', see S.4 (xxiii) and (xvi) AFA.

2. 'prescribed officer' See R.166 AFR.

3. A provost-marshal or any person working under him may, at any time, arrest and detain for trial any person subject to AFA (even though superior in rank) who commits or is charged with an offence. However, vide proviso to sub-section (3), an officer can be arrested or detained only on the order of another officer. Similarly, though a provost-marshal or any

person working under him can legally arrest a WO, a WO should not ordinarily be so placed in arrest except under orders of an officer or another WO.

4.1 Under R.45 (3) AFR a provost-marshal or assistant provost marshal is disqualified from serving as a member of a GCM or DCM. Similarly, R.130 (3) AFR prohibits the provost-marshal or his assistant from sitting as a member of a SGCM.

4.2 It is an offence under S.42 (f) AFA to impede the provost marshal or any person, lawfully acting on his behalf or to refuse to assist the provost-marshal or person lawfully acting on his behalf.

4.3 R.152 (5) AFR enjoins upon a provost-marshal to supervise the carrying out of the sentence of field punishment under certain circumstances.

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CHAPTER X



COURT MARTIAL

CHAPTER X

Courts-Martial

109. Different kinds of courts-martial - For the purposes of this Act there shall be three kinds of courts-martial that is to say.—

- (a) general. courts-martial;
- (b) district courts-martial; and
- (c) summary general courts-martial.

NOTES

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

1.2 Court-martial is a tribunal. It has most features, of a court but is nevertheless not a court of law in the strict sense of the term.

2. For purposes of easy reference, provisions dealing with the convening, composition, powers etc., of the three types of courts' martial are tabulated below -

	Convening	Composition	Powers	Confirmation
G C M	S.110	S.114	S.118	Ss.153, 157
	R.43	R.46,48	R.74	R.79-81
D C M	S.111	S.115	S.119	Ss.154, 157
	R.43	R.47,48	R.74	Rr.79-SI
S G C	S.113	S.116	S.118	Ss.156, 157
	R.130	R.130	R.74	R.79-81

3. As regards choice of court-martial, see para 735 Regs.

110. Power to convene a general court-martial - A general court-martial may be convened by the Central Government or the Chief of the Air Staff, or by any officer empowered in this behalf by warrant of the Chief of the Air Staff.

NOTES

1. For form of warrant, see Appendix 'C'. This form is at present issued by the CAS to AOs C-in-C of Commands and to the AOA.

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

3.1 When a warrant has been issued and its contents communicated to the addressee, he can act upon it before it actually reaches him. It follows that he cannot act after he has received notification that the warrant has been revoked though he may not have received the actual order.

3.2 In granting a warrant, it should be clearly shown that during the absence of the officer to whom such warrant is issued, the powers therein conferred may be exercised by the officer on whom the command devolves, if he is not under a specified rank. It is therefore, common to address such a warrant to an officer by designation of this office and not by name. Warrant issued need not name the officer authorised. **Amarendra Nath Das v. UOI.**

3.3 If the officer on whom the command devolves is the CO of the person to be tried or an officer who has investigated the case, he cannot (except on board a ship) afterwards act as convening officer in the same case, but must refer it to a superior authority. See para 723 (b) Regs.

3.4 In **Maj Gen Inder Jit Kumar V. UOI**, the Supreme Court held that there is nothing in Sec 109 of the Army Act (Corresponds to Sec 110 AFA) which requires the COAS to issue a warrant for each specific case. A general warrant issued by the COAS is competent under Sec 109.

4. An officer cannot convene or confirm a court-martial outside the jurisdiction limits of his command.

5. As to duty of officer before convening a court-martial, see R.43 AFR and para 735 Regs.

111. Power to convene a district court-martial. A district court—martial may be convened by an officer having power to convene a general court—martial, ‘or by any officer empowered in this behalf by warrant of any such officer.

NOTES

1. Power to convene DCM is exercised by AOs C-in-C by virtue of having power to convene a GCM. No warrant has so far been issued under this section.
2. For definition of ‘officer’, see 5.4 (xxiii) AFA.
3. See also Notes to 5.110 AFA.

112. Contents of warrants issued under Sees. 110 and 111 A warrant issued under Sec. 110 or Sec. 111 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

NOTES

1. One usual form of restriction is to limit the power to an officer not below a specified rank.
2. For definition of 'officer', see S.4 (xxiii) AFA.

113. Power to convene a summary general court-martial -The following authorities shall have the power to convene a summary general court-martial, namely:

- (a) an officer empowered in this behalf by an order of the Central Government or of [the Chief of the Air Staff];
- (b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;
- (c) an officer commanding any detached portion of the Air Force on active service when in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by a general court-martial.

NOTES

1. The object of this section is to provide for the speedy trial of offences committed abroad or on active service where it is not practicable with due regard to the interests of discipline and of the service, to try such offences by an ordinary GCM or DCM. A SGCM can try any offence committed on active service but when not on active service it can only be convened by an officer empowered in this behalf by an order of the Central Govt. or of the CAS.

2.1 For definition of 'active service', see S.4 (i) AFA and Notes thereto.

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

3.1 Clause (a) - For definition of 'Chief of the Air Staff', see S.4 (xiv) AFA.

3.2 An officer empowered under this clause can convene a SGCM both during peace time as well as on active service. However it is permissible to issue administrative instructions such that SGCM is not convened during peace time.

4.1 Clause (b) and (c) - The power under these two clauses is exercisable only during active service.

4.2 For definition of 'the forces', see S.4 (xix) AFA. See also Note 17.2 to S.4 AFA.

4.3 "officer commanding any detached portion of the air force" -The term 'detached portion' as used in S.113(c) AFA is not identical to the term 'detachment' as used in S.4 (xv) AFA. While the term 'detachment' as used in S.4 (xv) AFA implies a part of the unit which has been detached for some specific duties, in S.113 (c) AFA, the word 'detached portion' implies a portion of the Air Force constituted of either one or more units as formations, or in some cases even a part of a single unit, which is on detached service. An officer in command of such portion of the Air Force will, under S.113 (c) AFA, have power to convene a SGCM,

provided that the conditions specified in that sub-section are fulfilled.

4.4 For definition of 'Air Force', see S.4 (iv) AFA.

4.5 SGCM can be convened by an officer commanding under clause (c) without a warrant or authorization.

114. Composition of general court-martial A general court-martial shall consist of not less than five officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that, of flight-lieutenant.

NOTES

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

1.2 Even though the definition of the term 'officer' includes an officer of the regular Army on the Navy under certain prescribed conditions, members of a court-martial convened under AFA normally are to consist only to air force officers. The stipulation of minimum rank as 'flight lieutenant in this section and the absence of the words "or equivalent" in this section as also in R. 46-48 AFR, clearly revealed the intention that only air force officers are to be appointed members of a court-martial convened Under AFA.

2.1 A convening officer, increase beyond the legal minimum the number of officers to sit on a court-martial, but cannot decrease the number below the minimum he must therefore take care to convene a court with not less than the minimum, otherwise the proceedings are void. See also S.117 (1) AFA. It is desirable that every court should consist of an uneven number of officers.

2.2 If originally more than the legal minimum members sat and during the trial a member incapacitated by illness etc., the court could proceed with the trial provided the number did not fall below the legal minimum. The member who retired through sickness etc. cannot, of course, take his place when he recovered or becomes again available once the court has sat without him. R. 93 AFR.

2.3 'Waiting' members can be detailed to replace absentees, or members successfully challenged, before the court is sworn/affirmed; but if a waiting member sits in addition to all the members detailed, and not in place of an absentee etc., the court will be improperly constituted.

2.4 If before the accused is arraigned, the full number of officers detailed are not available to serve and a sufficient number of waiting members have not been detailed, the court shall ordinarily adjourn unless it is of opinion that in the interests of justice and for the good of the service, it is inexpedient so to adjourn provided it is not reduced in number below the legal minimum R.44(l) AFR.

2.5 A court would have no jurisdiction if each member had not held a commission for the required period, or if its composition differed in any respect from that detailed in the convening order. Any period during which an officer has held a commission in any of the three services shall count as commissioned service for this purpose, but no account shall be taken of an ante-date of seniority.

2.6 The presiding officer of the GCM, DCM or SGCM is not detailed in the convening order but the senior member sits as the presiding officer S.127 AFA.

2.7 The members and waiting members of the court may be detailed by name or by their rank and units to which they belong and in case where units cannot be specified they should be named.

2.8 As to the composition of GCM and DCM, see generally Rr.45-48 AFR and para 737 Regs.

3. Rank - Not less than four officers must be of the rank of Flight Lieutenant or above. Further, no officer below the rank of Flight lieutenant can be a member of a court-martial for the trial of an officer of or above the rank of Squadron Leader (R.46 (2) AFR)

115. Composition of district court-martial - A district court—martial should consist of not less than three officers, each of whom has held a commission for not less than two whole years.

NOTES

1. Officer See Note to S.114 AFA.
2. See Note 2 to S.114 AFA.
3. There is no statutory stipulation of a minimum rank for a member of DCM. See however para 737 (d) Regs.

116. Composition of summary general court-martial: -A summary general court—martial shall consists of not less than three officers.

NOTES

1. 'Officer' See Note 1 to S.114 AFA.

2.1 Though there is no statutory requirement as to the rank or service of a member of a SGCM, officers appointed or detailed as members should have held commission for not less than one year and if any officer with commissioned service of not less than three years are available, they should be selected in preference to officers of less service (R.130 (2) AFR).

2.2 Any available officer, other than the provost marshal, assistant provost-marshal, a prosecutor or witness for the prosecution may be appointed a member of the court, but see R.142 AFR which makes inter-alia R.81 AFR (member or prosecutor not to confirm proceedings) applicable, so far as practicable, to a SGCM.

3. See also generally Note 2 to S.114 AFA.

117. Dissolution of court-martial: (1) If a court-martial after the commencement of a trial is reduced below the minimum number of officers required by this Act, it shall be dissolved.

(2) If on account of the illness of the judge advocate or of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) The officer who convened a court-martial may dissolve such court-martial if it appears to him that the exigencies of the service or the necessities of discipline render it impossible or inexpedient to continue the said court-martial.

(4) Where a court-martial is dissolved under this section, the accused may be tried again.

NOTES

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

2. "Shall be dissolved" Apart from the conditions laid down in this section in which the court must be dissolved, a court always has the power to adjourn under R.89 AFR and report to the convening officer when something has occurred, which, in the opinion of the court, makes it improper or undesirable that it should continue to hear the case, e.g., if through inadvertence a previous conviction of the accused for a similar offence had been brought to the notice of the court before the finding. In such a case the convening officer, if he agrees with the opinion of the court, may dissolve it and convene a fresh court (R.90 AFR). The members who sat on the dissolved court will be ineligible to sit on the fresh court (R.45(2) (c) A FR).

3. **Sub-section (1)** - For the purposes of this section, the trial is held to have commenced when the accused is arraigned See Rr.56, 92 and 93 AFR.

4.1 **Sub-section (2)** - Illness of the accused or the JA - A medical certificate should where possible, be obtained, stating that the illness of the accused /JA renders his presence in court impracticable or dangerous to himself or others; it will also state the medical officer's opinion as to when the accused/JA will be able to be present. See Rr.91 AFR.

4.2 Impossible to continue - This means to continue within a reasonable time having regard to all the circumstances.

5. **Sub-section (3)** - For example when during the trial the court-martial becomes aware, say through a witness, that the accused has been previously convicted for the same offence by civil power.

6.1 **Sub-section (4)** - It may frequently be inexpedient to convene a fresh court for a re-trial

under this sub-section, especially where the accused has been for sometime under arrest or in confinement.

6.2 Where the court-martial has proceeded beyond the arraignment of the accused or has heard anything prejudicial to the accused none of the members of the original court should be appointed to the fresh court martial.

118. Powers of general and summary general courts-martial A general or summary general court-martial shall have power to try any person subject to this Act for any offence punishable therein and to pass any sentence authorised thereby.

NOTES

1. For definition of 'court-martial' and 'offence', see S.4 (xvi) and (xxii) AFA.
2. 'sentence authorised thereby' Reference should be made to the charging sections (Ss.34-71 AFA) and to Ss.73-79 AFA.
3. For factors to be considered while awarding sentence, see para 754 Regs.
4. When the court has a discretion whether to pass sentences of death or not, a sentence of death cannot be so passed by a GCM without the concurrence of at least two-thirds of the members or by a SGCM without the concurrence of all members of the court (S.131 (2) and (3) AFA).
5. As regards deciding the type of court-martial, see para 735 Regs.

119. Powers of district court-martial - A district court martial shall have power to try any person subject to this Act other than an officer or warrant officer for any offence made punishable therein, and to pass any sentence authorised by this Act other than a sentence of death, transportation, or imprisonment for a term exceeding two years.

NOTES

- 1.1 For definition of 'court-martial' and 'offence', see S.4 (xvi) and (xxii) AFA.
- 1.2 For definition of 'officer' and 'WO', see S.4 (xxiii) and (xxix) AFA.
2. Powers of a DCM are limited in as much as it has no jurisdiction to try an officer or a WO nor can it pass sentence of death, imprisonment for life or imprisonment over two years. If such a court, therefore, passes a sentence of death or imprisonment for life or sentences a WO to imprisonment, it will be wholly illegal and must be sent back for revision by the confirming officer (S.159 AFA and R.77 AFR) and if wrongly confirmed, action should be taken under S.160 AFA to substitute a valid sentence. However, a sentence of imprisonment for a period of three years to a NCO or aircraftman being in excess of the punishment authorised by law can be varied by the confirming officer to any sentence authorised by law i.e., imprisonment not exceeding two years and confirmed (R.80 AFR and Notes thereto)
3. 'sentence authorised by this Act - Reference should be made to the charging sections (Ss.34-71 AFA) and to Ss.73-79 AFA.
4. For factors to be considered while awarding sentence, see para 754 Regs.
5. transportation - See Note 6.1 to S.73 AFA.
6. As regards deciding the type of court-martial, see para 735 Regs.

120. Prohibition of second trial When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under Sec.82 or Sec. 86 he shall not be liable to be tried again for the same offence by a court—martial or dealt with under the said sections.

NOTES

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

2.1 Finding of a GCM, SGCM, or DCM, if not confirmed, is of no validity. In such case, therefore, the accused has not been acquitted or convicted, and may legally be tried again; see S.152 AFA but re-trials should rarely be resorted to. Re-trial should not be ordered until the CJA of the Command has been consulted and the sanction of superior authority obtained.

2.2 As per the law there is no limitation on the number of occasions that an accused person can be tried by courts-martial on the same charges, when the findings of the earlier trials are not confirmed by the Confirming Officer. The re-trials, however, should be ordered in rare and exceptional cases when the requirements of discipline and justice dictate that the offender shall not escape punishment on account of a legal technicality. It is an established rule of criminal jurisprudence that an accused person should not be placed on trial for the same offence more than once, except in very special circumstances. Every trial involves hardship, humiliation, suffering and some expense to the accused. When a re-trial takes place, the accused has to undergo the same humiliation trouble and suffering once again.

3. Where a court is not legally constituted and has no jurisdiction, it is no court at all; for example, if the convening order is signed by or on behalf of an officer not authorised to convene such a court, or if the number of officers composing the court is below the legal minimum required for that type of court, or if disqualified officers sit. In such cases the accused will not have been really tried, and may be tried again, even though the proceedings of such illegally constituted court have been inadvertently confirmed.

4. It is a general principle of law, also incorporated as a fundamental right in Art 20 Constitution, that a person cannot be tried twice in respect of the same offence. Where the same incident, or set of incidents, gives rise to two trials, the test of whether the offence is 'the same' offence would appear to be this - Could the accused

have been lawfully convicted at the first trial upon the charge-sheet then before the court, of the offence now charged at the second trial ? If so, the second trial is illegal and void. Thus, on a charge of desertion, a person could by virtue of S.138(1) AFA be convicted of absence without leave; if he is acquitted generally the acquittal applies to both offences and he cannot subsequently be charged with AWL (upon the same facts) if, however, the court while acquitting him of desertion; convicts him of AWL, and this finding is not confirmed he has not

been acquitted of absence, and can be charged again with the of fence.

5. Where a person is re-tried on the same charge, it is not usual to impose a more severe punishment than that awarded on the first trial, and a confirming officer should exercise his powers of mitigation, etc., when confirming the proceedings, if a greater punishment has been awarded on the second trial.

6. In cases where it is established that a minor punishment has been awarded by a CO or subordinate commander in contravention of S.83 AFA, such illegal award will not bar subsequent trial of the accused for the same offence. See also Notes 2.2 to S.83 AFA.

7. Where a fresh trial is ordered, no officer may serve on it who sat on the former court; (R.45 (2) (c) AFR).

121 Period of limitation for trial - (1) Except as provided by subsection (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years from the date of such offence.

