

ACT NO. XI OF 1918.

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL.]

(Received the assent of the Governor General on the 22nd March, 1918.)

An Act further to amend the Indian Army Act, 1911.

WHEREAS it is expedient further to amend the Indian Army Act, 1911; It is hereby enacted as follows:—

VIII of 1911.

Short title and commencement.

1. (1) This Act may be called the Indian Army (Amendment) Act, 1918.

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, direct in this behalf.

Substitution of "Indian" for "native" in Act VIII of 1911.

2. In the Indian Army Act, 1911 (hereinafter referred to as the said Act), for the expressions "native" and "a native" wherever they occur, the expressions "Indian" and "an Indian" shall be substituted, respectively.

VIII of 1911.

Amendment of section 6 of Act VIII of 1911.

3. For sub-section (1) of section 6 of the said Act, the following sub-section shall be substituted, namely:—

Officers to exercise powers in certain cases.

" 6 (1) Whenever persons subject to this Act are serving—

(a) out of India under an officer not subject to the authority of the Governor General in Council, or

(b) in India under an officer commanding any military organization not in this section specifically named, and being, in the opinion of the Governor General in Council, not less than a brigade,

the

the Governor General in Council may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised."

4. For clause (8) of section 7 of the said Act, the following clause shall be substituted, namely :—

Amendment
of section 7 of
Act VIII of
1911.

"(8) 'army,' 'army corps,' 'division' and 'brigade' mean respectively an army, army corps, division or brigade which is under the command of an officer subject to the authority of the Governor General in Council or, when on active service, an army, army corps, division or brigade under the command of an officer holding a commission in His Majesty's land Forces."

5. In section 9 of the said Act, after the words "he shall sign," the words "and shall also cause the person to sign" shall be inserted.

Amendment
of section 9 of
Act VIII of
1911.

6. In sections 14, 19, 21, 23 and 108 of the said Act, after the word "army", the words "army corps", and in section 102 of the said Act after the word "army", the words "or army corps" shall be inserted.

Amendments
of sections 14,
19, 21, 23,
102 and 108
of Act VIII
of 1911.

7. To sub-section (2) of section 18 of the said Act, the following proviso shall be added, namely :—

Amendment
of section 18
of Act VIII
of 1911.

"Provided that, where any such person is sentenced to dismissal combined with any other punishment, such other punishment, or, in the case of a sentence of transportation or imprisonment, a portion of such other punishment, may be inflicted before he is sent to India."

8. After clause (j) of section 25 of the said Act, the following shall be added, namely :—

Amendment
of section 25
of Act VIII of
1911.

"or

(k) on active service commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving."

9. In clause (a) of section 27 of the said Act, after the word "causes," the words "or conspires with any other persons to cause" shall be inserted.

Amendment
of section 27
of Act VIII
of 1911.

10. After

Insertion of
new section
39A in Act
VIII of 1911.

Attempts.

10. After section 39 of the said Act, the following section shall be inserted, namely:—

“39A. Whoever attempts to commit an offence punishable by this Act, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence may, where no express provision is made by this Act for the punishment of such attempt, be punished with the punishment provided in this Act for such offence.”

Amendment
of section 43
of Act VIII
of 1911.

11. In section 43 of the said Act—

(1) in clause (c) for the words and brackets “(with or without solitary confinement)”, the words “either rigorous or simple” shall be substituted;

(2) in clause (e) for the words “any stated period,” the words “a period not exceeding two months” shall be substituted;

(3) after clause (g) the following clause shall be inserted, namely:—

“(gg) in the case of officers, reprimand or severe reprimand”;

(4) in clause (h) after sub-clause (iv), the following sub-clause shall be added, namely:—

“(v) on active service forfeiture of pay and allowances for a period not exceeding three months.”

Amendment
of section 47
of Act VIII
of 1911.

12. In section 47 of the said Act, after the brackets and letter “(f),” the brackets and letters “(gg)” shall be inserted.

Insertion of
new section
49A in Act
VIII of 1911.

Retention in
the ranks of a
person con-
victed on act-
ive service.

13. In Chapter VI after section 49 of the said Act, the following section shall be added, namely:—

“49A. When any person on active service has been sentenced by court-martial to dismissal or to transportation or imprisonment, whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and where such person has been sentenced to transportation or imprisonment, such service shall be reckoned as part of his term of transportation or imprisonment.”

14. In

14. In section 50 of the said Act, after clause (c), the following clause shall be inserted, namely:—

Amendment
of section 50
of Act VIII
of 1911.

“(cc) 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 Commander-in-Chief in India;”

15. In the proviso to section 74 of the said Act, after the words “district court-martial,” the words “or on active service a summary general court-martial” shall be inserted.

Amendment
of section 74
of Act VIII
of 1911.

16. After sub-section (5) of section 86 of the said Act, the following sub-section shall be added, namely:—

Amendment
of section 86
of Act VIII
of 1911.

“(6) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted to commit or of abetment of that offence although the attempt or abetment is not separately charged.”

17. In section 91 of the said Act, for the words “and of the enrolment of such person,” the following words shall be substituted, namely:—

Amendment
of section 91
of Act VIII
of 1911.

“The enrolment of such person may be proved by the production of 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.”

18. After section 91 of the said Act, the following section shall be inserted, namely:—

Insertion of
new section
91A in Act
VIII of
1911.

