

CHAPTER 6

Suits by or against persons in Military Service.

PART—A. AMENABILITY TO THE CIVIL COURTS OF PERSONS SUBJECT TO MILITARY LAW.

- 1. All persons belonging to the Armed Forces are now amenable to jurisdiction of ordinary Civil Courts subject to certain restrictions as regards their personal appearance in Court and execution of decree against their persons, pay and allowances and military equipment. Jurisdiction of Civil Courts.
- 2. A Memorandum, drawn by the Government of India, showing the legal position of persons belonging to Army Officers. the Armed Forces in the matter of arrest for debt, attachment of their pay and allowances and priority in disposal of litigation involving them, is attached as an appendix at the end of this Chapter. This Memorandum is only for the guidance of the civil courts. This memorandum is not applicable to the personnel of Indian Navy who continue to be governed by the Memorandum issued with the Government of India, late Home Department letter No. F. 311/37-Judicial, dated the 29th July, 1937, as amended by letter No. 113/37—Judicial, dated the 29th May, 1939 (Appendix to Chapter 6—A of the 1942 edition of High Court Rules and Orders, Volume 1) Execution Against army Officers.
- 3. Attention is also invited to clause (j) of the proviso to sub-section (1) of section 60, of the Code. The pay and allowances of persons to whom the Air Force Act, 1950 or the Army Act, 1950, applies or of persons other than commissioned officers to whom the Indian Navy (Discipline) Act, 1934, applies are exempted from attachment in execution of decrees of civil Courts. Exemption from attachment of Pay and Allowances.
- 4. When any officer or soldier actually serving Government in military capacity is a party to a suit and cannot obtain leave of absence for prosecuting or defending a suit, he can appoint some other person to act on his behalf by an authority in writing given in the manner prescribed in Order XXVIII of the Code of Civil Procedure. Authority for conducting litigation.

In the case of Indian Officers or soldiers the following form has been prescribed for the authority in writing.

"Whereas I (name) Inhabitant of village
 Paragunnah in the district ofson of.....
the caste of.....
at present rank

in..... Company

.....
Regiment..... stationed at.....
..... having occasion to institute (or defend) an action for (nature and object of suit and name of adverse party), do hereby nominate and appoint (name, residence and caste and relationship, if any) to be my attorney and I bind myself to abide by whatever he, the said attorney may do in my behalf, in the prosecution (or defence) of the said suit. The said attorney will either prosecute (or defend) the suit in person or will appoint one or more of the authorised Vakils of the Court to prosecute (or defend) the same under the instructions of the said attorney as he may think proper. In the event of an appeal being preferred from the Judgement passed in the suit the said attorney is hereby empowered to act for me on the appeal in a like manner as in the original suit.

Signed in my presence. Signature
O.C."

(Vide Paragraph 285, Regulations for the Army in India, 1927)

A power of attorney to institute or defend a suit executed as above is not chargeable with Court fee (vide section 19, clause (1) of the Court fees Act, 1870).

Service of Processes.

5. As regards service of processes on officers and soldiers, see Order V, Rules 28 and 29 of the Civil Procedure Code, 1908 and Rules and Orders Volume IV, Chapter 7, Processes (Civil).

Speedy disposal of cases.

6. Civil Courts should dispose of all suits, for the prosecution or defence of which officers, soldiers or reservists have obtained leave of absence as speedily as is consistent with the administration of justice, irrespective of the order in which they stand on the register.

Priority certificate, Extension of leave by Court.

7. When a person subject to the Army Act, 1950, or the Air Force Act 1950, obtains or applies for leave of absence for the purpose of prosecuting or defending a civil suit, he is provided by his Unit Commander with a certificate to enable him to obtain priority of hearing (I. A.F. D. 902). This certificate must be presented by him in person to the Court. If the case cannot be disposed of within the period of leave granted, the civil officer concerned may grant leave for such period as will admit of the receipt of a reply to an application to the Unit Commander for the necessary extension of leave. The civil officer will atonce report to the Unit Commander any grant of leave sanctioned by him. (See paragraph 288, Regulations for the Army in India, 1927).