(2) The provision of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in Sec. 37.

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion, other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer has, subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the Air Force.

NOTES

1. In **UOI V. Maj Gen Madan Lal Yadav**, the Supreme Court held that the trial commences the moment General Court Martial assembles to consider the charge and examines whether they would proceed with the trial.

2.1 **Sub-sections (1) and (2)** - The effect of this section is that on the expiration of three years from the commission of the offence, the period of three years being computed in accordance with sub-section (3), the offender is free from being tried or punished under AFA by a court-martial for any offence except those mentioned in S.37 AFA, desertion or fraudulent enrolment. It follows that where an accused person is charged with desertion commencing on a date more than three years before his trial begins, he cannot be found guilty under S.138(1) AFA of AWL from that date, but such absence must be restricted to a period not exceeding three years immediately prior to the commencement of the trial. Where, however, such a finding and sentence has been wrongly confirmed, the authorities specified in S.160 AFA, may substitute a valid finding and pass a sentence for the offence specified or involved in such finding.

2.2 A plea to bar of trial may be raised on this ground: R.6l (1) (c) AFR.

2.3 The section does not prohibit deductions being ordered from his pay and allowances under S.91 (a) (c), (g) and (h) or S.92(a) and (f) even though the period of limitation for, trial has expired. Though the section specifically stipulates the period of limitation for trial by court-martial, the same principle would equally apply to summary disposal of offences under S.82 or 86 AFA.

2.4 Offences mentioned in S.37 AFA and desertion on active service can be tried at any time by a court-martial.

2.5 For desertion not on active service and fraudulent enrolment, a person, not being an officer, cannot be tried if he has since served continuously in an exemplary manner for not less than three years with any portion of the Air Force. A person is considered as having served in an exemplary manner if at any time during his service subsequent to the commission of the offence, he has had no red ink entry in his conduct sheet for a continuous period of three years (para 725 Regs). For 'red ink entries' see para 1054 Regs.

2.6 An 'offence' includes a 'civil offence' as defined in S.4 (xii) AFA. Where, therefore, a person subject to AFA has committed a civil offence and his trial by court-martial is barred under this section, he may be handed over to the civil authorities to be dealt with according to law as most civil offences are triable by a criminal court at any time. As regards limitation under Cr PC for taking cognizance of certain offence, see Ss.467-473 Cr. PC.

2.7 For forfeiture of service in the case of desertion and fraudulent enrolment, see Reg 112, Pension Regs AF (Part I).

2.8 Where the accused is charged under S.39 (b) AFA for overstaying leave without sufficient cause, if some period of the overstayal has become time-barred under this section, such period should be excluded while framing the charge. If this is not done, then the court martial should record a special finding and find the accused guilty only of such period of overstayal as is not time-barred.

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

3. 1 **Sub-section (3)** - The period of three years referred to in sub-section (1) is extended by any time spent by the offender as a prisoner of war, or in enemy territory or evading arrest after the commission of the offence; for instance, if a person absconds immediately after misappropriating Govt. or non-public funds and later surrenders or is apprehended after the expiry of three years, he can still be tried by a court-martial, the period which he had absconded being ignored.

3.2 'enemy territory' means any area, at the time of the presence therein of the person in question, under the sovereignty of or administered by or in the occupation of a State at that time at war with the Union of India.

3.3 For definition of 'enemy', see S.4 (Xviii) AFA.

3.4 'evading arrest' - in **Kartarey v. State of UP**, the Supreme Court held that to be an absconder, in the eyes of law, it is not necessary that a person should have run away from his home; it is sufficient if he hides himself to evade the process of law, even if the hiding, place be his own home.

3.5 Illustrations: LAC X commits a murder on 01 Jan 82 and is captured by the enemy on 01 Mar 82; he is not released until 01 Apr. 86. He can be tried for the murder at any time upto 31 Jan 89 because only two months before the date of his release, 1 Jan - 1 Mar 82 count as

part of the three year period.

LAC Y absents himself without leave on 01 Jan 83 and returns to his unit on 01 Feb. 83. He desert on 01 Mar 83 and evades arrest until 01 Mar 86. He can still be tried for the first absence without leave at any time upto 31 Jan 89, because only the months 01 Feb - 01 Mar 83 count before the date of his arrest as part of the three years period.

4.1 **Sub-section (4)** - 'active service', see Ss.4 (i) and 9 AFA.

4.2 See Note 2.5 above. This exemption does not apply to an officer.

4.3 For definition of 'officer' and 'Air Force', see S.4 (xxii) and (iv) AFA.

4.4 'exemplary manner' - see Note 4.1 to S.38. See also paras 725 and 1054 Regs.

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

6. A GCM found an officer not guilty of all charges and on revision adhered to the same findings. The confirming authority did not confirm the proceedings. Thereafter R.14 AR (corresponds to R.16 AFR) was invoked by the COAS and a show cause notice was issued to the officer. The Supreme Court considered the related provisions of AA and AR and observed that there being no express provision in the AA empowering the assembly of a fresh court-martial when the finding on revision is not confirmed, the issue of the show cause notice under R. 14 AR by the COAS was neither without jurisdiction nor unwarranted in law. The SC opined that in such circumstances, to order a fresh trial by a court-martial could certainly be said to be both inexpedient and impracticable. **COAS V. Major DP Kukrety.**

7. In **Supdt. & Rememberancer of Legal Affairs, West Bengal V. Usha Ranjan** the SC held that the initial lack of jurisdiction to take cognisance and try a case (due to non-compliance of S.549 (1) Cr PC 1898 and rules made thereunder) would vitiate the trial by the criminal court and the position will remain unaltered even when the ban under S.122 AA for trial under AA is attracted because more than three years have expired from the date of the commission of the alleged offence. (S.549 Cr PC, 1898 corresponds to S.475 CPC, 1973. S.122 AA corresponds to S.121 AFA).

8. In **UOI V. Rajbir Singh Khanna**, the Supreme Court held that if delay in initiating Court Martial proceedings is attributable to Court Orders interdicting Court Martial proceeding, then the proceedings cannot be quashed as barred by limitation under Section 122 of the Army Act, (Corresponds to Sec 121 AFA).

122. Liability of offender who ceases to be subject to Act- (1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in air force custody, and tried and punished for such offence as if he continued to be so subject.

(2) Except as provided by sub-sections (3) and (4) any such person shall not be tried for an offence, unless his trial commences within six months after he had ceased to be subject to this Act.

(3) The provisions of sub-section (2) shall not apply to the trial of any such person for an offence of desertion of fraudulent enrolment or for any of the offences mentioned in Sec.37.

(4) Nothing contained in sub-section (2) shall affect the jurisdiction of a civil court to try any offence triable by such court as well as by a court martial.

(5) When a person subject to this Act is sentenced by a court-martial to transportation or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissed from the Air Force, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(6) When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out.

NOTES

1. For definition of 'air force custody' and 'offence', see S.4 (v) and (xxii) AFA.

2. This section meets the case of a person who commits an offence against AFA whilst subject to it, and then ceases to be subject to it. Such cases will occur, for example, when an officer relinquishes his commission or is dismissed or when a WO or aircraftsman is discharged.

3.1 Such a person though he has ceased to be subject to AFA even before discovery of the offence may nevertheless be arrested, tried and punished just as if he were still subject but he can only be tried within six months after he has ceased to be so subject; the six months will not be deemed to have expired if the trial has commenced within that period. An exception has been made in the case of desertion, fraudulent enrolment and offences mentioned in S.37 AFA, for which he can be tried at any time subject to the restrictions in S.121 AFA. Further, a criminal court can try such offence; if triable by it as well as a court-martial, though the offence is no longer triable by a court-martial under sub-section (2). The

term 'civil court' used in sub-section (4) should be understood as reference to 'criminal court as defined in S.4 (xvii) AFA.

3.2 When the six months have once expired, the offender is protected and his liability is not revived in respect of the earlier offence, by his again becoming subject to AFA.

4.1 Under sub-section (5) which deals with the case of a person subject to AFA who is tried and sentenced to imprisonment for life or imprisonment to be undergone in a civil prison, AFA applies to such a person during the term of his sentence, notwithstanding that his cashiering or dismissal from the service has been formally carried Out, or that he has otherwise ceased to be subject to AFA. Consequently he may be tried by court-martial for an offence committed by him while under sentence at any time before his sentence is completed, or he may be kept in or removed to air force custody and made to undergo his sentence there although the sentence is one to be undergone in a civil jail. Also see R.146 AFR.

4.2 The effect of sub-section (5) is that if, for example, an airman serving a sentence of imprisonment in an air force establishment after a sentence of dismissal, takes part in a mutiny, there, he can be tried by court-martial for an offence under S.37, AFA.

5.1 The fiction created by S.122 (1) AFA does not relate to the pay and allowances, and these will be governed by such regulations or orders as may be framed from time to time, respecting these matters. For orders as regards rank and status, pay and allowances, accommodation, ration, uniform, medical, transport etc. in cases where this section is invoked, see GOI, MOD letter No.01086/PSI/889-S/D(AG) dated 3 Jul 75 as amended by corrigendum No.01086/PSI/1573/D(AG) dated 26 Mar 77. Where the individual is acquitted, it will be for decision as to whether the period of custody under S.122 (1) AFA should be left uncompensated.

5.2 In cases when this section is invoked, the term CO will connote the CO of the last unit, or the CO of the unit where attached for purposes of trial, or the CO of the unit where trial will be carried out as applicable.

123. Place of trial - Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

NOTES

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

2.1 'any place whatever' means any place in which the offender may for the time being be and which is within the jurisdiction of an officer authorised to convene a court-martial for his trial as if the offence had been committed where the trial takes place and the offender were under the command of the officer convening such court.

2.2 The section enables a court-martial convened in India to try a person for an offence committed elsewhere and vice versa. See para 736 Regs.

3. In **UOI V. Maj Gen Madan Lal Yadav**, the Supreme Court held that where witnesses and records were at the place where the offence took place, the Court Martial should be conducted at that place and shifting of trial to other place is not justified.

124. Choice between criminal court and court-martial When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the Chief of the Air Staff, the officer commanding any group, wing or station in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in air force custody.

NOTES

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

1.2 For definition of 'Chief of the Air Staff' and 'commanding officer', see S.4 (xiv) and (xv) AFA.

1.3 'other officer as may be prescribed' - Air or other officer commanding the Command or the officer commanding the forces or the air forces in the field, under whom the accused is serving, have been prescribed under this section. See R.167 AFR.

2.1 The section should be read with Ss.71, 72 and 125 AFA and Notes thereto. All civil offences can be tried by a court-martial (subject to the provisions of S.72 AFA) or by a criminal court. See also para 683 Regs.

2.2 In cases of 'concurrent jurisdiction', since criminal court and courts-martial have both jurisdiction, the question as to which court is to try an accused person in any particular case assumes significance for resolving any conflict of jurisdiction. Ss.124 and 125 AFA and S.475 Cr PC make provisions as to the manner in which and the competent authority by which a decision in a case of concurrent jurisdiction may be taken about the court before whom such case shall be instituted for trial. The Criminal Courts and Courts-Martial (Adjustment of Jurisdiction), Rules, 1978 have been framed under S.475 Cr PC vide GOI Ministry of Home Affairs notification SO 488 dated 9 Feb 78. See also para 682 Regs.

3.1 Where there is dual jurisdiction, the choice initially lies with the Air Force officers, mentioned in this section to decide whether an accused should be dealt with by a court-martial or he should be handed over to the civil authorities for being dealt with according to civil law.

3.2 Where a charge has not already been brought before any criminal court for trial, it shall be in the discretion of the Chief of the Air Staff, or the Air or other officer commanding a Command, Group, Wing or Station in which the accused may be serving, or the officer commanding the Forces or the air forces in the field under whom the accused person is serving, to decide before which court the proceedings shall be instituted; and if he decides that the proceedings shall be instituted before a court-martial, to direct further that the accused person shall be detained in air force custody (Ss.124 and 125 AFA and R.167 AFR).

It is to be noted that the word 'court-martial' in this context does not signify that a court-martial must be convened forthwith and the proceedings be instituted before it. It merely means that the proceedings for the offence shall commence in the normal manner under R.24 AFR.

3.3 Where a direction of the above nature stating that proceedings shall be instituted before a court-martial has been issued, but a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of such offence, it may, by written notice to the above officer, require him either to deliver the offender to the nearest Magistrate or to refer the case to Central Govt. for decision. If the officer concerned decides not to hand over the offender to the Magistrate, he shall refer the matter to the Central Government whose decision shall be final (S.125 (2) AFA). Where a criminal court having jurisdiction considers that the accused should be tried before itself, it may, in writing, call upon the officer referred to in this section to hand over the accused to it for trial, in which case the said officer should either hand over the accused as demanded or pend the proceedings and refer the question to the Central Govt.

4. As a matter of administrative policy, however, a person subject to AFA should not be handed over for trial by criminal court, where a court-martial may also try him, unless prior sanction has been obtained from the AOC-in-C, Command/Group concerned, or, in the case of units directly under Air Headquarters from the AOA. Proceedings in criminal courts tend to take longer time and the accused is not likely to be fully available for air force duties during such period. Also, if he is in civil custody, he may come into association with hardened criminals. A case for trial by a criminal court should, therefore, not be initiated except in circumstances which make such step absolutely necessary. Surrendering a person subject to AFA, for trial by a criminal court will normally not be agreed to except when :-

(a) the civil offence alleged to have been committed by him is of an exceptionally serious nature ; or

(b) it is administratively impracticable to try him by a court-martial, for example , when he is a co-accused with civilians.

5.1 When a person subject to AFA is brought before a magistrate and charged with an offence for which he is liable to be tried by a court martial, such magistrate, unless he is moved by the competent Air Force officer referred to in S.124 AFA to proceed against the accused under the Cr. PC shall before so proceeding give written notice to the CO of the accused and, until the expiry of fifteen days from the date of service of such notice, shall not proceed to try such person or to inquire with a view to his commitment for trial by the court of sessions for any offence triable by such court.

5.2 If a Magistrate proceeds to try and award a punishment to a person subject to AFA in violation of S.475 Cr Pc and the rules made thereunder then it will be proper for the aggrieved party to appeal to the higher civil court against the illegal award.

6.1 The word jurisdiction in S.125 AA refers to initial jurisdiction to take cognisance. It refers to the stage at which proceedings are instituted in a court-martial and not to the jurisdiction of the ordinary criminal court. See **Lt. Col. SK. Loraiya V. SPE, Delhi**. (S.125 AA corresponds to S. 124 AFA)

6.2 In **Ram Swarup V. UOI**, the Supreme Court upheld the validity of s.125 AA (corresponds to S.124 AFA) and stated thus -

"The question then is whether the discretion of the officers concerned in deciding as to which court should try a particular accused can be said to be an unguided discretion, as contended for the appellant. Section 125 itself does not contain anything which can be said to be a guide for the exercise of the discretion, but there is sufficient material in the Act which indicate the policy which is to be a guide for exercising the discretion and it is expected that the discretion is exercised in accordance with it. Magistrates can question it and the Government, in case of difference of opinion between the views of the Magistrate and the Army authorities, decide the matter finally."

6.3 However in **RS Bhagat v. UOI**, a single judge of the Delhi High Court held that in a case of theft involving complicated questions of law and based entirely on circumstantial evidence, the proper court to try is criminal court and not court-martial.

6.4 Where due to a scuffle between jawans, one of the injured died and civil police officers conducted inquest and seized certain exhibits, it was held by the Supreme Court that this by itself could not be construed that the competent military authority under S.125 AA (corresponds to S.124 AFA) had taken a decision for handing over the case to criminal court. The rules framed under S.475 Cr. PC applied only to cases where proceedings have been instituted in a criminal court and not to a stage before it. **Som Datt Datta V. UOI**.

6.5 See also Note 7 to S.121 AFA.

6.6 In **COAS V. Maj SP Chadha**, the Supreme Court held that even after opting for trial of an Army Officer by a Court-Martial under the Army Act, if the trial is found to be not possible or feasible (in this case due to bar of limitation), the army authorities can send back the officer to the ordinary criminal court for standing trial for the same offence and sanction of the Central Government is not necessary.

7. In **Balbir Singh V. State of Punjab**, the SC held that the defence of the country being of paramount importance, the Air Force Authorities would know best as to whether the accused should be tried by the Court-Martial or by the ordinary criminal court because the trial by the ordinary criminal court would necessarily involve a member of the force being taken away for trial by the ordinary criminal court and not being available to the authorities and the like considerations. However, in the event the criminal court is of the opinion, for reasons to be recorded, that instead of giving option to the Authorities under the Act, the said court should proceed with the trial of the accused, without being moved by the competent authority under the Act and the Authorities under the Act decide to the contrary, the conflict of jurisdiction

shall be resolved by the Central Government under Sec 125 (2) of the Act and the decision as to the forum of trial by the Central Government in that eventuality shall be final.