“91A. (1) A letter, return or other document respecting the service of any person in, or the dismissal or discharge of any person from, any portion of His Majesty's Forces, or respecting the circumstance of any person not having served in, or belonged to, any portion of His Majesty's Forces, if purporting to be signed by or on behalf of the Governor General

Presumption
as to certain
documents. *

in

in Council or the Commander-in-Chief in India or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

(2) An Army 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 such officers or warrant officers and of the corps, battalion or arm or branch of the service to which such officers or warrant officers belong.

(3) Where a record is made in any regimental book, in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of military 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 thereby stated.

(4) A copy of any record in any regimental book purporting to be certified to be a true copy by the officer having the 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, or has been apprehended by, a provost-marshal, assistant provost-marshal or other officer, or any portion of His Majesty's Forces, a certificate purporting to be signed by such provost-marshal, assistant provost-marshal or other officer, or by the commanding officer of that portion of His Majesty's Forces and stating the fact, date and place of such surrender or apprehension, shall be evidence of the matters so stated.

(6) When 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, shall be evidence of the matters so stated."

19. In sub-section (1) of section 98 of the said Act,—

Amendment of section 98 of Act VIII of 1911.

(1) after the words "convening officer," the words "or if the convening officer so directs, by an authority superior to the convening officer" shall be inserted;

(2) in clause (c) for the word "said," the word "convening" shall be substituted.

20. After section 99 of the said Act, the following section shall be inserted, namely:—

Insertion of new section 99A in Act VIII of 1911.

"99A. When any person subject to this Act is tried and sentenced by court-martial while on board ship, the finding and sentence so far as not confirmed and executed on board ship may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation."

Confirmation of finding and sentence on board ship.

21. After the proviso to section 107 of the said Act, the following proviso shall be added, namely:—

Amendment of section 107 of Act VIII of 1911.

"Provided further that on active service a sentence of rigorous 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."

22. After section 108 of the said Act, the following section shall be inserted, namely:—

Insertion of new section 108A in Act VIII of 1911.

"108A. In every case in which a sentence of transportation is passed under this Act, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be deemed to have been undergoing his sentence of transportation during the term of his imprisonment."

Offenders sentenced to transportation how dealt with until transported.

23. In Chapter IX of the said Act, after section 111, the following section shall be added, namely:—

Insertion of new section 111A in Act VIII of 1911.

"111A. When a sentence of fine is imposed by a court-martial under section 41 or section 42, whether the trial was held within British India or not, a copy of such sentence, signed and certified by the president

Execution of sentence of fine.

president of the court or the officer holding the trial, as the case may be, may be sent to any Magistrate in British 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, for the levy of fines as if it was a sentence of fine imposed by such Magistrate."

Substitution
of new section
for section
112 of Act
VIII of 1911.
Pardons and
remissions.

24. For section 112 of the said Act, the following section shall be substituted, namely:—

"112 (1). When any person subject to this Act has been convicted by a court-martial of any offence, the Governor General in Council or the Commander-in-Chief in India or, in the case of a sentence which he could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division or independent brigade in which such person at the time of his conviction was serving, or the prescribed officer may,

- (a) either without conditions or upon any conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded;
- (b) mitigate the punishment awarded, or commute such punishment for any less punishment or 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.

(2) If any condition on which a person has been pardoned or a punishment has been remitted is, in the opinion of the authority which granted the pardon or remitted the punishment, not fulfilled, such authority may cancel the pardon or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon had not been granted or such punishment had not been remitted:

Provided that, in the case of a person sentenced to transportation or imprisonment, such person shall

shall undergo only the unexpired portion of his sentence.

(3) When under the provisions of section 49 a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purposes of this section, be treated as a punishment awarded by sentence of a court-martial."

25. After section 126 of the said Act, the following sections shall be inserted, namely :—

Insertion of new sections 126 A and 126 B in Act VIII of 1911.

" Disposal of Property.

126A. 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.

Order for custody and disposal of property pending trial in certain cases.

126B. (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, or, in the case of a court-martial whose finding or sentence does not require confirmation, the officer commanding the army, army corps, division or brigade within which the trial was held, 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.

Order for disposal of property regarding which offence committed.

(2) Where any order has been made under subsection (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

within British India or not, be sent to a Magistrate in any presidency-town or district in which such property for the time being is, and such Magistrate shall thereupon cause the order to be carried into effect as if it was an order passed by such Magistrate under the provisions of the Code of Criminal Procedure, 1898. V of 1898

Explanation.—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 party, 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.”

Repeals.

26. The title and the sections of the said Act mentioned in the Schedule are hereby repealed to the extent specified in the second column thereof.

THE SCHEDULE.

SECTIONS OF THE INDIAN ARMY ACT, 1911, TO BE REPEALED.

(See section 26.)

	Extent of repeal.
The title	The word “Native.”
Sec. 2	The proviso to sub-section (1).
„ 10	The words “of which the last pay statement, if produced, shall be evidence.”
„ 15	The whole.
* „ 18	Sub-section (3).
„ 43	In sub-clause (iii) of clause (k) the words “or whose sentence involves such dismissal.”
„ 50	In clause (c) the word “proper” and the words “at the hospital,” and in the proviso the words “or whose sentence involves dismissal.”
„ 93	In sub-section (2) the words “to prove the signature to such certified extracts, nor shall it be necessary.”
„ 126	Sub-section (3).