

INSTRUCTIONS FOR THE USE OF OFFICERS IN CONNECTION WITH FIELD GENERAL COURTS MARTIAL.

TO BE LAID BEFORE THE PRESIDENT.

ISSUED WITH GENERAL ROUTINE ORDERS.

May 11th, 1915.

(1.) CONVENING.

A Field General Court Martial may be convened by an Officer in command of any Corps or portion of a Corps or by any Officer in immediate command of a body of forces when it is not practicable to convene a General Court Martial.

N.B. A Commanding Officer is an Officer who under normal circumstances has power to "tell off" a soldier (e.g., a C.O., or Officer commanding a detachment.) R.P. 129.

2. COMPOSITION OF COURT (R.P. 106).

- (a.) Normally not less than three Officers (see para. 12a.).
- (b.) A convening Officer must not appoint as President any Officer below the rank of Field Officer unless he (the convening Officer) is himself below that rank.
- (c.) Each Officer should have held a commission for at least one year.
- (d.) R.P. 22a and 23 must be complied with.

3. CHARGES.

The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Army Act. Each charge should state one offence only, and the particulars of the offence must be shown. (R.P. 108.)

4. OATH.

The President, members, and witnesses must be duly sworn, and this fact must be recorded on the proceedings.

The forms of oath for members of the Court and witnesses are to be found on page 633 of the Manual of Military Law.

5. EVIDENCE.

The Provost Marshal, or Assistant Provost Marshal, if present, and failing them, the President must take down all material evidence in writing and attach it to the proceedings. (R.P. 107.)

6. The evidence of all witnesses should be read over to them at its conclusion before they leave the Court, (R.P. 83 B), and the President should insert a statement in the proceedings that this has been done.

7. When it is necessary to prove that a soldier was a defaulter at the time of the commission of an offence or that any special force order existed, the certified record must be given in evidence. (K.R. 581a.)

8. If it is not practicable to appoint another officer, the prosecutor may give evidence himself, but must be the first witness. (R.P. 39c.)

9. FINDING.

The finding of the Court on each charge will usually be recorded simply as a finding of “Guilty” or “Not Guilty” unless a special finding is absolutely necessary. If the evidence is not fully sufficient to prove the commission of an offence the court will acquit the accused. (See also R.P. 117.)

10. CONVICTION.

An accused charged before a Court Martial with any offence under the Army Act may, on failure of proof of an offence being committed under circumstances involving a higher degree of punishment, be found guilty of having committed a cognate lesser offence. (A.A. 56.)

11. If the court find a soldier guilty of a offence they must take evidence of and record the character, age, service and any recognised acts of gallantry or distinguished conducts of the accused, as well as such other matters as are material. The accused may always call witnesses as to these matters in his defence. (R.P. 46.)

12. SENTENCE.

(a.) Of death or penal servitude.

A sentence of death requires the concurrence of all members of the court. A.A. 49 (2).
If there are only two officers on the Court, the sentence cannot exceed 2 years imprisonment or 3 months field punishment.

(b.) The limits of sentences that may be passed upon a soldier are.

- (i) Penal servitude (not less than 3 years).
- (ii) Imprisonment (with or without hard labour, for not more than 2 years).
- (iii) Detention (not more than 2 years).
- (iv) Field Punishment (not more than 3 months).
- (v) Stoppages of pay (not more than 3 months).

13. In passing sentence a court martial will have regard not only to the nature and degree of the crime and the previous character of the accused, but also to any matters in extenuation or aggravation of the offence.

Any statements which have a bearing on the sentence should be investigated, as well as any matters which appear to call for disciplinary action. (K.R. 589a.)

The proper amount of punishment to be awarded is the least amount by which discipline can be efficiently maintained.

14. CONFIRMATION.

(a) The proceedings will usually be sent for confirmation through the Headquarters of the unit to the proper confirming authority, as laid down in Divisional or Brigade Orders.

(b) With reference to the proviso in para. 15, if the Court was convened by an officer in command of a portion of a corps the proceedings may be confirmed by the senior officer present (being a field officer) or if there is not a field officer present, by any field officer to whom it may be possible to take the proceedings.

(c) The Provost Marshal, Assistant Provost Marshal or Prosecutor cannot confirm the proceedings.

15. No sentence of death or penal servitude shall be carried into effect unless or until it has been confirmed by the G.O.C., subject only to the proviso that where the confirming officer is of opinion that owing to the nature of the country, the great distance, or the operations of the enemy it is not practicable to delay the case, the above sentences may be carried out if confirmed by the general or field officer commanding the force with which the person under the sentence is present. (R.P. 120 D. ii. A.A. 54.)

16. SUSPENSION OF SENTENCES ACT, 1915.

Where a soldier is sentenced to penal servitude or imprisonment the confirming authority may, when confirming the sentence, direct that the soldier be not committed to prison until the orders of the G. O. C.-in-Chief have been obtained.

17. If the sentence has been suspended the confirming officer shall appoint a day within the following three months on which the case shall be reconsidered with a view to a remission of the sentence. Such remission may be made by a general officer holding a warrant to convene General Courts Martial. The G. O. C.-in-Chief has power, on representation being made to him, to terminate the suspension of any sentence.