

CHAPTER 6

Suits by or Against Persons in Military Service

Part A
AMENABILITY TO THE CIVIL COURTS OF PERSONS
SUBJECT TO MILITARY LAW

1. Jurisdiction of Civil Courts—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.

2. Execution against Army Officer—A Memorandum, drawn by Government of India, showing the legal position of persons belonging to 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.

3. Exemption from attachment of Pay and Allowances—Attention is also invited to clause (i) 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 the 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.

4. Authority for conducting litigation—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 persons to act on his behalf by an authority in writing given in the manner prescribed in Order XXVIII of the Code of Civil Procedure.

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

“Whereas I (name) Inhabitant of village.
. Paraggunnah. in the district of.

..... son of. of the caste of.
..... at present rank in Company. ...
..... Regiment. stationed at. .
..... having occasion to institute (or defend) and 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 on 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 judgment 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).

5. Service of Processes—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).

6. Speedy disposal of cases—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.

7. Priority certificate, Extension of leave by Court—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 at once report to the Unit Commander any grant of leave sanctioned by him. (*See* paragraph 288, Regulations for the Army in India, 1927).

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 person. The intention of this memorandum is to state in simple terms the existing provisions in regard to exemption from arrest for debt and attachment to 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 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 Section 28 of the Army/Air Force Act, no arms, clothes, equipment, accountments 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 revenue officer in satisfaction of any decree or order enforceable against him.

(b) Immunity from Arrest for debt—Section 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 20 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 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 proceeding 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 proceedings 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 certificates 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 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 these 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.

Part B
THE INDIAN SOLDIERS' LITIGATION ACT, 1925

1. Explanation of various sections—An 'Indian soldier' is defined in the Indian Soldiers' Litigation Act, 1925, as a person subject to the Army Act, 1950, or the Air Force Act, 1950. Section 3 defines the circumstances in which an Indian soldier shall be deemed to be serving "under special conditions". According to Section 6, when a Court (Civil or Revenue), has reasons to believe that a party to a suit before it is an Indian soldier who is not duly represented and is unable to appear, it must give notice thereof to the 'prescribed authority' in the 'prescribed manner' and suspend proceedings in the mean time. If the 'prescribed authority' certifies that the soldier is serving under "special condition" the case must be postponed. Section 10 confers power on the Court to set aside decrees and orders passed against an Indian soldier serving under 'War' or 'special conditions' in certain circumstances. Section 11 permits the period spent in such service to be deducted from the normal period of limitation, except in the case of pre-emption suits. For the purposes of Section 10 and Section 11, the Court may refer the question as to whether a soldier has been serving under 'special' or 'War conditions' to the prescribed authority, and certificate granted by that authority is conclusive on the point.

2. Rules under the Act—The rules framed by the Central Government under Section 13 of the Indian Soldiers (Litigation) Act, 1925 are given in the following notification:

Defence Department
Simla, the 14th May, 1938

No. 455—In exercise of the powers conferred by Section 13 of the Indian Soldiers' (Litigation) Act, 1925 (IV of 1925), this Central Government after consulting the High Courts, concerned, is pleased to make the following rules, namely:—

1. (1) These rules may be called the Indian Soldiers (Litigation) Rules, 1938.

(2) They extend to the whole of India.

2. Definitions— (1) In these rules, 'the Act' means the Indian Soldiers (Litigation) Act, 1925 (IV of 1925).

(2) All words used herein and defined in the Act shall be deemed to have the meanings respectively attributed to them by the Act.

3. Prescribed Authority—The prescribed authority for the purposes of sub-clause (iv) of clause (b) of Section 3 and Sections 6, 7 and 8 of the Act shall be the Officer Commanding the Unit or the Depot of the unit to which the soldier belongs.

4. Form of Collector's certificate—The certificate given by a Collector under Section 5 of the Act shall be in Form A of the Schedule.

5. Notice by Court—The notice given by the Court under Section 6 of the Act shall be in Form B of the Schedule and shall be sent to the prescribed authority care of the General Officer Commanding-in-Chief of the Command in which the Courts is situated, and the certificate of the prescribed authority, under Section 7 of the Act, shall be in Form C of the Schedule.

COMMENTS

Court cannot require soldier's counsel to disclose his place of posting. *Lt. Col. Ram Singh Yadav v. Smt. Gunwati Devi and another*, AIR 1968 Punjab 26.

6. Certificate as to that postponement not required—If at any time it appears to the prescribed authority that the circumstances in which he certified to the Court under Section 7 of the Act that a postponement of the proceedings was necessary in the interest of justice, no longer exist, he shall forthwith certify to the Court to that effect in Form D of the Schedule.

7. Postponement by Court—On receipt of a certificate from the prescribed authority under Section 7 of the Act that a postponement of the proceedings is necessary in the interest of Justice the Court shall postpone the proceedings until the receipt of a certificate in Form D from the prescribed authority or until the soldier is represented in the proceedings by some person duly authorised to appear, plead or act in his behalf.

8. Prescribed Authority—The prescribed authority for the purposes of Section 12 of the Act shall be the General Officer Commanding-in-Chief of the Command in which the Court is situated.

Schedule

FORM A
(See Rule 4)

Collector's certificate under Section 5 of the Indian Soldiers (Litigation) Act, 1925.

From

The Collector,

District.....

.....

To

.....

.....

In reNo..... of 19

Versus

No.....dated.....