125. Power of criminal court to require delivery of offender - (1) when a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may by, written notice, require the officer referred to in Sec. 124 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government whose order upon such reference shall be final.

NOTES

1. For definition of 'criminal court' and 'offence', see. S.4 (xvii) and (xxii) AFA.
2. This section may be read with S.124 AFA. See also Notes to S.124 AFA.
3. Where a charge against a person subject to AFA is initially brought before a criminal court, such court is bound under S.475 Cr PC and the Criminal Courts and court-Martial (Adjustment of Jurisdiction) Rules, 1978, to forward a notice to the accused's commanding officer for the latter to obtain a decision from the competent authority as to the court before which the proceedings shall be held. The competent authority for this purpose is the CAS, officer commanding of the Command, Wing, Group or Station in which the accused person is serving, or where such person is serving in field area, the officer commanding the Forces or the air forces in the field. If the competent authority decides that the case shall be tried before a court-martial, such decision ought to be conveyed within fifteen days to the criminal court. On receipt of such decision, the criminal court will either transfer the case-papers and hand over the accused to the Air Force, or if it considers that the case should not be so transferred, require the competent air force authority to refer the question to the Central Government for decision.
4. The law does not require that every case of a civil offence or that every case taken over from a criminal court must invariably be tried by a court-martial. The provisions of S.82 AFA and S.86 AFA relating to summary trials and of R.24 AFR and equally applicable to such cases. It may, however, be found desirable that in cases of civil offences, especially where the case has been taken over by the air force authorities from the criminal court, a summary of evidence is recorded. In all cases, where an accused is taken over from criminal court for trial under AFA, the disposal of the case is to be communicated to that court. Where effectual proceedings are not taken by the Air Force, the criminal court may report the matter to the State Government who may, in consultation with the Central Government, take appropriate steps in the matter. Disposal of a case under air force law, including summary disposal, is 'effectual proceedings' for this purpose.

5. A commanding officer will afford the civil authorities every assistance in his power, in the execution of criminal proceedings against any person under his command.
6. The conviction of an officer by a criminal court will be reported to the Central Government and that of warrant officer to Air Headquarters for such action as the authorities see fit to take. The conviction of an NCO or aircraftman will be reported to the AOC-in-C, Command under which he is serving who will decide whether dismissal, discharge or reduction is desirable. See para 687 Regs.
7. See **SK Kashyap V. State of Rajasthan**. In this case the CO initially wrote to the Magistrate giving notice that the accused will be tried by court-martial under AA but after 10 days the CO again wrote to the Magistrate cancelling his earlier letter. Such cancellation was upheld by the SC who opined that the CO did not lack authority or jurisdiction to communicate to the Magistrate that court-martial proceedings will not be instituted.
8. Section 126 AFA provides that a person convicted or acquitted by a court-martial for a civil offence may, with the previous sanction of the Central Government, be tried again by a criminal court for the same offence or on the same facts, but in such cases, while awarding punishment, the criminal court will have regard to the punishment which the accused may have already undergone.
9. In **Balbir Singh V. State of Punjab**, the SC held that the right to exercise the option is with the authorities and an accused has no right to demand or choose trial by a particular forum.

126. Successive trials by a criminal court and a court-martial - (1) A person convicted or acquitted by a court-martial may, with the previous sanction of the Central Government, be tried again by a criminal court for the same offence, or on the same facts.

(2) If a person sentenced by a court-martial under this Act or punished under Sec. 82 or Sec.86 is afterwards tried and convicted by a criminal court for the same offence, or on the same facts, that court shall, in awarding punishment have regard to the punishment he may already have undergone for the said offence.

NOTES

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

2. Art 20 of the Constitution lays down that no person shall be prosecuted and punished for the same offence more than once. S.126 AFA has been enacted in pursuance of the powers conferred on Parliament by Art 33 of the Constitution to modify any fundamental right in its application to 'the forces'.

3. This section, in effect, declares that the civil law remains supreme, and that a person subject to AFA is not thereby exempted from the civil law. In the case of any offence against the criminal law of India he may be tried and punished by a criminal court; and if such a court once tries him, then (whether acquitted or convicted) he cannot be tried again under AFA for the same offence. See also S.120 AFA and Notes thereto. On the other *hand*, a person acquitted or convicted of an offence by a court-martial may still be tried, by a criminal court for the same offence (if an offence is against the criminal law of India or on the same facts but only with the previous sanction of the Central Govt; and where such permission has been granted and the accused found guilty by the criminal court, such court, in awarding punishment must have regard to any punishment whether awarded by court-martial or under Ss.82 or 86 AFA, which the accused may have already undergone.

4. See also Note 6 to S.121 AFA.

5. In **Major SK Sharma v UOI**, the Supreme Court upheld the constitutionality of S.127 AA, being protected by Art 33 of the Constitution according to Supreme Court, Rule 7(1) of the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978 requires the CO or the competent military, naval or air force authority to inform the magistrate whether the accused has been tried by a court-martial or other effectual proceedings have been taken against him, in order to enable the operation and application of S.127 AA (corresponds to S.126 AFA).

CHAPTER XI

Procedure of Courts—martial

127. Presiding officer - At every general, district or summary general court-martial the senior member shall be the presiding officer.

NOTES

1. For definition of 'court-martial', see S.4(xvi) AFA.
2. See Note 2.6 to S. 114 AFA.
3. For form of convening order, see Form F.2(a), Sixth Schedule to AFR.
4. As to responsibility of Presiding Officer, see R.83 AFR.

128. Judge advocate - Every general court-martial shall, and every district or summary general court-martial may, be attended by a judge advocate, who shall be either an officer belonging to the department of the Chief Legal Adviser or if no such officer is available, an officer approved by the Chief Legal Adviser or any of his deputies.

NOTES

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

1.2 'Chief Legal Adviser' - See S.4 (xi) AFA and Notes thereto.

2.1 Presence of a JA at a GCM is a legal necessity and his non-attendance thereat will, invalidate the proceedings.

2.2 A court-martial, in the absence of a judge advocate (if such has been appointed) shall not proceed and shall adjourn. R.89 (3) AFR.

2.3 If on account of the death or illness of the JA, it is impossible to continue the trial, a court-martial shall be dissolved. S.117 (2) AFA. There is no provision in air force law for substitution of a trial JA during a trial.

3.1 Any 'officer' of the JAG (Air)'s department or, if such officer is not available, an officer approved by the JAG (Air) or any of his deputies can attend as JA. Although at a DCM and SGCM appointment of a JA is not legally necessary, in practice a JA is nominated by the CJA of Command concerned.

3.2 When an officer of the JAG (Air) 's department is not available and the case presents no legal difficulties the convening officer may appoint any suitable officer, who has been approved by the JAG (Air) or his deputy/assistant, to act as JA at a court-martial. Ordinarily CJA of a Command is not to act as trial JA in trials within the same Command. See para 738A Regs.

4.1 under law the accused has no right to object to the JA or the officers under instruction. S.129 AFA.

4.2 The procedure adopted at a court-martial ought not to be such as might 'lead to injustice or an appearance of injustice. The impartiality of the JA at a trial is a necessary part of our conception of judicial requirement. If it comes to the notice of a court-martial that there is a likelihood of the JA being a disqualified person, they must go into the question and decide whether the JA can continue to sit on the court. As there is no provision of law for JA to be absent at any sitting of the court, it would seem that even when the court was deciding upon the objection to the JA the latter should continue to occupy his place.

5. As to powers and duties of a JA see R.111 AFR.

6. In **UOI V. Charanjeet Singh Gill**, the Supreme Court held that a Judge Advocate

appointed with the Court Martial should not be an officer of a rank lower than the officer facing the trial unless the officer of such rank is not (having due regard to the exigencies of public service) available and the opinion regarding non-availability is specifically recorded in the convening order.

129. Challenges (1) At all trials by general, district or summary general courts-martial, as soon as the court is assembled, the names of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded and the remaining officers of the court shall, in the absence of the challenged officer, decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

NOTES

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

2. As to challenges generally see R.52 AFR and Notes thereto; as to adjourning for the purpose of appointing fresh members, and the power to convene another court see R.44 AFR and as to challenges where a court is being sworn/affirmed to try several persons, see R.96 AFR.

3. Under law the accused has no right to object to the JA. But see also Note 4.2 to S.128 AFA.

4.1 Under no circumstances should challenges be dealt with collectively but they should be disposed of individually starting from the objection to the junior-most member:

4.2 The JA should render advice before the court proceeds to decide on the objection.

4.3 The member objected to and he alone should withdraw from the court during the deliberations on the challenge with respect to him and the record of the proceeding should contain an annotation to such effect.

4.4 It is not illegal for a member against whom objections have been raised by the accused to participate in the voting as regards the challenge against another member including the Presiding Officer.

5.1 This section embodies a basic procedural safeguard to the accused, namely rule against bias, and ensures a fair hearing.

5.2 That bias disqualifies an individual from acting as a member of a court-martial flows from two principles (a) No one should be a judge in his own cause; and (b) justice must not only be done but seem to be done. An essential element of judicial process is that the person judging has to be impartial and neutral. He must be in a position to apply his mind objectively to the dispute before him. Proceedings may be vitiated if he is biased or if there are factors which may influence him to improperly favour one party at the cost of the other party.

5.3 Bias is generally of three kinds pecuniary bias, personal bias and policy bias. A direct pecuniary interest, even if not significant, will disqualify a person from acting as judge. Personal bias may arise out of various circumstances, some of which are listed in R.45 AFR. Personal animosity or 'hostility to the accused will be a disqualification.

Policy bias does not generally operate as disqualification. For example, it is the duty of every person subject to AFA to enforce discipline and uphold the lofty traditions of the IAF. But this would not entitle an accused to challenge a member on the ground that he is a strict disciplinarian. Clearly all service personnel ought to be biased in favour of strict disciplinary norms and they would not be disqualified to act as a member of a court-martial on this ground.

5.4 The fact is not whether bias will result or has resulted; but where there is a reasonable possibility of bias, such member should be disqualified.

5.5 Bias is a limb of the principles of natural justice. Since AFA and AFR lay down elaborate procedural safeguards in this regard such provisions should compulsorily be followed and there will be no justification or need to import any implied norms of natural justice.

130. Oaths of member, judge advocate and witness-

(1) An oath or affirmation in the prescribed manner shall be administered to every member of every court-martial and to the judge advocate before the commencement of the trial.

(2) Every person giving evidence before a court-martial shall be examined after being duly sworn or affirmed in the prescribed form.

(3) The provisions of sub-section (2) shall not apply where the witness is a child under twelve years of age and the court-martial is of opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation.

NOTES

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

1.2 Oath See s.51, IPC and Note 7.1 to S.59 AFA.

2.1 **Sub-section (1)** - Prescribed form/manner of oath or affirmation

(i) for a member of the court, Rr.53 and 134 AFR.

(ii) for the JA, officer attending for the purposes of instruction, shorthand writer and interpreter, Rr.54 and 134 AFR.

2.2 The person to administer oath or affirmation is prescribed by R.55 AFR.

2.3 The oath/affirmation taken by the members of the court binds them in their capacity of jurors to find a true verdict according to the evidence (discarding from their minds any private knowledge or information they may happen to possess) and in their capacity of judges to administer justice; and to keep secret the votes or opinions of other members. See Notes to R. 53 AFR and S.131 AFA.

2.4 No member can' be added to' 'the court after it is sworn affirmed. '

3.1 **Sub-section (2)** - The prescribed form of oath or affirmation for witness and the person to administer it are prescribed in R.118 AFR.

3.2 Refusal by a witness subject to AFA to take an oath or make an affirmation is punishable under S.59(b) AFA. Giving false evidence on oath/affirmation is an offence under S.60 AFA.

3.3 If a civilian witness refuses to take the oath or make an affirmation or gives false evidence on oath/affirmation, action should be taken by the court as indicated in R.129(c) AFR. See Notes to R.129 AFR.

4.1 **Sub-section (3)** -is based on the proviso to S.4 of the Oaths Act, 1969.

4.2 See Chapter VI, para 101. The sworn or unsworn evidence of a child may be corroborated by the sworn evidence of another child. Further the sworn evidence of a child may be corroborated by the unsworn evidence of another child. Where such corroborative evidence, sworn or unsworn, is received from children the court should be warned by the judge advocate that such evidence must be regarded with particular care.

131. Voting by members (1) Subject to the provisions of sub—sections (2) and (3), every decision of a court—martial shall be passed by an absolute majority of votes; and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused.

(2) No sentence of death shall be passed by a general court—martial without the concurrence of at least two thirds of the members of the court.

(3) No sentence of death shall be passed by a summary general court—martial without the concurrence of all the members.

(4) In matters other than a challenge or the finding or sentence, the presiding officer shall have a casting vote.

NOTES

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

2. As to manner of voting, see R.94 AFR,.

3. See Note 5.1 to S.73 AFA regarding endorsement to be made where a GCM or SGCM sentences the offender to death.

4. As to procedure on incidental question, see R.95 AFR.

5.1 Unanimity obtained without sacrifice of conviction commends the decision to public confidence.

5.2 Members of a court-martial are not there simply to decide the case; but to decide it as they think it should be decided. While it may be regrettable that they cannot all agree, it is better that their independence should be maintained and recognised than that unanimity must be secured through its sacrifice. Hence under this section, unanimity has been sought only in case of SGCM and that too only for award of the severest punishment.

132. General rule as to evidence — The Indian Evidence Act, 1872, (1 of 1872), shall, subject to the provisions of this Act, apply to all proceedings before a court—martial.

NOTES

1. Subject to the provisions of this Act - See Ss.133, 139 to 143 AFA and R 112 to 121 AFR.
2. As regards production of official documents or giving evidence as to their contents, see para 601 Regs.
3. Privilege for production of character rolls and confidential reports of a Government servant can be claimed under S.123 IEA. They are in the nature of confidential communication from one official to another and are meant to serve as part of the material designed to maintain the efficiency of - public service. Since these documents are maintained for the purpose of carrying on the administration in a proper manner, they relate to affairs of state. **State of Punjab V. Surjit Singh.**
4. For definition of 'court-martial', see S.4(xvi) AFA.

133. Judicial notice — A court martial may take judicial notice of any matter within the general air force knowledge of the members.

NOTES

1. 'Judicial notice' means that the court will recognize a matter without formal evidence. Thus, evidence need not be given as to the relative rank of officers, as to the 'general duties, authorities and obligations of different members of the service, or generally as to any matters which an officer, as such, may reasonably be expected to know.

2. For other matters of which a court may take judicial notice, see S.57 IEA. Also see Ss.56 and 58 IEA.

3. What is contemplated under this section is the general service knowledge; not special service knowledge which one might acquire as a member of a particular branch of the service. This does not prevent a member putting questions to a witness, which are based on his special knowledge.

4. In **General Court Martial V. Col Aniltej Singh Dhaliwal**, the SC held that judicial notice can be taken by a Court-Martial that signatories to the document, who were lower officials, would implicitly obey the directions of the accused who was a higher official.

134. Summoning witnesses — (1) The convening officer, the presiding officer of a court-martial, the judge advocate or the commanding officer of the accused person, may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to air force authority, the summons shall be sent to his commanding officer, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.

NOTES

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

1.2 For definition of 'document', see S.29 IPC.

2. When an application has been made for a court-martial, no witness will be allowed to leave the station without the sanction of the convening authority nor will witnesses disperse after trial without the previous sanction of such authority. See Para 742 Regs.

3.1 For forms of summons, see Third Schedule to AFR Forms C1 and C2.

3.2 If a witness before a court-martial is required from the navy, army or air force, his attendance may be procured by the issue of a summons through the commanding officer of the witness in the form prescribed in AFR, or by an application to the commanding officer of the witness stating the time, date and place of assembly of the court-martial or, where the witness is under the command of the convening officer, by an order to the witness to attend. See para 741 Regs.

3.3 A witness summoned merely to produce a document shall be deemed to have complied with the summons if he causes it to be produced instead of attending personally to produce the same.

4. See also R.24(8), (9) and 115 AFR.

5.1 Sub-section (1) - Under this sub-section, a civilian witness can be required to attend before a CO, or at the taking of the summary of evidence, or before a court-martial ; but see R.24(8) AFR. They cannot however, be compelled to attend before a court of inquiry.

5.2 'under his hand' - Such summons should be signed by the officer specified in this sub-section; but see R.5 AFR.

6. **Sub-section (2)** - Witnesses who are subject to AFA should be ordered by the proper authority to attend without the issue of a formal summons. If no summons has been issued, the witness cannot however be dealt with under S.59 AFA for making default in attending, but he may be dealt with under S.41 or S.65 AFA, as the case may be.

