

PART B:—THE INDIAN SOLDIERS' LITIGATION ACT, 1925.

1. 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 meantime. If the 'prescribed authority' certifies that the soldier is serving under "special conditions" 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.

Explanation of various sections

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

Rules under the Act.

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

Definitions.

*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 62 of 1956.

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

- ^[26] 3. The prescribed authority for the purposes of sub clause (iv) of clause (b) of section 3 and section 6, 7 and 8 of the Act shall be the Authority competent to sanction leave of absence to an Indian Soldier.
4. The certificate given by a Collector under section 5 of the Act shall be in Form A of the Schedule.
5. ^[27] [(1) The notice given by the Court under section 6 of the Act shall be in Form B of the Schedule and shall be sent:-
- (a) In the case of persons subject to the Army Act, 1950, to the prescribed authority, care of the General Officer Commanding-in-Chief of the Command in which the court is situated; and
- (b) In the case of persons subject to the Air Force Act, 1950, to the prescribed authority, care of the Assistant Chief of the Air Staff (Personnel) Air Headquarters, New Delhi.
- (2) The certificate of the prescribed authority under section 7 of the Act, shall be in Form C of the Schedule.]
6. 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 interests of justice, no longer exist, he shall forthwith certify to the Court to that effect in Form D of the Schedule.
7. 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 interests 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. ^[28] [The prescribed authority for the purposes of section 12 of the Act shall be:-
- (a) In the case of persons subject to the Army Act 1950, the General Officer Commanding-in-Chief of the Command in which the court is situated; and
- (b) In the case of persons subject to the Air Force Act, 1950, the Assistant Chief of the Air Staff (Personal), Air Headquarters, New Delhi.]

Prescribed authority.

Form of Collector's certificate.

Notice by Court

Certificate as to that postponement not required.

Postponement by Court.

Prescribed authority.

SCHEDULE

FORM A.

(See rule 4)

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

From

The Collector,
District.....

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To

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

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Versus

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

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

FORM B.

(See Rule 5)

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

In the.....

.....No.....of.....

.....

Versus

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To

The [29][Prescribed Authority %][Care of the General Officer Commanding-in-Chief..... Command. the Assistant Chief of the Air Staff (Personnel), Air Headquarters, New Delhi.]

Please take notice [30][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]* that....., son of..... an Indian Soldiers who is a party in the above-mentioned proceeding 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.

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

*Strike out whichever is not applicable.

% The prescribed authority is the authority competent to sanction leave of absence to an Indian Soldier. On receipt of the notice from the Court, the General Officer Commanding-in-Chief/Assistant Chief of the Air Staff (Personnel) (as the case may be) shall cause the notice to be forwarded, as soon as possible to the authority competent to sanction leave of absence to the Indian Soldier concerned. The time limit within which the prescribed authority certificate should reach the court is two months in the case of a soldier resident in the district in which the court is situated, and three months in other cases. (Section 8 of the Indian Soldiers (Litigation) Act, 1925, refers).

@ The service number, rank, full name, and unit of the Indian Soldier or such full service particulars as are known to the Court should be stated.]

B.

FORM C.

(See Rule 5).

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

From

[32] [-----

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.....Noof 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 (IV of 1925), in the above mentioned proceeding, and to certify under section 7 of the said Act thatson 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,

[17][*Prescribed Authority*].

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) Ruls,
1938.

From

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To

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

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Versus

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No....., dated.,.....

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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,

^[33][Prescribed Authority].

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 the Court or in other cases to the Presiding Officer of the Court.