Sir,

I have the Honour to certify under Section 5 of the Indian Soldiers (Litigation) Act, 1925 (IV of 1925), that I have the reason to believe that..... son of....., who is an Indian Soldier ordinarily residing in my district and who is a party in the above mentioned (enter suit, appeal application or other proceedings) now pending in (enter name of Court) is unable to appear therein.

Yours faithfully,
Collector.

(2) It should be addressed in the case of High Court, to the Registrar of the Court, or in the case of a Board of Revenue to the Secretary of such Board, or in the case of a Financial Commissioner, to the Clerk of the Court, or in other cases to the Presiding Officer of the Court.

Notes—This Certificate should be sent by post in a registered cover or by hand and an acknowledgement should be obtained for it.

2. Schedule, as substituted by Government of India, Defence Department, Notification No. 540, dated the 5th April, 1941.

Form B
(See Rules 5)

Notice under Section 6 of the Indian Soldiers (Litigation) Act, 1925.

In the.....of.....No.....

.....

Versus

.....

To

The Officer Commanding (enter name of unit) depot of unit Care of the General Officer Commanding-in-Chief.....Command.

Please take notice that [upon the certificate of the Collector of under Section 5 of the Indian Soldiers (Litigation) Act, 1925 (IV of 1925)] (having had reason to believe]² that....., son of..... an Indian Soldiers who is a party in the above-mentioned proceedings now pending in this Court and is not represented by any person duly authorised to appear, plead or act on his behalf, is unable to appear therein, this Court has, under Section 6 of the said Act, suspended the

proceedings, if within the period prescribed in Section 8 of the said Act, no certificate is received from you under Section 7 thereof, the Court will, if it thinks fit, continue the proceeding.

Given under my hand and the seal of the Court, this the day of.....19.....

Presiding Officer of the Court
Registrar.

Note—This notice should be sent by post in a registered cover, or by hand, and an acknowledgement should be obtained for it.

FORM C
(See Rule 5)

Certificate under Section 7 of the Indian Soldiers (Litigation) Act, 1925

From

The Officer Commanding,

(enter name of unit/depot of unit)

.....

.....

.....

.....No.....of 19.....

.....

Versus

.....

No..... dated

Sir,

I have the honour to acknowledge receipt of your notice dated,..... under Section 6 of the Indian Soldiers (Litigation) Act, 1925), in the above mentioned proceeding, and to certify under

Section 7 of the said Act that....., son of....., in respect of whom the above-mentioned notice has been given is serving under special conditions and that a postponement of the proceeding in respect of that soldier is necessary in the interest of justice.

Yours faithfully,
Officer Commanding.

Notes—(1) This certificate should be sent by post in a registered cover or by hand, and an acknowledgement should be obtained for it.

(2) It should be addressed in the case of a High Court to the Registrar of the Court, or in the case of a Board of Revenue to the Secretary of such Board, or in the case of a Financial Commissioner, to the Clerk of Court, or in other cases to the Presiding Officer of the Court.

FORM D
(See Rule 6)

Certificate under Rule 6 of the Indian Soldiers (Litigation) Rules, 1938

From

.....
.....
.....

To

.....
.....
.....

In re.....No..... of 19.....

.....

Versus

.....

No..... dated.....

Sir,

I have the honour to invite a reference to my letter No..... dated..... and to certify under Rule 6 of the Indian Soldiers (Litigation) Rules, 1938, that circumstances no longer exist for the postponement of the above-mentioned (enter suit appeal, application or other proceeding), now pending in (enter name of Court), wherein.son of..... an Indian soldier, is a party.

Yours faithfully,
Officer Commanding.

Notes—(1) This certificate should be sent by post in a registered cover, or by hand and an acknowledgement should be obtained for it.

(2) It should be addressed, in the case of a High Court, to the Registrar of the Court, or in the case of a Board of Revenue to the Secretary of such Board or in the case of Financial Commissioner, to the Clerk of the Court or in other cases to the Presiding Officer of the Court.

Part C
PROCEEDINGS WITH RESPECT TO SUCCESSION CERTIFICATES

As some doubt and difference of opinion existed in connection with the application of Sections 5 and 6 of the Indian Soldiers' Litigation Act, 1925, to cases for the grant of succession certificates under the Indian Succession Act, 1925 (No. XXXIX, of 1925), the following instructions have been issued for the guidance of subordinate Courts.

(1) *Party to a proceeding*—“A party to any proceeding” is a person actually impleaded, *e.g.*, a plaintiff or defendant or an appellant or respondent—and the phrase does not include persons named under Section 372, sub-section (1), clause (c) of the Indian Succession Act, 1925, in an application for the grant of a certificate until the Court has, by order under Section 373 (1) (a) of that Act, expressed the opinion that special notice of the application should be given to them.

(2) *Notice to Soldiers under Section 6 of the Succession Act*—When the Court finds that a person falling under clause (c) of Section 372(1) aforesaid, is an Indian Soldier serving under special or War conditions, and there is no special and obvious reason for suspecting the good faith of the members of the family actually applying for the certificate, the Court should declare that, in the circumstance, it is unnecessary to make the soldier a party to the proceeding or to issue notice to him; but in such cases the Court should always demand security under Section 375 of the Act. If, on the other hand, there is any good reason to suspect the good faith of the applicant, then he should be required to get a power of attorney from the absent soldier or some written assurance from him that he does not object to the application.

¹. Added by Government of India, Defence Department Notification No. 1864, dated the 11th November, 1941, and then amended on the lines of Adaptation of Laws Order, 1950, and the Part B States (Laws) Act, 1951 (No. III of 1951) and Act No. 62 of 1956.

2. One of the two portions within square brackets, should according to the circumstances of each case, be panned through.