7. **Sub-section (3)** - For action where a civilian witness, who has been duly summoned and whose expenses have been tendered, makes default in attending, see R.129(c) AFR and Notes thereto. A civilian witness is not deemed to be duly summoned unless the summons is served on him through a magistrate as required under this sub-section.

8.1 **Sub-section (4)** - When a witness is directed by summons to produce a document etc., which is in his possession or power he must bring it to court, notwithstanding any objection that he may have with regard to its production or admissibility. After this has been done, it rests solely with the court to hear the objection or the claim as to privilege, and to decide whether it should be allowed; S.162 IEA. Also see, para 601 Regs.

8.2 Audited documents held by audit officers may be required to be produced before a court-martial by issue of summons. GOI has issued instructions that in such cases where the court-martial decides to take on record a document, photostat copies will be retained by the audit department and, originals produced before the court. GOI, MOD letter No F.32(48/07/D(Coord) dated 19 Dec. 69.

9. As to privilege from arrest under civil or revenue process of a witness summoned to attend before a court-martial, see S.30 AFA.

135. Documents exempted from production (1) Nothing in Sec. 134 shall be deemed to affect the operation of Secs. 123 and 124 of the Indian Evidence Act, 1872, (I of 1872), or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(2) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, High Court or Court of Session, wanted for the purpose of any court-martial, such magistrate or court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

(3) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or High Court or Court of Session.

NOTES

1. Ss. 123 and 124 IEA deal with 'affairs of State' and 'official communications'. See para 601 Regs, as to how such matters are protected from disclosure in courts of law, including courts-martial, except under adequate guarantees for public interests being safeguarded. 'Affairs of State' include all matters of a public nature with which the Government is concerned.

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

2.2 For definition of 'document', see S.29 IPC.

2.3. Sub-sections (2) and (3) indicate the only way in which letters, postcards, telegrams and similar documents in the custody of the postal or telegraph authorities can be made available as evidence. If none of the authorities mentioned in sub-section (2) are available, and it is considered necessary that the document should be detained until such authority is communicated with, application should be made to any of the authorities mentioned in sub-section (3), one of whom is certain to be present in or near any air force unit, however small.

4. See also paras 601 and 753 Regs.

136. Commissions for examinations of witnesses - (1) Whenever, in the course of a trial by court—martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Chief Legal Adviser in order that a commission to take the evidence of such witness may be issued.

(2) The Chief Legal Adviser may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) The magistrate or officer to whom the commission is issued, or, if he is the district magistrate, he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant cases under the Code of Criminal Procedure, 1898 (V of 1898), or any corresponding law in force in the State of Jammu and Kashmir.

(4) When the witness resides in a tribal area or in any place outside India, the commission may be issued in the manner specified in Ch XL of the Code of Criminal Procedure, 1898 (V of 1898), or of any corresponding law in force in the State of Jammu and Kashmir.

(5) In this and the next succeeding section, the expression "Chief Legal Adviser" includes a Deputy Chief Legal Adviser.

NOTES

1. This and the next section provide for the examination of witness 'on commission', that is, by means of a series of written questions decided upon by the court trying the case, which questions are sent to another court at a distance and put by it to the witness, whose answers are then recorded. It will be noticed that the procedure here laid down can only be set in motion by a court-martial assembled for the trial of the accused, and then only in the circumstances specified in sub-section (1), while the actual issue of the commission can only be effected by the JAG (Air) or the DJAG (Air).

2.1 For the definition of 'court-martial' and 'Chief Legal Adviser', see S.4 (xvi) and (xi) AFA.

2.2 As per sub-section (5) Chief Legal Adviser includes a Deputy Chief Legal Adviser which

term in turn will include Command Judge Advocate. See also Notes to S.4 (xi) AFA.

3. When a court-martial considers that the evidence of a witness should be taken on commission it should forward to the CJA of the command (or to the JAG (Air) if the

trial is held at a unit directly under Air HQ or if the Command does not have a CJA) a list of questions to be put to the witness, along with an explanation of the circumstances which appear to render his examination on commission necessary. Any questions which the prosecutor or the accused desire to have put to the witness, and

which the court considers relevant, should be added.

4. The taking of evidence by commission in court-martial should be most sparingly resorted to, and ought not to be adopted save in extreme cases of delay, expense or inconvenience. The following considerations should guide courts-martial in this important matter -

(a) A complainant, or a witness who practically fills the role of complainant, should never be examined on a commission, the risk of injustice to the accused is too great.

(b) A material prosecution witness, the value of whose evidence can only be made apparent under full examination and cross-examination in court should very seldom be so examined.

(c) A merely 'formal' or corroborative witness for either side, or a material witness for the defence, if the accused is fully satisfied by this action, might generally be examined on a commission. By 'formal' is here meant a witness who has to prove a document, entry, or similar fact, which must be legally proved, but which when so proved cannot rationally be disputed by the accused or by the prosecution.

5. This section does not enable examination of witnesses on commission at pre-trial stage, namely hearing under R.24 AFR or 'at the recording of summary of evidence. But see R.24 (8) AFR.

137. Examination of a witness on commission - (1) The prosecutor and the accused person in any case in which a commission is issued under Sec. 136 may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer executing the commission shall examine the witness upon such interrogatories.

(2) The prosecutor and the accused person may appear before such magistrate or officer by counsel or except in the case of an accused person in custody, in person, and may examine, cross—examine and re—examine, as the case may be, the said witness.

(3) After a commission issued under Sec. 136 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder to the Chief Legal Adviser.

(4) On receipt of a commission and deposition returned under subsection (3), the Chief Legal Adviser shall forward the same to the court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to inspection by the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(5) In every case in which a commission is issued under Sec.136, the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

NOTES

1. Evidence taken on commission at the instance of a court-martial which has been dissolved, is admissible before another court-martial assembled for the trial of the accused of course, only on the same or substantially the same charges. If great delay in the return of a commission is anticipated, advantage may be taken of this provision and the original court dissolved. In such a case, however, each of the witnesses who gave evidence at the first trial must repeat his evidence on oath or affirmation at the second trial unless —

(a) he is dead or cannot be found; or

(b) he is incapable of giving evidence; or

(c) he is kept out of the way by the adverse party; or

(d) his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable.

In any of these cases the evidence given at the first trial can, under S.33 IEA be read and considered at the second trial.

2. See also generally Notes to S.136 AFA.

3. For definition of 'Chief Legal Adviser', see S.4 (xi) AFA.

138. Conviction of offence not charged (1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may be found guilty of being absent without leave.

(3) A person charged before court-martial with using criminal force may be found guilty of assault.

(4) A person charged before a court-martial with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a court-martial with any one of the offences specified in Cls. (a), (b), (c) and (d) of Sec. 52 may be found guilty of any other of these offences with which he might have been charged.

(6) A person charged before a court-martial with an offence punishable under Sec. 71 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), were applicable.

(7) A person charged before a court-martial with any offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

(8) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted or abetted the commission of that offence, although the attempt or abetment is not separately charged.

NOTES

1.1 The object of this section is to prevent miscarriage of justice by permitting a person charged with one of the offences mentioned in it to be found guilty of a cognate offence. But a court-martial has no power to find a person guilty of an offence other than that with which he is charged in the statement of the offence except in the cases specified in this section. R 36 AFR. A court may, however, (as allowed by R.71 (5) AFR) find a person guilty of a charge with the exception of certain words in the particulars of the charge or with certain words in the particulars of the charge or with certain immaterial variations, and this finding will be valid as long as in its reduced or varied form it discloses the offence which forms the subject of the charge.

1.2 Alternative charges need not be preferred in the cases provided for in this section but in other cases where the facts disclose a greater and a lesser offence it may in practice be expedient to prefer alternative charges, the more serious offence being placed first in order (see Note to R.60 (3) AFR).

1.3 This section does not permit a court-martial to find, an accused guilty of one or other of two offences e.g. a finding of 'not guilty of theft but guilty Of dishonest misappropriation or criminal breach of trust'.

2. This section does not apply to summary awards under Ss.82 or 86 AFA, but in such cases the officer dealing with the case, if not the CO, can have the charge amended by the CO.

3. **Sub-section (1)** - Care must be taken in this case to ensure that the provisions of S.121 AFA are not offended. See also Note 2.1 to S.121AFA.

4. **Sub-section (3)** - For difference between assault and criminal force, see Notes 5.1 and 5.2 to S.40 AFA.

5. **Sub-section (5)** - The special finding under this sub-section applies only where the charge is laid under one of the specified clauses of S.52 AFA and not when the accused is charged under S.71 AFA with having committed the civil offence of theft etc. But see sub-section (6) for such cases.

6. **Sub-section (6)** - For the special findings referred to in this sub section, see Ss.221 and 222 Cr PC,1973.

7. **Sub-section (7)** - Thus a person charged with using criminal force to his superior officer in the execution of his office may be convicted of using criminal force to his superior officer; or a person charged with an offence committed on active service may be found guilty of the same offence committed not on active service; or a person charged with wilfully allowing the escape of a person in his charge may be found guilty of allowing his escape without reasonable excuse.

8. 1 **Sub-section (8)** - Where a person charged with an offence is found guilty of having attempted or abetted the commission of that offence and no express provision has been made for the punishment for such attempt or abetment, the punishment will be as specified in S.67 AFA for attempt and Ss.68 to 70 AFA for abetment.

8.2 Ss.38(1), 51 and 66(c) make attempt to commit the offences specified therein as substantive offences.

9. As regards special finding, see R.71 (4) AFR.

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

139. Presumption as to signatures: In any proceeding under this Act any application, certificate, warrant, reply on other document purporting to be signed by an officer in the service of the Government shall, on production, be presumed to have been duly signed by the person by whom and in the character in which it purports to have been signed, until the contrary is shown.

NOTES

1. The presumption only relates to the signature and the character by whom and in which it purports to have been signed and not to the contents of the document. The application, certificate, warrant etc., must be admissible in evidence as such, and upon its being admitted, the presumption in question can be drawn.
2. 'Purporting' - This expression means that if the paper appears to be signed, as mentioned in this Section, it can be accepted without calling a witness, to prove that it has been so signed, unless indeed some evidence is given to the contrary. If any evidence is given casting a doubt on the authenticity of a document, the court should require evidence of the signature to be given by a witness.
3. 'an officer in the service of the Government' - The term officer here has to be understood in a wider context. The presumption under this section is not confined to document etc., signed by air force officers. There is nothing in this section or in S.142 to restrict the scope to acts done by such officers acting in their official capacity.
4. 'until the contrary is shown the presumption under this section is rebuttable.
5. For definition of 'document', see S.29, IPC.

140. Enrolment paper (1) Any enrolment paper purporting to be signed by an enrolling officer, shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given.

(2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

NOTES

1. On the trial of a person subject to AFA for making a false answer on enrolment or for fraudulent enrolment, the answer made or the fact of enrolment can be proved by the production of his enrolment paper. The fact of the enrolment (but not any answer made on enrolment) may also be proved by a properly certified true copy of the enrolment paper. The enrolment paper, or when admissible the true copy thereof, must be produced by a witness on oath or affirmation and the accused identified as the person referred to.

2. Where a certified true copy of the enrolment paper is admissible, it must purport to be so certified by the officer having custody of the enrolment paper and not by a subordinate officer 'for' him.

3. see generally notes to S.14 AFA.

4. Enrolling officer see R.7(l) AFR.

5. See Note 2 to S.14 AFA.

141. Presumption as to certain documents (1) A letter, return or other document respecting the service of any person in or the cashiering, dismissal or discharge of any person from, any portion of the Air Force, or respecting the circumstance of any person not having served in or belonged to, any portion of the Forces, if purporting to be signed by or on behalf of the Central Government or [the Chief of the Air Staff] or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

(2) An Army, Navy or Air Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers or warrant officers therein mentioned, and of any appointment held by them and of the unit or branch of the services to which they belong.

(3) Where a record is made in any service book in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of air force duty, and purports to be signed by the commanding officer or by the officer, whose duty it is to make such record, such record shall be evidence of the facts therein stated.

(4) A copy of any record in any service book purporting to be certified to be a true copy by the officer having custody of such book shall be evidence of such record.

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of any officer or other person subject to this Act, or any portion of the Air Force, or has been apprehended by such officer or person, a certificate purporting to be signed by such officer, or by the commanding officer of that portion of the Air Force, or by the commanding officer of the unit, or detachment to which such person belongs, as the case may be, and stating the fact, date and place of such surrender or apprehension, and the manner in which he was dressed, shall be evidence of the matters so stated.

(6) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a police officer not below the rank of an officer in charge of a police station, a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension and the manner in which he was dressed shall be evidence of the matters so stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly

submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act.

NOTES

1. As to documentary evidence generally, see Ss.61 to 90, IEA. The provisions of the IEA, which apply to the court-martial proceedings are further supplemented by the provisions relating to evidence in Ss.133, 139 to 143 AFA.

2.1 This section provides for the admissibility in evidence of a variety of documents or copies of documents used in connection with Air Force administration, but does not make them conclusive proof of the facts stated in them; therefore evidence may be given to contradict them.

2.2 The documents made admissible in evidence by this section can only be received as such when produced by a witness on oath or affirmation.

2.3 A document purporting, to be such 'a document as specified in the various sub-sections is, upon mere production before the court on oath or affirmation, prima facie evidence of the facts therein stated; but, of course, it is not evidence that the accused is the person to whom it relates; and evidence must be given on oath or affirmation by a witness to prove that the accused is in fact the person referred to in the document. If the accused disputes the identity, great caution is required as to the sufficiency of the evidence, and if he disputes the accuracy or completeness of the books, further evidence on the disputed points must be adduced.

3. Purporting - See Note 2 to S.139 AFA.

4. 1 **Sub-section (1)** - This sub-section is limited to proof of the fact of length of service or date of cashiering, dismissal or discharge; it does not assist proof of particular incidents occurring during such service. A telegram, as delivered by the telegraph department, respecting the service of a person is not signed at all and would not be admissible.

4.2 Prescribed officer - See R.168 AFR.

5. **Sub-section (2)** - Documents under this sub-section need not be produced on oath/affirmation but may be handed in to the court. See also S.139 IEA.

6.1 Sub-section (3) - Service Book - This term has not been defined in AFA. or in the AFR. The term should therefore be understood in its ordinary sense. It will include books which are maintained not only in pursuance of AFA and AFR but also in pursuance of air force duty e.g., Form700 with respect to service aircraft.

6.2 It should be noted that every entry in a service book is not made evidence under this sub-section; the entry must be made for the purpose of being used as a record, and must be

made in pursuance of AFA or of any rules made thereunder or in pursuance of air force duty, and it must purport to be signed by the CO or by the officer whose duty it is to make the record. No hard and fast rules can be laid down as to what entries can properly be considered as 'records', but as a general rule this sub section should only be taken advantage of in cases, where a formal record, prima facie of non-controversial character, is made in a service book of record in pursuance of AFA/AFR or of air force duty and purporting to be signed in accordance with this sub-section. Entries which cannot properly be considered as records, such as daily entries in accounts, and entries in books not being 'service books', may be proved under the ordinary provisions of the IEA.

6.3 The fact that a statement is recorded in a "service book" does not make it admissible in evidence if it is otherwise legally objectionable, e.g. if court of inquiry under S.107 AFA be held before 30 clear days have expired, a record of its finding is inadmissible.

6.4 Unit court-martial book is a service book. Court-martial book is a portfolio book, bound or otherwise, containing true copy signed by the CO of the Unit of every declaration of a court of inquiry held under S.107 AFA.

7.1 **Sub-section (4)** - Such a copy cannot be certified by another officer 'for' the officer having the custody of the book.

7.2 Where certified true copy of a record in any service book is to be produced, the copy should show clearly that the record purports to have been signed by the CO or by the officer whose duty it was to make the record.

7.3 Where IAFF (P) 29 is to be produced, it must be signed by the officer having the custody of the books from which it is compiled. The original declaration of the court of inquiry even if in existence, is not admissible in evidence. Nor is IAFF (P) 29 unless the entry in the court-martial book (of which it is a certified copy) purports to have been signed by the officer in actual command of the accused's unit as required by S.107 AFA.

8.1 **Sub-section (5)** - desertion or absence without leave The presumption under sub-sections (5) and (6) will also cover charges, of overstaying of leave and other species of AWL described in S.39 AFA.

8.2 In this sub-section and in sub-section (6), the certificate should only state the fact, date and place of surrender or apprehension and the manner in which the offender was dressed; it can only be admitted as evidence of those facts and then only in cases of desertion or absence without leave. If it is necessary to prove the circumstances of the surrender or apprehension, a witness must be called.