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APPENDIX

(Referred to in Para 2)

Memorandum showing the Legal position of persons belonging to the armed forces in the matter of arrest for debt, attachment of their pay allowances and priority in disposal of litigation involving them.

1. Cases have occurred where Civil Courts have issued orders attaching the pay and allowances of persons belonging to the Armed Forces. There have also been cases of delay by courts in the hearing and final disposal of cases involving such persons. The intention of this memorandum is to state in simple terms the existing provisions in regard to exemption from arrest for debt and attachment of pay and allowances and other property of persons belonging to the Armed Forces and the priority to be given by Civil Courts for the hearing and final disposal of any suits or other proceedings in which they may be involved.
2. The privileges granted to such persons by the Army and Air Force Act, 1950 (Acts XLVI and XLV of 1950 respectively) are detailed below. These rights and privileges are in addition to any other rights and privileges conferred by any other law for the time being in force.
3. (a) *Immunity from attachment.*—Under Sec. 28 of the Army/Air Force Act, no arms clothes, equipment, accoutrements or necessaries of any person subject to either of these Act nor any animal used by him for the discharge of his duties can be seized, nor can his pay and allowances or any part thereof be attached by direction of any civil or revenue court or any revenue officer in satisfaction of any decree or order enforceable against him.

(b) *Immunity from Arrest for debt.*—Sec. 29 of the Army/Air Force Act provides that no person subject to either of these Acts, so long as he belongs to the Armed Force, can be arrested for debt under any process issued by, or by the authority of a civil or revenue court or a revenue officer. Where, inspite of the above any such arrest is made, the court of the revenue officer concerned on receipt of a complaint by such person or by his superior officer to that effect, may discharge him and award reasonable costs to the complainants. The costs may be recovered

in like manner as if they were awarded to him by a decree against the person obtaining the processes. No court fees are payable for the recovery of such costs.

(c)*Immunity of persons attending courts martial from arrest.*

—Under Section 30 of the Army/Air Force Act, no presiding officer or member of a court martial, no Judge advocate, no party to any proceedings before a court martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court martial while proceeding to, attending or returning from, a court martial is liable to be arrested under civil or revenue process. If any such person is arrested under any such process, he may be discharged by order of the court martial.

(d)*Priority in respect of Army Air Force personnel's litigation.*

—Under Section 32 of the Army/Air Force Act on the presentation to any court by or on behalf of any person subject to either of these Acts of a certificate, from the proper military/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, 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 proceedings within the period of the leave so granted or applied for.

The certificate from the proper military 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. No fee is 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. 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 reason 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 the copy itself. If in any case a question arises as to the proper Military/air force authority qualified to grant such certificated as aforesaid, the court shall refer the question at once through the authority granting the certificate to---

- (i) An officer having power not less than a Brigadier or equivalent commander in the case

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of military personnel;

- (ii) an officer having power not less than a group commander or equivalent commander in respect of air force personnel.

The decision of the officer so referred to shall be final.

4. Persons subject to the Army and Air Force Act who are entitled to the privileges mentioned above are detailed in Sections 2 and 31 of those Acts. They are-

- (a) Officers, Junior Commissioned officers and warrant officers of the Regular Army and Officers and warrant officers of the Air Force;
- (b) Persons enrolled under the Army or the Air Force Acts;
- (c) Persons belonging to the Indian Reserve Forces or Air Force Reserve when called out for, or engaged in, or returning from, training or service;
- (d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;
- (e) Officers of the Territorial Army when doing duty as such officers;
- (f) enrolled persons of the Territorial Army when called out or embodied or attached to any regular forces;
- (g) Persons holding commissions in the Army in India Reserve of Officers and officers appointed to the Regular Reserve of Officers when ordered on any duty or service for which they are liable as such members;
- (h) persons belonging to the Indian Air Force Volunteer Reserve in the circumstances specified in section 3 of the Indian Air Force Volunteer Reserve (Discipline) Act, 1939 (XXXVI of 1939).
- (i) persons not otherwise subject to military/air force law, who on active service, in camp on the march, or at any frontier post specified by the Central Government are employed by, or are in the service of or are followers of, or accompany any portion of the Regular Army Air Force.