8.3 If the deserter or absentee surrenders to or is apprehended by any officer, the certificate must purport to be signed by that officer. But if he surrenders himself to a WO, NCO or aircraftman of any unit, or if the offender is apprehended by a WO, NCO or aircraftman, the certificate must purport to be signed by the CO of such WO etc., of that unit.

8.4 The certificate must 'purport to be signed by the officer indicated and not by another officer 'for' him. For form of apprehension/surrender certificate, see para 384 (b) Regs.

9.1 **Sub-section (6)** - see Notes 8.1, 8.2 and 8.4 above.

9.2 'officer in charge of a police station' - includes, when the officer in charge of the police station is absent from the station - house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of Constable or, when the State Government so directs, any other police officer so present. S.2 (c) Cr. P.C.

9.3 Under this sub-section it is essential that the certificate should be actually signed by a police officer not below the rank of officer incharge of the police station. It is, however, not necessary that it must be signed by the police officer incharge of the police station concerned. The certificate should be on the same lines as IAFD-910.

10. Sub-section (7) - This sub-section applies only to the report signed by any Chemical Examiner to the Government or his assistant and not to the report of any other 'expert'.

11.1 For definition of 'Air Force' and 'the Forces', see S.4 (iv) and (xix) AFA.

11.2 For definition of 'Chief of the Air Staff', see S.4 (xiv) AFA.

11.3 For definition of 'Commanding Officer' and 'officer', see S.4 (xv) and (xxiii) AFA.

11.4 For definition of 'Unit', see S.4 (xxviii) AFA.

142. Reference by accused to Government officer — (1) If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorised absence, and refers in support thereof to any officer in the service of the Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence the court shall address such officer and adjourn the proceedings until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him, be received in evidence and have the same effect as if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial.

NOTES

1. This section goes much further than S.139 AFA in as much as the document, e.g., written reply is prima facie evidence not only of the signature of the writer and the character in which it was signed but also of the truth of the facts stated therein.

2. 'Court' - refers to court-martial under AFA.

3. 'an officer in the service of the Government' - See Note 3 to S.. 139 AFA

4. Where at a trial by court-martial on a charge of AWL, an accused person attaches to his statement before the court, a medical certificate given by a private practitioner, who is not an officer in the service of the Government, and does not call such private practitioner as a defence witness, the court is not bound to call such practitioner as a court witness unless in the circumstances of the case it decides otherwise. Subject to the above qualification, a court should normally advise the accused person of the provisions of burden of proof and of Section 114 (g), IEA and should record the fact of such advice. The accused person might, therefore, be left to take his own decision about the need of calling such witness in his defence.

143. Evidence of previous convictions and general character: (1) When any person subject to this Act has been convicted by a court—martial of any offence, such court—martial may inquire into, and receive and record evidence of any previous convictions of such person, either by a court-martial or by a criminal court, or any previous award of punishment under Sec. 82 or Sec. 86 and may further inquire into and record the general character of such person and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court—martial books or other official records, and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

NOTES

1. This section should be read with R.73 AFR which prescribes the other matters which may be proved. See also R.142 AFR.

2. Character includes both reputation and disposition but apart from previous conviction, evidence of character, where admissible, may only be given of general reputation and general disposition and not of particular acts by which reputation or disposition were shown. (Explanation to S.55, IEA).

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

3.2 Court martial Book - The term 'Court Martial Book' has not been defined in the AFA or AFR. A Court Martial Book should be maintained by all units. Apart from containing every declaration of courts of inquiry held under S.107 AFA, the Court Martial Book should also contain a true copy signed by the CO of the Unit of every conviction by a court martial, every summary award under S.86 AFA and also every conviction by civil authority for imprisonment exceeding seven days, with respect to service personnel posted to or attached to the unit. See also note 6.4 to S.141 AFA.

4. In criminal proceedings, which include trials by court-martial, the fact that the accused is of general good character is always relevant but evidence of the accused's bad character is relevant and admissible only in the following cases:

(a) After a finding of 'guilty', to enable the court to determine the punishment.

(b) Before the finding of guilty

(i) If the accused has in the first instance through the defence witnesses given evidence of good character, the whole question of his character, good or bad, is opened and the prosecutor is at liberty to tender evidence of general bad character.

See R.12I(3) AFR.

(ii) In cases where guilty knowledge or intention or design is of the essence of the offence, proof may be given that the accused did other acts similar to those which form the basis of the charge; such evidence is admissible not to show that because he has committed one offence, he would, therefore, be likely to commit another offence of the same nature but to prove intention, knowledge, good faith etc., of the accused with regard to the act or to rebut (even by anticipation) the defence of accident, mistake etc., and to show that the offence charged formed part of a series of similar occurrence. Ss.14 and 15, IEA.

5. In the case of officers Form 731 is produced. In the case of airmen Form (PS) 1655 is produced.

144. Lunacy of accused — (1) Whenever, in the course of a trial by a court—martial, it appears to the Court that the person charged is by reason of unsoundness of mind incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or knowing that it was wrong or contrary to law, the Court shall record a finding accordingly

(2) The presiding officer of the Court shall forthwith report the case to the confirming officer.

(3) The confirming officer to whom the case is reported under sub—section (2) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court— martial for the offence with which he was charged.

(4) A confirming officer confirming a finding in any case so reported to him under sub—section (2) shall order the accused person to be kept in custody in the prescribed manner and shall report the case for the orders of the Central Government.

(5) On receipt of a report under sub—section (4) the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

NOTES

1. As to insanity in connection with responsibility for crime, see S.84 IPC which lays down the legal test of responsibility in cases of alleged unsoundness of mind.

2. It is to be observed that two distinct cases are contemplated. A person may have been sane at the time when he committed the act or made the omission charged, but may not be sane enough to make his defence; while on the other hand, a person insane at the time when he did the act or the omission charged may have recovered sufficiently to stand his trial.

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

4. An application that the accused is of unsound mind and consequently incapable of making his defence should be made before arraignment. The application will normally be made by counsel for the defence or the defending officer, but should, if necessary, be made by the prosecutor. Evidence in support of the application may of course, be given.

5.1 Where a court-martial finds that an accused person committed the act (or made the omission) alleged as constituting the offence (or offences) specified in the charge or charges but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, such finding does not amount to a conviction, but means that on the facts proved the court would have found him guilty of the offence (offences) had it not

been established to its satisfaction that the accused at the time was not responsible for his actions.

5.2 If such a finding is recorded, no pay and allowances are forfeited automatically under Ss.91 and 92 AFA and P and A Regs., e.g., in respect of the period during which the accused is in custody awaiting trial.

6. **Sub-section (4)** - prescribed manner - see R.169 AFR. The report should be forwarded through Air HQ.

7. **Sub-section (5)** - other suitable place. In view of the provisions of S.337, Cr PC the place of safe custody must, if it is not a lunatic asylum, be a jail.

8. Sub-section (4) and **(5)** - See also Ss. 147 and 148 AFA.

9. See also para 727 Regs.

145. Subsequent fitness of lunatic accused for trial— Where any accused person having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under Sec 144, the officer commanding a unit or detachment within the area of whose command the accused is in custody or is detained, or any other officer prescribed in this behalf, may -

(a) if such person is in custody under sub-section(4) of Sec. 144. on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained in a jail under sub section (5) of Sec. 144 on a certificate of the Inspector— General of Prisons, and if such person is detained in a lunatic asylum under the said sub-section on a certificate of any two or more of the visitors of such asylum that he is capable of making his defence.

take steps to have such person tried by the same or another court- martial for the offence with which he was originally charged, or, if the offence is a civil offence, by a criminal court.

NOTES

1. For definition of 'commanding officer' and 'unit', see S.4 (xv) and (xxviii) AFA.
2. For prescribed officer, see R.176 AFR.

146. Transmission to Central Government of orders under Sec. 145. A copy of every order made by an officer under Sec. 145. for the trial of the accused shall forthwith be sent to the Central Government.

147. Release of lunatic accused Where any person is in custody under sub-section (4) of Sec. 144 or under detention under sub-section (5) of that section

(a) if such person is in custody under the said sub section (4), on the report of a medical officer, or

(b) if such person is detained under the said sub section (5), on a certificate from any of the authorities mentioned in Cl. (b) of Sec. 145 that, in the judgement of such officer or authority such person may be released without danger of his doing injury to himself or to any other Person;

the Central Government may order that such person be released, or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

NOTES

1. See S.338, Cr PC.

148. Delivery of lunatic accused to relatives: Where any relative or friend of any person who is in custody under sub section (4) of Sec. 144 or under detention under sub-section (5) of that section desires that he should be delivered to his care and custody, the Central Government may upon application by such relative or friend and on his giving security to the satisfaction of that Government that the person delivered shall be properly taken care of, and prevented from doing injury to himself or any other person, and be produced for the inspection of such officer, and at such times and places, as the Central Government may direct, order such person to be delivered to such relative or friend.

149. Order for custody and disposal of property pending trial - When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court—martial during a trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

NOTES

1. For definition of 'offence' and 'court-martial, see S.4(xxii) and (xvi) AFA.
2. The power under this section should be exercised only in exceptional cases where retention of the property till confirmation and/or disposal of a petition under S.161 AFA is not desirable or practicable due to the nature of the property.

150. Order for disposal of property regarding which offence is committed (1)

After the conclusion of a trial before any court—martial, the Court or the officer confirming the finding or sentence of such court—martial or any authority superior to such officer, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise of any property or document produced before, the Court or in its custody, or regarding which any offence, appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub—section (1) in respect of property regarding which an offence appears to have been committed a copy of such order signed and certified by the authority making the same may, whether the trial was held within India or not, be sent to a magistrate within whose jurisdiction such property for the time being is situated, and such ‘magistrate shall thereupon cause the order to be carried into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1898 (V of 1898) or any corresponding law in force in the State of Jammu and Kashmir.

(3) In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

NOTES

1.1 Reference to Cr PC 1898, should be now understood as reference to Cr PC 19 73.

1.2 The words ‘in The State of Jammu and Kashmir’ appearing in Sub-section (2) were substituted by the Adaptation, of Laws (No.3) Order, 1956 for the words ‘a Part B State.’

2. An order passed under this section should not be vague or conditional. It must only relate to disposal by destruction, confiscation, delivery or otherwise.

3.1 For definition of ‘court-martial’ and ‘offence’, see S.4(xvi) and (xxii) AFA.

3.2 Property - refers to moveable property. For definition of moveable property, see S.22, IPC.

3.3 For definition of ‘document’ see S.29 IPC

4. Theft or misappropriation of property does not alter the owner ship, and therefore, prima

facie the person from whom property has been stolen or misappropriated is the lawful owner of it, and can recover it from the holder.

5. Where stolen property has not been recovered, the value of the property should be stated in the particulars of the charge and proved in evidence. Stoppages may then be awarded to recoup the owner: R.36(6) AFR. In a case of theft followed by sale to an innocent purchaser, stoppages may be awarded to recoup the purchaser on a charge of theft, provided that charge contains an additional averment informing the accused of the further liability he has incurred in respect of the innocent purchaser.

151. Powers of courts—martial when certain offences are committed by persons not subject to this Act. — Any trial by a court—martial under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of Secs. 193 and 228 of the Indian Penal Code, (1860 XLV of 1860) and the court—martial shall be deemed to be a court within the meaning of Secs. 480 and 482 of the Code of Criminal Procedure, 1898 (V of 1898).

NOTES

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

1.2 This section indicates that summary proceedings under Ss. 82 or 86 AFA are not deemed to be 'judicial proceedings' nor is the officer disposing of the case summarily under those sections a 'Court' within the meaning of the Cr. PC.

2.1 Reference to Cr PC 1898 should be now understood as reference to Cr PC 1973.

2.2 Ss. 480 and 482 Cr PC 1898 corresponde to Ss 345 (1) and 346 of Cr IPC 1973.

3. See R. 129 AFR and Note 4 to S.59 AFA.

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CHAPTER XII



CONFIRMATION AND REVISION

CHAPTER XII

Confirmation and Revision

152. Finding and sentence not valid unless confirmed.- No finding or sentence of a general, district or summary general court—martial shall be valid except so far as it may be confirmed as provided by this Act.

NOTES

1. For definition of 'court-martial', see S.4 (xvi) AFA.
2. For details as regards the authorities/officers empowered to confirm findings and sentences of courts-martial, see Ss. 153 to 156 AFA and Notes thereto.
- 3.1 Confirmation is complete when the proceedings are promulgated. (See R.78 AFR). At any time before promulgation the confirming authority may cancel his minute of confirmation and revoke the minute or order a revision. If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.
- 3.2 A CO who has investigated the case cannot subsequently confirm the proceedings of a court-martial arising out of the 'same matter. Para 762 Regs.
- 3.3 Similarly a member of a court-martial or an officer who has acted as prosecutor cannot confirm the proceedings of that court martial. R.81 AFR.
- 4.1 The result of this section is that if a finding of 'guilty' or 'not guilty' is not confirmed it is invalid; consequently there is no conviction or acquittal, and the accused has not been convicted or acquitted by a court-martial for the purpose either of any subsequent trial or of any entry in service books or of any forfeiture. See S.120
AFA and Notes as to a second trial. Also see R.128 AFR as to merely technical errors not involving injustice to the accused.
- 4.2 Confirmation of the sentence alone implies confirmation of the finding also, but is not the correct mode of recording confirmation.
- 4.3 A confirming officer cannot substitute a special finding on any charge for the court's finding; he can only confirm, reserve confirmation for superior authority, send back for revision, or refuse to confirm. The power under S.160 AFA can be exercised only after confirmation.
- 5.1 Confirmation ought to be withheld in the following cases:
 - (a) Where the provisions of AFA relating to jurisdiction have been contravened. See

Ss. 110 to 116, 118, 119 and 127 to 131 AFA.

(b) Where evidence of a nature prejudicial to the accused has been wrongly admitted.

(c) Where the accused has been unduly restricted in his defence.

(d) Where a finding of 'guilty' has been come to with exception of certain words of the charge, and these words so far describe the essence of the offence, that the finding with the words omitted fails to disclose an offence of which the court could, legally have convicted.

(e) Where a special finding of 'guilty' fails to disclose an offence of which the court could have legally convicted.

(f) Where the charge is bad in law, even though the accused has pleaded guilty.

(g) Where there has been such a deviation from the AFR that injustice has been done to the accused.

5.2 There is no express provision in the AFA or AFR requiring that a minute of non-confirmation ought to include the reasons for such non-confirmation. However, the minute of non-confirmation as reproduced at page 160 J of the Compendium of the Air Force Law (IAP 8751) reads, "Not Confirmed (the reasons for non-confirmation may be stated)". Accordingly, whenever proceedings of a court-martial are not confirmed, the minute of non-confirmation should normally include, in brief, the reasons for such non-confirmation; e.g.,

(a) "Not confirmed as Fit Lt 'X' being ineligible to act as a member of the court-martial, the court-martial was not constituted according to law".

(b) "Not confirmed because the finding is against the weight of evidence".

6. Even a finding of 'not guilty' requires confirmation.

7. As per the law there is no limitation on the number of occasions that an accused person can be tried by court-martial on the same charges, when the findings of the earlier trials are not confirmed by the confirming officer. The re-trials, however, should be ordered in rare and exceptional cases when the requirements of discipline and justice dictate that the offender shall not escape punishment on account of a legal technicality. It is an established rule of criminal jurisprudence that an accused person should not be placed on trial for the same offence more than once, except in very special circumstances. Every trial involves hardship, humiliation, suffering and possibly some expense to the accused. When a re-trial takes place, the accused has to undergo the same humiliation, trouble and suffering once again.

8.1 In **COAS v Major Dharam Pal Kukrety**, the Supreme Court observed that by reason of S.153 AA (corresponds to S.152 AFA) under which no finding or sentence of a court-martial shall be valid except as confirmed, and there being no express provision in the Act which empowers the holding of a fresh court-martial, when the finding of a court-martial on revision

is not confirmed, recourse to administrative dismissal/removal under S.19AA (S.19 AFA) read with R.14 AR (R.16 AFR) is justified.

8.2 In **AK Malik v UOI**, the Rajasthan High Court expressed the view that an order of non-confirmation of finding/sentence should be a reasoned order. In **Capt Harish Uppal v UOI**, the Supreme Court expressed the view that it was not necessary for the confirming authority to give a hearing to the accused person before confirming the sentence passed after revision.

8.3 In **Capt Ram Kumar v COAS**, the Delhi High Court held that under Art 226 of Constitution, the High Court does not review the findings of a tribunal, such as 'GCM', as if it were hearing an appeal. To justify interference by the High Court, it has to be shown that the findings of the tribunal are vitiated by an error of law or the tribunal lacked jurisdiction to deal with the matter, or violated the rule of natural justice or something of that kind.

9. In **UOI V. Himmat Singh Chahhar**, the Supreme Court held that power of judicial review under Art. 226 does not permit the High Court to reappriciate the evidence and in coming to the conclusion that the evidence is insufficient for the conclusion arrived at by the Competent Authority in the Court Martial Proceedings.

10. In **Uoi V. Harjeet Singh Sandhu**, the SC held that the confirming authority has to examine the legality and justness of the finding and sentence of the Court-Martial before confirming the same. Finding and sentence, if legal and just, have to be ordinarily confirmed. Once finding and sentence are confirmed, exercise of power under Sec 19 of the Army Act (Corresponds to Sec 19 AFA) read with Rule 14 (Corresponds to Rule 16 AFR) is impermissible.

153. Power to confirm finding and sentence of general court-martial. — The findings and sentences of general courts—martial may be confirmed by the Central Government, or by any officer empowered in this behalf by warrant of the Central Government.

NOTES

1. For definition of 'court-martial' and 'officer', see S.4(xvi) and (xxiii) AFA.
- 2.1 Warrants under this section have been issued by the Central Government to the CAS, AOs C-in-C of Commands and to AOA.
- 2.2 For form of warrant issued to the CAS and AOC-in-C, see Appendix 'C'.
3. See generally Notes to S.152 and Note 3 to S.110 AFA.

154. 'Power to confirm finding and sentence of district court-martial.- The findings and sentences of district court-martial may be confirmed by any officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of such officer.

NOTES

1. For definition of 'court-martial' and 'officer', see S.4(xvi) and (xxiii) AFA.
2. No officer has been empowered by warrant issued under this section.
3. See generally Notes to S.152 and Note. 3 to S. 110 AFA.

155. Limitation of powers of confirming authority.- A warrant issued under Sec 153 or Sec. 154 may contain such restriction, reservations or conditions as the authority issuing it may think fit.

NOTES

1. As to restrictions, etc., see form of warrant issued to AOsC-in-C of Commands. For instance, a sentence of death must be reserved for confirmation by the Central Government. See Note 2.2 to S.153 AFA.
2. See para 762 Regs.

156. Power to confirm finding and sentence of summary general court-martial. -
The findings and sentences of summary general courts-martial may be confirmed by the convening officer or if he so directs, by an authority superior to him. -

NOTES

1. For definition of 'court-marital, see S.4(xvi) AFA.
2. In the case of a SGCM, the convening officer can confirm the finding and sentence thereof, if he so desires.
3. A member of a SGCM or an officer who has acted as prosecutor there at should not, so far as practicable, confirm the proceedings of that court-martial; see RR. 142 and 81 AFR.

157. Power of confirming authority to mitigate, remit or commute sentences.—(1) Subject to such restrictions, reservations or conditions as may be contained in any warrant issued under Sec. 153 or Sec. 154 and to the provisions of sub sections (2) and (3) a confirming authority may, when confirming the sentence of a court—martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in Sec. 73.

(2) A sentence of transportation shall not be commuted for a sentence of imprisonment or detention for a term exceeding the term of transportation awarded by the Court.

(3) A sentence of imprisonment shall not be commuted for a sentence of detention for a term exceeding the term of imprisonment awarded by the Court.

NOTES

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

1.2 Transportation see Note 6.1 to S.73 AFA.

2. Since the confirming authority has powers under this section, himself to mitigate, remit or commute the punishment awarded by the court-martial, it follows - that when a sentence is directed to be revised by the confirming authority it necessarily means that the confirming authority considers that the punishment awarded by the court-martial is not commensurate with the offence and it should therefore be revised upwards. (See **Capt Harish Uppal v UOI**).

3. The powers conferred by this section may be exercised by the confirming officer, as such only when confirming the sentence. After promulgation, when the confirmation is complete the power of the confirming officer in that capacity ceases and the above powers can only be exercised by one of the authorities mentioned in S.177 AFA.

4.1 'Mitigation' is awarding a less amount of the same species of punishment, as, for example, by reducing the length of imprisonment to which an offender has been sentenced; and is in effect equivalent to a remission of part of the sentence. The power to mitigate etc., cannot be exercised whilst execution of the sentence is suspended.

4.2 'Remission' may be remission of the whole or part of the sentence; thus a sentence of imprisonment may be remitted altogether, or a portion of the term may be remitted. A confirming officer cannot remit such forfeiture of pay and allowances, as follow automatically (under S.91 or 92 AFA and P and A Regs) upon the finding of the court.

4.5 'Commutation' is changing the description of punishment by awarding a punishment

lower in the scale of punishments in S.73 AFA. For example, imprisonment in lieu of imprisonment for life, or dismissal in lieu of cashiering, or forfeiture of seniority in lieu of reduction in rank.

5. 'any punishment or punishments' - There is no standard of comparison between one punishment and two or more other punishments, and as it is necessary that the commuted sentence should be less than the original sentence, commutation of one punishment to two or more punishments is only permissible where it is obvious that the two are together less severe than the one, e.g., death commuted to cashiering and imprisonment for life, or dismissal commuted to forfeiture of seniority and severe reprimand. Partial commutation of any one punishment by the substitution for a portion thereof by another punishment is illegal; thus where in a case of 'losing by neglect' a court passed a sentence of imprisonment, but omitted to pass a sentence of stoppages of pay which would have been valid, a portion of the imprisonment cannot be commuted to stoppages.

6.1 Conversion of rigorous imprisonment into simple imprisonment is commutation.

6.2 Discharge is not a punishment as per S.73 AFA. Accordingly dismissal from service cannot be commuted under this section to discharge.

7.1 If a confirming officer purports (by way of commutation) to substitute for a valid sentence a sentence which the court had no power to award, neither the original sentence - since it has been commuted nor the new sentence - since it is illegal - can stand. That conviction, however, remains good.

7.2 As to mitigation of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see R.79 AFR and as to the power of the confirming officer to vary a sentence informally expressed or in excess of the punishment authorised by law, see R.80 AFR.

8. Where a term of imprisonment or field punishment is reduced in length by remission or mitigation, automatic forfeiture of pay under Ss. 91 or 92 AFA and P & A Regs, is governed by the term actually undergone - not by that originally imposed. So, too, pay and allowances are not automatically forfeited, whilst a sentence is suspended.

9. A confirming officer may also under S.181 AFA direct that an offender sentenced to imprisonment for life or imprisonment be not committed until the orders of the authority/officer specified in S.180 AFA are obtained. If himself an authority under S.180 AFA he has further powers as such under that section.

158. Confirming of findings and sentences on board a ship — When any person subject to this Act is tried and sentenced by a court-martial while on board a ship, the finding and sentence so far as not confirmed and executed on board the ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

NOTES

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

159. Revision of finding or sentence - (1) Any finding or sentence of a court-martial may be once revised by order of the confirming authority and on such revision, the Court, if so directed by the confirming authority, may take additional evidence.

(2) The Court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the Court shall proceed with the revision provided that, if a general court-martial, it still consists of five officers, or, if a summary general or district court-martial, of three officers.

NOTES

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

2. See Notes to R.77 AFR.

3.1 See also Note 2 to S.157 AFA.

3.2 It has been held in **GB Singh V UOI** and **Subedar Surat Singh V.Chief Engineer**, Project that the confirming authority, if dissatisfied with the finding/sentence of a court-martial, cannot go on ordering retrial by another court-martial until he obtains a verdict or finding of his own liking, if the confirming officer has exhausted the power of revision, it would not be proper for him to 'not confirm' the proceedings of the court-martial and order retrial of the accused.

4. In **UOI V. Capt AP Bajpai**, the Supreme Court held that the revisional jurisdiction of the confirming authority under Sec 160 of the Army Act (Corresponds to Sec 159 AFA) and Rule 68 of the Army Rules (Corresponds to Rule 77 AFR) is not confined to giving of directions for recording additional evidence but extends to analyzing the evidence on record for indicating where the Court-Martial could have erred in appreciation of evidence. Hence where without an intention to interfere with the discretion of the Court-Martial, the confirming authority directed the GCM: (i) to reconsider the entire evidence relating to the charge, or which the GCM had exonerated the accused, (ii) to give a further opportunity to the accused to address the court, and (iii) to pass a suitable fresh sentence in place of the earlier one, in case the GCM revoked its earlier finding, the SC held that the confirming authority did not exceed its jurisdiction. Further, contentions of the accused that the mind of GCM was influenced by the observations of the confirming authority, and that the confirming authority ought not to have interfered with the proceedings of the GCM which had taken a decision after considering the evidence was rejected on facts

160. Alteration of finding or sentence in certain cases.- (1) Where a finding of guilty by a court-martial, which has been confirmed, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under Sec. 177 to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding and pass a sentence for the offence specified or involved in such finding:

Provided that no such substitution shall be made unless such finding could have been validly made by the court-martial on the charge and unless it appears that the court-martial must have been satisfied of the facts establishing the offence.

(2) Where a sentence passed by a court-martial which has been confirmed not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority referred to in sub-section (1) may pass a valid sentence.

(3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by, the sentence for which a new sentence is substituted under this section.

(4) Any findings substituted, or any sentence passed, under this section shall for the purposes of this Act and the rules made there under have effect as if it were a finding or sentence, as the case may be, of a court-martial.

NOTES

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

2.1 **Sub-section (1)** - This sub-section enables any of the authorities mentioned in S.177 AFA to substitute new finding for an invalid finding or for one which cannot be supported by the evidence; the finding being substituted having been confirmed is not open to revision. On substituting a new finding, the competent authority has powers to pass a sentence in respect of such new finding. See also R.79 (2) AFR.

2.2 The confirming officer himself has no power to substitute or change the finding; if in his opinion the court has arrived at a wrong finding, he can only send it back for revision or not confirm it. See Note 4.3 to S.152 AFA.

2.3 The procedure does not apply where the charge is bad in law or where the charge offends S.121 AFA.

3. **Sub-section (2)** - It similarly enables the said authorities to substitute a valid sentence for an invalid sentence not being sentence passed in pursuance of a new finding under sub-section (1). See also Note 4 below.

4. **Sub-section (3)** - The new sentence substituted for an invalid sentence must not be higher in scale than, or in excess of, the original sentence. The words 'invalid sentence' are used to mean a sentence which is authorised under AFA but which is inapplicable in relation to the accused or to the offence with which he is charged, as distinct from an illegal sentence or a sentence which is unknown to the said Act e.g., reproof. In case a sentence which is not specified in the scale of punishments in S.73 AFA is awarded by a court-martial, it is not feasible for the authority specified in sub-section (1), to hold that any sentence which such authority may propose to substitute for the sentence of the court is not 'higher' in the scale of punishments. In such cases action under this section for the substitution of the sentence is not permitted and the accused will receive no punishment though the conviction will stand.

5. The substituted finding and/or sentence has the same effect as if it were the original finding and/or sentence.

161. Remedy against order, finding or sentence of court-martial.- (1) Any person subject to this Act who considers himself aggrieved by any order passed by a court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court—martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of a court—martial which has been confirmed, may present a petition to the Central Government, the Chief of the Air Staff or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Chief of the Air Staff or other officer, as the case may be, may pass such order thereon as it or he thinks fit.

NOTES

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

2.1 A person subject to AFA who considers himself aggrieved by any order finding or sentence of a court-martial has a right, under this section, to represent. The officers or authorities to whom such petition may be addressed are as follows:-

(a) Before confirmation the officer or authority empowered to confirm the finding or sentence of that court-martial.

(b) After confirmation - the Central Government, the CAS or any prescribed officer, superior in command to the confirming authority. For prescribed officer, see R.171 AFR.

2.2 A person, who addressed a petition to the confirming officer before confirmation, will have the additional right to address another petition to any of the authorities mentioned in Note 2.1(b) above.

2.3 'Any person subject to this Act' In addition to those subject to AFA, the right to petition may be exercised by a person even if he has ceased to be subject to AFA. But see Note 3.3 below.

3.1 Petition submitted by a person still in service is to be signed by him personally and addressed to any of the authorities mentioned in Note 2.1 above. It will be forwarded through the normal channels of official correspondence to the authority to whom it is addressed, unless the redress asked for is granted by a subordinate authority. The confirming authority and all officers superior in the chain of command forwarding the petition are to offer their comments on each issue raised in the petition and the relief prayed for by the petitioner.

3.2 While forwarding a petition, the CO or other intermediate commander, lower than the confirming authority, will not normally offer any comments on the merits of the petition. However, where such officer considers such comment necessary in order to inform the competent authority of facts especially within his knowledge, the same may be conveyed through a separate covering letter accompanying the petition.

3.3 A petition submitted by a person who is no longer in AF service is to be signed either by himself personally or by a person who has been given a power of attorney by the aggrieved person in this behalf. In the latter case, the power of attorney in original or a copy thereof, certified as true by a gazetted or commissioned officer or any Magistrate is to accompany the petition. In the absence of attorney; disposal of a petition will be liable to delay. In case of a petitioner undergoing a sentence of imprisonment in a civil jail, he should submit the petition to the Superintendent of the jail in which he is confined for onward transmission to the Director of Personnel Services, Air Headquarters, for consideration by the authority to whom it is addressed.

4.1 This section does not lay down any time limit within which a petition must be submitted, nor does it lay down a time limit within which a petition must be disposed of.

4.2 There must be no undue haste in confirming the finding or sentence of a court-martial, so that the accused is not improperly deprived of his right under sub-section (1) Before confirmation, if it comes to the knowledge of the confirming authority that a petition under sub-section (1) has been submitted, confirmation should only be after considering such petition.

5.1 For types of reliefs that can be granted by the competent authority include those set out S.177 AFA.

5.2 Detention may be commuted to dismissal, since dismissal is lower in the scale of punishments

5.3 A confirming officer may substitute two punishments for one. if not more severe than the originally passed, e.g. severe reprimand and forfeiture of seniority for dismissal in the case of an officer.

5.4.. Where some findings are confirmed and others not confirmed, a confirming officer should consider whether he should remit part of the sentence. In some cases he have to do so when the court's sentence is greater than what can be passed in respect of the confirmed convictions. See also R.79 AFR.

5.5 Pardon shall take away conviction as well as sentence; but past loss of rank or pay already suffered will not automatically be restored by grant of pardon.

6.1 While disposing of a petition under either of the sub-sections, the officer or authority is not required to give a personal hearing. But the section does not prohibit granting a personal hearing. (**Lt Col Sidhu Vs UOI**)

6.2 Although not expressly required by S.161, prudence and fairness demanded that a petition under this section should be replied. The form and content of the reply would depend on the facts and circumstances of each case.

6.3 In **Som Datt Datta v UOI**, the Supreme Court held that there is no express obligation under Ss. 164 and 165 AA (corresponds to Ss. 161 and 162 AFA) on the confirming authority, or upon the superior authority, or the Central Government to give reasons in support of its decision. Accordingly, the disposal of a petition under either of these sub-sections need not be by a speaking order. (See also **Amarender Nath Dass v UOI**)

7.1 If before the conclusion of the trial a petition under sub-section (1) is received by the confirming authority, he should decide whether pending disposal of the petition the court should be adjourned or not. The prime consideration should be that substantial justice is not sacrificed on grounds of delay or expediency.

7.2 The words 'by any order' in sub-section (1) have wide scope. It covers not only the finding and the sentence of the court but also other orders, such as adjournments, admissibility of evidence etc.

8.1 No limit can be laid down on the number of petitions which a person may submit under S.161 (1).

8.2 Sub-section (2) vests a right to 'present a petition'. It is for the petitioner to choose his forum and present the petition. Successive petitions are not permissible under sub-section (2).

9. The expression 'such order thereon as it or he thinks fit' appearing in sub-section (2) has a wide scope. The authority disposing of the petition may not only order remission, mitigation or commutation but he has also powers under this sub-section to interfere with any consequential effects of the finding or the sentence of the court-martial. In **RN Srivastava v UOI** where dismissal from service was modified by the CG under S. 164 (2) AA (corresponds to S.161(2) AFA) to release from the service, the same was upheld by the Delhi HC.

10. The orders of the officer or authority to whom the petition is addressed will be final and will exhaust the legal rights of redress under AFA; but see Note 2.2 above. Original copy of the petition and the orders passed by the competent authority together with a certificate of promulgation will be attached to the original proceedings.

162. Annulment of proceedings — The Central Government, the Chief of the Air Staff or any prescribed officer may annul the proceedings of any court-martial on the ground that they are illegal or unjust.

NOTES

1. For definition of 'Chief of the Air Staff' and 'court-martial', see S.4 (xiv) and (xvi) AFA.
2. Prescribed officer - see R 172(1) AFR.
3. The proceedings of any court-martial may be annulled under this section after considering the advice of the JAG(Air) or the CJA of the Command. The authority annulling a finding & sentence will direct that the record of the conviction be removed and that the accused be relieved from the consequence of his trial. R.172 (2) AFR. See also para 769 Regs.
4. Though successive petitions are not permissible under section 161 (2) AFA, it is permissible for the CG to act under this section, even where a petition in the same case under section 161(2) AFA had been disposed of.

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CHAPTER XIII



EXECUTION OF SENTENCES

CHAPTER XIII

Execution of Sentences

163. Form or sentence of death - In awarding a sentence of death, a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

NOTES

1. For definition of 'court-martial', see S.4 (xvi) AFA.
2. A person sentenced by a court-martial to death remains subject to AFA until the sentence is carried out. S.122 (6) AFA.
- 3.1 As regards voting, see S.131 (2) and (3) AFA and Notes thereto.
- 3.2 See Note 5.8 to S.73 AFA as regards forms of warrants etc.
4. As regards execution of sentence of death, see R. 147-151 AFR.

164. Commencement of sentence or transportation or imprisonment — Whenever any person is sentenced by a court—martial under this Act to transportation, imprisonment or detention the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the presiding officer.

NOTES

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

1.2 'transportation' - see Note 6.1 to S.73 AFA.

2.1 'the day on which the original proceedings were signed' - Means the day on which the first verdict and sentence, if any, was announced for example, on his trial by a court-martial, 'A' was found not guilty on 15 May 87. On revision, on 15 Jun 87, he was convicted and awarded three months RI. The term of his sentence shall reckon to commence with effect from 15 May 87. It is, therefore, essential that the proceedings be dated as well as signed. When, however, a presiding officer or officer holding the trial omits either to sign or date the proceedings, he can even after confirmation sign them and date his signature as on the true date.

2.2 A term of imprisonment for life or imprisonment awarded by way of commutation must commence on the date of the signing of original proceedings even though the original sentence was of a different character.

2.3 The suspension of a sentence of imprisonment or life of imprisonment has no effect on its currency. See S.183 AFA. -

2.4 In **UOI V. Sunil Kumar Sarkar**, the Supreme Court held that if the accused is taken into custody on the same day on which the sentence was pronounced against him by the General Court-Martial, the same is in accordance with Sec 167 of the Army Act, 1950 (Corresponds to Sec 164 AFA). The view that the GCM erred in taking the respondent into custody immediately after it imposed the sentence without the said order of sentence being confirmed by the higher authority is contrary to provisions of the Act.

3. Under this section a term of imprisonment for life or imprisonment can be made to commence at the expiration of a previous term, but must commence on the day on which the original proceedings are signed. If, therefore, the court desires to inflict, six months' additional imprisonment on a prisoner already undergoing six months' imprisonment, of which three months are unexpired, the court must award nine months.

4.1 Pre-trial period of custody are not set-off against sentence of imprisonment or detention awarded by court-martial. S.4 Cr PC excludes the applicability of Cr PC in respect of proceedings under the special or local law. Accordingly the Supreme Court held in **Ajmer Singh v UOI** that the provisions for set off contained in S.428 Cr PC can never be attracted

in the case of--persons convicted and sentenced by court—martial.

4.2 The period of pre-trial custody is, however, always brought to the notice of the court-martial and the sentence is awarded by a court martial after taking this matter into consideration.

5. See also generally Note 6 to S73 AFA.

165. Execution of sentence of transportation — When ever any sentence of transportation is passed under this Act or whenever any sentence of death be commuted to transportation the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

NOTES

1.1 For definition of 'civil prison', see S.4 (xiii) AFA.

1.2 'transportation' - See Note 6.1 to S.73 AFA.

2. 'passed' - A sentence is inoperative until confirmed; action in respect of such a sentence cannot, therefore, be taken under this section before confirmation. Until promulgation has been effected, confirmation is not complete (see R.78 AFR)

3. Prescribed officer - None has been prescribed.

4.1 As regards forms of warrants etc., see Note 6.8 to S.73 AFA.

4.2 See also generally Note 6 to S.73 AFA.

166. Execution of sentence of imprisonment — (1) Whenever any sentence of imprisonment is passed under this Act or whenever any sentence of death or transportation is commuted to imprisonment, the confirming officer or such other officer as may be prescribed, shall save as otherwise provided in sub—sections(3) and (4), direct either that the sentence shall be carried out by confinement in a military or air force prison or that it shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub—section (1) the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of sentence of imprisonment for a period not exceeding three months, the officers referred to in sub—section (1) may direct that the sentence shall be carried out by confinement in air force custody instead of in a civil or military or air force prison.

(4) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time appoint.

NOTES

1.1 For definition of ‘civil prison’, ‘commanding officer’, and ‘officer’ see S.4 (xiii), (xv) and (xxiii) AFA.

1.2 ‘active service’, see Ss.4(i) and 9 AFA and Notes thereto.

1.3 For definition of ‘air force custody’, see S.4(v) AFA.

2.1 Sub-section (1) - prescribed officer - see R.173 AFR.

2.2 Sentence of imprisonment combined with dismissal should, as a rule, be carried out by confinement in a civil prison.

3.1 Sub-sec (2) - prescribed officer - see R.144 AFR.

3.2 As to forms of warrants, see Note 7.7 to S.73 AFA.

4.1 Sub-section (3) - Since no military or air force prison is now in existence, in all fit cases where it is not desirable to commit the individual to civil prison, recourse should be made to the power under this sub-section. Sentence of imprisonment not exceeding three months to

which no sentence of dismissal has been added, should desirably be carried out by confinement in air force custody.

4.2 When the power is exercised by the confirming officer, the direction under this sub-section should form part of the confirmation minute.

4.3 The direction under this sub-section may also be given by an authority having power, under Ss.161 or 179 AFA to mitigate the sentence.

4.4 Imprisonment carried out in air force custody - See para 771- 772 Regs.

5. See also generally Note 7 to S.73 AFA.

167. Temporary custody of offender - Where a sentence of transportation or imprisonment is directed to be undergone in a civil prison, the offender may be kept in military or air force custody or in any other fit place, till such time as it is possible to send him to a civil prison.

NOTES

1.1 For definition of 'civil prison' and 'air force custody', see S.4 (xiii) and (v) AFA.

1.2 'transportation' - See Note 6.1 to S.73 AFA.

2. This section, which deals with interim custody provides that a prisoner can be kept in any fit place till it becomes possible to send him to a civil prison. This section does not apply when a direction has been given under S.166 (3) AFA.

168. Execution of sentence of imprisonment in special cases — Whenever in the opinion of an air or other officer commanding a group, any sentence or portion of a sentence of imprisonment cannot for special reasons, conveniently be carried out in a military or air force prison or in air force custody in accordance with the provision of Sec. 166 such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

NOTES

1.1 For definition of 'civil prison' and 'air force custody', see S.4 (xiii) and (v) AFA.

1.2 'air or other officer commanding a group' - Even though only 'group' has been mentioned in this section, it will be in order to consider 'command' as included in the term 'group'.

2.1 The power conferred by this section might be of use in an emergency, such as an epidemic. It will also admit of local arrangements being made for the execution of a sentence of rigorous imprisonment passed in any place outside India when it is, for any reason, inconvenient or undesirable that an offender should be sent to India to undergo his sentence.

2.2 In such a case, the warrant of commitment must cite the order made under this section.

3. This section differs from S.166 (4) AFA. The direction under this section may be made by the specified authorities even when not on active service. Further, a direction can be made only when the imprisonment, cannot for special reasons conveniently, be carried out in a military or air force prison or in air force custody.

169. Conveyance of prisoner from place to place: A person under sentence of transportation of imprisonment may, during his conveyance from place to place, or when on board ship, aircraft or otherwise, be subject to such restraint as is necessary for his safe conduct and removal.

NOTES

1.1 For definition of 'aircraft', see S.4 (ii) AFA.

1.2 'transportation' - See Note 6.1 to S.73 AFA.

170. Execution of' sentence of detention Whenever any sentence of detention is passed under this Act, or whenever any sentence of death, transportation or imprisonment is commuted to detention, the sentence shall be carried out by detaining the offender in any military or air force detention barracks, detention cells or other military or air force custody; and when the sentence is to be carried out by detention in any military or air force detention barracks ,the Commanding Officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the detention barracks in which the person under sentence is to be detained and shall forward the person under sentence to such detention barracks with the warrant.

NOTES

- 1.1 For definition of 'commanding officer', and 'air force custody', see S.4 (xv) and (v) AFR.
- 1.2 'transportation' - See Note 6.1 to S.73 AFA.
- 2.1 Prescribed officer - See R.144, AFR.
- 2.2 As regards forms of warrants, etc., see Note 8.6 to S.73 AFA.
3. When awarded as minor punishment under S.82 AFA, the date of commencement is the date of award. Its execution cannot be postponed or suspended. See Note 8.2 to S.73 AFA.
4. See also generally Note 8 toS.73 AFA and Note 8 to S.82 AFA.

171. Communication of certain orders to prison officers-Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil, military or air force prison or detained in a military or air force detention barracks, a warrant in accordance with such order shall be forwarded 'by the officer making the order, or his staff officer, or such other person as may be 'prescribed, to the officer in charge of the prison or detention barracks in which such person is confined.

NOTES

1. For definition of 'civil prison' and 'officer', see S.4 (xiii) and (xxiii) AFA.
2. For form of warrants under this section, see Seventh Schedule to AFR, Forms G8 to G IO, G13 and G14. The heading of the form shows clearly the cases in which it is to be used. See R.145 (1) AFR as to who may sign such warrant. See R. 45(2) AFR as regards prescribed officer for forwarding the warrant.
3. The order, after promulgation, should be sent to Air HQ, for attachment to the court-martial proceedings.
4. Prescribed Officer See R.144 and 145 AFR.

172. Execution of sentence of fine When a sentence of fine is imposed by a court—martial under Sec. 71 whether the trial was held within India or not, a copy of such sentence, signed and certified by the confirming officer may be sent to any magistrate in India, and such magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898 (V of 1898) or any corresponding law in force in the State of Jammu and Kashmir, for the levy of fines as if it were a sentence of fine imposed by such magistrate.

NOTES

1. For definition of 'court-martial' - see S.4 (xvi) AFA.
- 2.1 This provision should be used when the fine imposed by sentence of a court-martial is not recoverable under S.91 (f) or 92 (h) AFA.
- 2.2 When a minor punishment of fine is awarded under S.82 (g) AFA, the same can only be recovered under S.92 (h) AFA.
3. See also S.421 Cr PC.

173. Establishment and regulation of air force prisons -The Central Government may set apart any building or part of a building, or any place under its control as an air force prison or detention barracks for the confinement of persons sentenced to imprisonment or detention under this Act.

NOTE

1. No air force prison has so far been established.

174. Informality or error in the order or warrants — When-ever a person is sentenced to transportation, Imprisonment or detention under this Act and is undergoing the sentence in any place or manner in which he might be confined under a lawful order or warrant in pursuance of this Act, the confinement of such person shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant or other document, or the authority by which, or in pursuance whereof such person was brought into or is confined in any such place, and any such order, warrant or document may be amended accordingly.

NOTES

1. 'transportation' - See Note 6.1 to S 73 AFA.

175. Power to make rules in respect of prison and prisoners — The Central Government may make rules providing —

- (a) for the government, management and regulation of air force prisons and detention barracks;
- (b) for the appointment, removal and powers of inspectors, visitors, governors and officers thereof;
- (c) for the labour of prisoners undergoing confinement therein, and for enabling such prisoners or persons to earn by special industry and good conduct, a remission of a portion of their sentence;
- (d) for the safe custody of such prisoners or persons and the maintenance of discipline among them and the punishment, by personal correction, restraint or other wise, of offences committed by them;
- (e) for the application to air force prisons or detention barracks of any of the provisions of the Prisons Act, 1894 (IX of 1894) relating to the duties of officers of prisons and the punishment of persons not being prisoners;
- (f) for the admission into any prison, at proper times and subject to proper restrictions, of persons with whom prisoners may desire to communicate, and for the consultation by prisoners under trial with their legal advisers without the presence as far as possible of any third party within hearing distance.

NOTES

1. No air force prison has so far been established.

176. Restriction of rule-making power in respect to Corporal punishment — Rules made under Sec. 175 shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment more severe than it is under any law for the time being in force relating to civil prisons in India.

NOTES

1. For definition of 'civil prison', see S.4 (xii) AFA.
2. No rules have been made under S. 175 AFA.

CHAPTERXIV

Pardons, Remissions and Suspensions

177. Pardon and remission — When any person subject to this Act has been convicted by a court-martial of any offence, the Central Government, the Chief of the Air Staff, an air or other officer commanding a group , or the prescribed officer, may -

(a) either with or without conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded ; or

(b) mitigate the punishment awarded or

(c) commute such punishment for any less punishments mentioned in this Act

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court; and a sentence of imprisonment shall not be commuted for a sentence of detention for a term exceeding the term of imprisonment so awarded

(d) either with or without conditions which the person sentenced accepts, release the person on parole.

NOTES

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

1.2 'transportation' - see Note 6.1 to S. 73 AFA.

1.3 Prescribed Officer - see R. 174 AFR.

2.1 A sentence awarded by a court-martial, which has already been confirmed, may be interfered with by the authorities mentioned in this section and such authorities may pardon the offender or may remit, mitigate or commute the sentence or release such offender on parole. The powers under this section may be utilized suo moto or otherwise by the authorities mentioned therein. A review under this section of the punishments, must however have, as in all other provisions, a nexus with the offence committed, the circumstances/merits of the case, the quantum/consequential effects of the sentence and the reviews, if any, already taken place under S 161AFA.

2.2 As to mitigation, remission and commutation of sentences, see Notes to S. 157 AFA; as to substitution of a valid for an invalid sentence, see S.160 AFA and as to mitigation of the sentence when the finding on one of several charges is found to be invalid, see R.99(2) AFR.

3.1 Conversion of rigorous imprisonment to simple imprisonment is commutation.

3.2 In **State (Govt of NCT of Delhi) V. Prem Raj**, the Supreme Court held that pardon is one of the many prerogatives which have been recognized since time immemorial as being vested in the Sovereign, where sovereignty might lie. A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It affects both the punishment prescribed for the offence and the guilt of the offender; in other words, a full pardon may blot out the guilt itself.

3.3 A 'pardon' takes away the conviction, and when a pardon has been granted the record of the conviction must be removed from the pardoned person's conduct sheet and such conviction will not be provable against him should he be again tried by court-martial and convicted of any offence.

3.3 Where the convicted person has been pardoned under this section, he cannot be tried again, See R.61 AFR.

3.5 A sentence of dismissal might be remitted on the condition that the person sentenced shall not receive pay in respect of or count service for any purpose during the period spent under dismissal. The condition, if any, must be clearly stated and the written acceptance of the person obtained. Mitigation or commutation cannot be made conditional.

4. The powers conferred by this section will not be exercised by an officer holding a command inferior to that of the authority confirming the sentence, unless such officer is authorised by such confirming authority or other superior air force authority to exercise such power. In cases where an order under this section has already been passed by a competent authority, an officer inferior in command will not exercise any powers under this section without prior approval of such authority. Similarly, in case where a person undergoing sentence of imprisonment has been moved outside the command in which he was convicted, the authorities in whose command the prison or other place in which he is undergoing the sentence is situated will not exercise any powers under this section in respect of such person without reference to the air or other officer commanding of the command in which such person was convicted. See para 765 Regs.

5. Any order made under this section should, after promulgation., be sent to Air HQ for attachment to the court-martial proceedings.

6.1 When remission, mitigation or commutation of a court-martial sentence is ordered under this section, the order will be recorded in writing. The written order will be sent to the unit of the person for promulgation to him and completion of his service records. After completion of his records the order will be sent through the same channels as the original proceedings of the court-martial, for attachment to them.

6.2 In every case in which a sentence of imprisonment which a person is undergoing is mitigated under this section such authority will be responsible for immediately forwarding,

direct to the officer in-charge prison in which that person is undergoing sentence formal notice of such mitigation, commutation or remission for promulgation to offender.

178. Cancellation of conditional pardon, release on parole or remission — (1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the Court shall be carried into effect as if •such pardon, release or remission had not been granted.

(2) A person whose sentence of transportation, imprisonment or detention is carried into effect under the provisions of sub—section(1) shall undergo only the unexpired portion of his sentence.

NOTES

1.1 'Court' — refers to court—martial.

1.2 'transportation' - See Note 6.1 to S. 73 AFA.

2. 'unexpired portion' This is the period of the sentence less the period the person was in custody in consequence of the sentence i.e., less the period from the effective date of sentence to date of release in consequence of the remission.

3. See also Note 5 to S. 177 AFA.

179. Reduction of warrant officer or non-commissioned officer — When under the provisions of Sec. 79 a warrant officer or a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purpose of Sec. 177 be treated as a punishment awarded by a sentence of a court-martial.

NOTES

1. For definition of 'warrant officer', 'non-commissioned officer' and 'court-martial', see S.4 (xxix), (xx) and (xvi) AFA.
2. The remission of the punishments mentioned in S. 79 AFA would not of itself avoid the reduction to the ranks consequent on the sentence. If it is desired to avoid such reduction to the ranks the reduction may, by reason of this section, be remitted as well. See Note 2 to S.79 AFA.
3. A NCO sentenced by court-martial to imprisonment etc, is ipso facto reduced to the ranks, and the suspension of his sentence does not cancel or suspend the reduction. There is, however, no legal bar to a person receiving promotion or an appointment whilst under a suspended sentence.
4. See also Note 5 to S 177 AFA.

180. Suspension of sentence of transportation, imprisonment or detention – (1)
Where a person subject to this Act is sentenced by a Court- Martial to transportation, imprisonment or detention, the Central Government, the Chief of the Air Staff or any officer empowered to convene a general or a summary general court-martial may suspend the sentence whether or not the offender has already been committed to prison or to air force custody.

(2) The authority or officer specified in sub-section (1) may in the case of an offender so sentenced direct that, until, the orders of such authority or officer have been obtained, the offender shall not be committed to prison or to air force custody.

(3) The powers conferred by sub-sections (1) and (2) may be exercised in the case of any such sentence which has been confirmed, reduced or commuted..

NOTES

1.1 For definition of 'court-martial', 'Chief of the Air Staff', 'Officer' and 'air force custody' See S.4 (xvi), (xiv), (xiii) and (v) AFA.

1.2 'transportation' - See Note 6.1 to S.73 AFA.

2. Ss. 180 to 188 AFA, which deal with suspension of sentence only apply to sentences of imprisonment for life or imprisonment or detention passed on persons subject to AFA. One view is that use of the word 'dismissal' in S.188 (2) AFA implied that the Parliament intended to exclude officers from the purview of these sections.

3.1 The authority/officer specified in sub-sec (1) may in his discretion issue a general direction that no person under his command sentenced to imprisonment for life, or imprisonment or detention is to be committed to prison or to air force custody until his orders have been obtained

3.2 The authority or officer under sub-sec (1) read with S.184 AFA can at any time 'suspend a sentence, order it into execution and again suspend it etc., until the sentence expires. See S. 122(5) AFA and R.146 AFR.

4,1 Under S. 180 AFA, the CAS has powers to suspend the punishment of imprisonment or detention.. AFA does not lay down any guidelines for the exercise of such power.

4.2 Suspension orders may probably be justified in a case where a petition shows promise of annulment of proceedings, or any circumstances leading to an impression that the continuance of the petitioner in prison may result in serious injustice, or even the existence of some very serious domestic or other matters which in the absence of suspension may be likely to result in unacceptable consequences.

5. An order putting a suspended sentence into execution must be signed by the competent authority under sub-section (1); a minute of suspension may be signed by a staff officer "for" him, so long as it makes it clear that the competent authority/officer himself considered the case and arrived at the decision.
6. There is no provision for the suspension of detention or field punishment awarded by a CO on summary disposal under S. 82 AFA.

181. Orders pending suspension — A confirming officer may, when confirming any sentence referred to in Sec. 180, direct that the offender be not committed to prison or to air force custody until the orders of the authority or officer specified in Sec. 180 have been obtained.

NOTES

1. For definition of 'air force custody', see S4(v) AFA.

2.1 This section empowers the confirming officer to issue a direction when confirming the sentence, that the offender be not committed to prison or to air force custody until orders of the authority specified in S.180 (1) have been obtained.

2.2 The power under this section cannot be exercised after the proceedings have been confirmed.

2.3 If the confirming officer is one of the authorities mentioned in S.180 (l) AFA, he can exercise his powers under S.180 (1) or (2) any time before the sentence expires.

182. Release on suspension — Where a sentence is suspended under Sec. 180, the offender shall forthwith be released from custody.

NOTES

1. Suspension does not affect the finding or the continuity of the sentence but the offender is released from custody and if in service can carry on his duties.
2. No form of warrant has been prescribed but a suitable one should be made out by the issuing authority.

183. Computation of period of suspension — Any period during which the sentence is under suspension, shall be reckoned as part of the term of such sentence.

NOTES

1. Suspension of a sentence does not affect its continuity. A sentence of imprisonment for life, or imprisonment or detention whether suspended or not, commences on the date on which the original proceedings were signed by the presiding officer of the court-martial and runs continuously until it expires. See also S. 164 AFA.

184. Order after suspension — The authority or officer, specified in Sec. 180 may at any time while a sentence is suspended, order -

(a) that the offender be committed to undergo the unexpired portion of the sentence, or

(b) that the sentence be remitted.

NOTES

1.1 An order under this section may be as a result of periodical reconsideration of case under S.185 AFA, or. consequent to a petition, or suo motu.

1.2 If the authority/officer specified in S.185(1) AFA considers at the periodical review that a sentence ought not to remain suspended, he will refer the case to the authority or. officer specified in S.180(1) AFA. A suspended sentence may, however, be referred to the authority/officer mentioned in S.180 (1) AFA at any time with a view either to its remission or to the committal of offender to undergo the unexpired portion of the sentence.

2. When an offender is committed to prison to undergo the 'unexpired portion' of his sentence, the unexpired portion should be stated in the warrant.

3. This section does not contemplate the partial remission of a sentence; the only power of remission under clause (b) is to remit the whole sentence. Partial remission must be effected (if at all) under S.177 AFA. See S.187 AFA.

185. Reconsideration of case after suspension — (1) Where a sentence has been suspended, the case may at any time, and shall, at intervals of not more than four months, be reconsidered by the authority, or officer specified in Sec. 180, or by any air or other officer not below the rank of squadron leader duly authorised by the authority or officer specified in Sec. 180.

(2) Where on such reconsideration by the officer so authorised it appears to him that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall refer the matter to the authority or officer specified in Sec. 180.

NOTES

I. For definition of 'air officer', see S.4 (ix) AFA.

2. Unless the authority referred to in sub-sec (1) is himself one specified in S.180(1) AFA, the former can either -

(a) keep a suspended sentence further suspended by ordering it to be brought forward for reconsideration on a date not more than four months ahead; or

(b) refer it to the authority/officer specified in S.180(1) AFA a recommendation that the sentence be remitted; or

(c) recommend that the offender be committed to undergo the unexpired portion of the sentence, if sufficient grounds exist for doing so (even though not specifically provided for in sub-section (2)).

3. Failure to reconsider a suspended sentence at the proper date has no effect upon the sentence; it can be subsequently reconsidered, and remission or committal may then be ordered under S.184 AFA.

186. Fresh sentence after suspension — Where an offender, while a sentence on him is suspended under this Act is sentenced for any other offence, then

(a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently

(b) if the further sentence is for a period of three months or more and is not suspended under this Act, the offender shall also be committed to prison or air force custody for the unexpired portion of the previous sentence. but both sentences shall run concurrently: and

(c) if the further sentence is for a period of less than three months and is not suspended under this Act, the offender shall be so committed on that sentence only, and the previous sentence shall, subject to any order which may be passed under Sec. 184 or Sec. 185, continue to be suspended.

NOTES

1. For definition of 'offence' and 'air force custody' see S. 4(xxii) and (v) AFA.

2. **Clause (b)** - Under this clause, the offender is committed to undergo the unexpired portion of the previous sentence from the date the further sentence is effective. An order by a competent air force authority under S.180 (1) AFA is not required.

3. **Clause (c)** - If dismissal has been added to the further unsuspended sentence and no order has been passed under S.166 AFA, that the imprisonment is to be undergone in air force custody, the offender should not be committed to a civil prison until the competent authority under S.180(1) AFA has had an opportunity to order the unexpired portion of the former sentence into execution.

4. Committal warrants must, in order to comply with the provisions of the Prisoners Act 1900, be forwarded to the authorities of the prison to which the offender is sent. It will generally be convenient to prepare separate warrants whenever necessary. In preparing the warrant in respect of the former sentence care must be taken to state the unexpired portion which the offender has to undergo.

187. Scope of power of suspension — The powers conferred by Sec 180 and 184 shall be in addition to and not in derogation of, the power of mitigation, remission and commutation.

NOTES

1. The powers under Ss. 180 and 184 AFA are distinct from the power under S. 177 AFA. The authority or officer referred to in S.180(1) AFA can in addition exercise, if otherwise entitled, the powers of mitigation, remission and commutation under S.177 AFA.

2.1 Mitigation - See N. 4.1 to S.157 AFA.

2.2 Remission - See N. 4.2 to S.157 AFA.

2.3 Commutation - See N. 4.3 to S. 157 AFA.

188. Effect of suspension and remission on dismissal - (1) Where in addition to any other sentence the punishment of dismissal has been awarded by a court-martial, and such other sentence is suspended under Sec. 180 then, such dismissal shall not take effect until so ordered by the authority or officer specified in Sec. 180.

(2) If such other sentence is remitted under Sec.184, the punishment of dismissal shall also be remitted.

NOTES

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

2. **Sub-Sec (1)** - In the case of a sentence of dismissal combined with imprisonment for life, or imprisonment or detention, which is suspended, the dismissal does not take effect until so ordered by the competent authority under S.180(1) AFA. This is so even if the sentence is subsequently ordered into execution by the competent authority or is automatically put into execution under S.186(b) AFA. A competent authority who orders into execution a sentence of imprisonment for life, or imprisonment (other than imprisonment to be undergone in an air force custody under S.166 (3) AFA) should, if dismissal has been added to such sentence, as a rule, order the dismissal to take effect when the offender is received into a civil prison. If the dismissal accompanies a sentence of imprisonment for life, or imprisonment, which is not suspended, it takes effect as provided in R.146 AFR.

3. **Sub- Sec (2)** - The effect of this sub-sec is that whenever dismissal has been added to a sentence of imprisonment for life, or imprisonment or detention and such sentence is remitted under S.184 AFA the dismissal is also automatically remitted. The remission of a sentence of imprisonment for life, or imprisonment or detention under S. 177 AFA does not operate so as to remit the accompanying sentence of dismissal. If a suspended sentence to which dismissal has been added runs out whilst still under suspension, the dismissal should as a rule, be formally remitted under S. 177 AFA by one of the authorities/officer empowered under that section, since this sub- section does not automatically remit such dismissal.

CHAPTER XV

Rules

189. Power to make rules - (1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the power conferred by sub—section (1) the rules made thereunder may provide for

- (a) the removal, retirement, release or discharge from the service of persons subject to this Act;
- (b) the amount and incidence of fines to be imposed under Sec. 90;
- (c) the specification of the punishment which may be awarded as field punishments under Sec. 77 and 82;
- (d) the assembly and procedure of courts of inquiry, the recording of summaries of evidence and the administration of oaths or affirmations by such courts;
- (e) the convening and constituting of courts—martial and the appointment of prosecutors at trials by courts— martial;
- (f) the adjournment, dissolution and sitting of courts— martial;
- (g) the procedure to be observed in trials by courts— martial and the appearance of legal practitioners thereat;
- (h) the confirmation, revision and annulment of, and petitions against the findings and sentences of courts— martial;
- (i) the carrying into effect of sentences of courts-martial;
- (j) the forms of orders to be made under the provisions of this Act relating to courts—martial, transportation, imprisonment and detention;
- (k) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependants under Sec. 100 and the carrying out of such decisions;
- (l) the relative rank of the officers, junior commissioned officers, warrant

officers, petty officers and non-commissioned officers of the regular Army, Navy and Air Force when acting together ;

(m) any other matter directed by this Act to be prescribed.

NOTES

I. The Central Government is empowered to make rules for the purpose of carrying into effect the provisions of AFA. The rules so made must not contain anything contrary to or inconsistent with any provision of the said Act itself. Consequently, if any rule is found to conflict with some section of AFA, the section must prevail. See also N.2.2 to S.191 AFA.

2.1 As regards publication of rules, see S.191 AFA.

2.2 As regards laying of rules before Parliament, see S.191A, AFA.

3.1 The Air Force Rules, 1969 have been made in pursuance of this section. These rules came into force on 01 Jun 72.

3.2 Prior to the coming into force of the Air Force Rules, 1969, the Air Force Act Rules, 1950, were in force.

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

4.2 Sub-section (m) - 'prescribed' See S.4 (xxiv) AFA.

190. Power to make regulations - The Central Government may make regulations for all or any of the purposes of this Act other than those specified in Sec. 189.

NOTES

1.1 This section confers power on the Central Government to make regulations for all or any of the purposes of AFA other than the purposes specified in S.189 AFA. But the regulations contemplated to be issued under this section are statutory regulations which are required under S.191 AFA to be published in the Official Gazette before they can have effect. Regulations for the Air Force (Regs.) have not been so published in the Official Gazettes The Regs. are, therefore, not the regulations, which could be said to have been made under this section.

1.2 The prevailing judicial view of the Courts is that the Central Government can under Art 73 Constitution, issue administrative instructions in respect of any matter on which there is no law and which falls within the legislative competence of the Parliament. The executive power of the Government is co-extensive with its legislative power and, therefore, in the absence of a statute, or the rules made under Art 309 Constitution, administrative instructions can be issued to regulate service matters (**Sant Ram Sharma v Rajasthan**). Even when rules exist administrative instructions may be issued to fill the void or gaps in the rules (**District Registrar v.M.B. Royakutty**).

1.3 The framing of the Regs. under the executive powers of the Government cannot be objected to either as unconstitutional or in excess of the powers of the Government. Where, however, any provision of these Regs. is inconsistent with any law or statutory rule, such provision of the Regs shall, to that extent, be ineffective.

2. The scope of this section, is wider than that of S.189 AFA. But regulations under this section can be made only for those purpose of AFA other than those specified in S.189 AFA. Thus in case of conflict between a valid rule under S.189 AFA and a regulation made under this section, the rule will prevail.

3.1 As regards publication of regulations, see S.191 AFA.

3.2 As regards laying of regulations before Parliament, see S.191A, AFA

191. Publication of rules and regulations In Gazette - All rules and regulations made under this Act shall be published in the official Gazette and, on such publication, shall have effect as if enacted in this Act.

NOTES

1. it is mandatory that rules made under S.189 and the regulations made under S.190 are published in the Official Gazette. If this is not done, such rules and regulations will not have effect "as if enacted in this Act".

2.1 'as if enacted in this Act' - The "as if enacted" clause in the rule-making powers has been used extensively in many enactments. The prevailing judicial view is that the words 'as if enacted in this act do not preclude judicial consideration of the 'vires' i.e. whether the particular rule is within the rule-making power under the enactment. The rules are delegated legislation and the delegate can claim no more power than what the ambit or scope of the statute is.

2.2 In State of **Kerala v. Abdulla & Co.**, the Supreme Court stated as follows;

"Power to frame rules is conferred by the Act upon the State Government and that power may be exercised within the strict limits of the authority conferred. If in making a rule, the State transcends its authority, the rule will be invalid, for statutory rules made in exercise of delegated authority are valid and binding only if made within the limits of authority conferred. Validity of a rule whether it is declared to have effect as if enacted in the Act or otherwise is always open to challenge on the ground that it is unauthorised'.

191A Laying of rules and regulations before Parliament - Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

NOTES

1.1 This section was inserted vide S.2 of the Delegated Legislation Provisions (Amendment) Act, 1985 (Act No.4 of 1986) to implement the recommendations of the Committee on Subordinate Legislation regarding publication and laying of rules and other delegated legislation.

1.2 It is the function of the legislature to legislate, but if it seeks to give this power to the executive because of some circumstances, it is not only the right of the legislature, but also its duty, as principal, to see how its agent (executive) carries out the agency entrusted to it. Since it is the legislature which delegates legislative power to the administration, it is primarily for it to supervise and control the actual exercise of this power, and ensure against the danger of its objectionable, abusive, and unwarranted use by the administration. Based on this theory, a whole system of legislative supervision over delegated legislation has come into being in India.

2.1 The rules and regulations made under Ss. 189 and 190 AFA take effect on publication in the Official Gazette (S.191 AFA). The laying procedure operates only thereafter and if any modification is made in the rules or regulations, or they are annulled, by the Houses then the rules/regulations operate in the modified form or to be of no effect, as the case may be. When annulled, they will cease to, exist from the date of annulment. The rules/regulations can be annulled/modified only when both Houses agree.

2.2 Under this section, the initiative to move a resolution, to annul or modify the rules has to be by the members of the House. .

192. Repealed

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CHAPTER XVI



TRANSITORY PROVISIONS

193. Definition of "British Officer -

(1) In this Chapter "British Officers" means a person of non-Indian domicile holding a commission in His Majesty's Air Forces and serving in the Air Force.

(2) The expression "superior officer" in this Act shall be deemed to include a British Officer.

194. Powers of British Officer — A British officer shall have all the powers conferred by this Act on an officer of corresponding rank or holding a corresponding appointment.