

Accused given scope for defence

Mutiny a serious offence

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The Sixth Instalment of the White Paper on Chittagong mutiny and the killing of President Ziaur Rahman issued on Sunday dealt with the constitution of the General Court Martial and extension of defence opportunity to the accused mutineers.

The White Paper also quoted the Army Act and relevant provisions of the act for the trial of mutineers.

The White Paper said that considering the nature and gravity of the offence and the number rank and position of the offenders the Chief of Army Staff convened a General Court Martial with the following officers to try the offenders. They were from different corps as provided under Army Act's Rule 31.

President of the Court Martial Major General Mohammed Abdur Rahman, PSC, Members are: Brigadier Nasrat Ali Quaishi, Col. Mohammed Matiur Rahman B.P., Col. Mafizur Rahman Choudhury, Lt. Col. Mohammed Masud Ali Khan, Engineers, Lt. Col. M. Maqbul

By A Staff Correspondent

Haider, Signals and Lt. Col. Mohammed Haris, ASC.

The White Paper said the following persons were appointed prosecutors: Brigadier Nazirul Aziz Chishti PSC, Col. A.M.S.A. Amin PSC, and Lt. Col. Abu Nayeem Amin Ahmed PSC EME. The following officers have been appointed defending officers: Brigadier M. Anwar Hossain, Col. Mohammed Aminuddin PSC BP and Lt. Col. Md. Mohammed Ibrahim BP, Bengal.

Following is the text of the instalment of White

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OR. Subject to Bang. committing like mutiny, disobedience or dereliction to be convened who

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is tried

In this case i.e. Chittagong Mutiny, the accused persons, who are all subject to Army Act have been charged under Section 31 of Army Act i.e. mutiny and insubordination, leading to death of the President and it is a military offence of the gravest nature. 'Mutiny' is such a serious offence that, it not only disrupts the Army Command and discipline

but also threatens the very existence of the country as an independent and sovereign state.

The offence of Mutiny and Insubordination under Section 31 of Army Act provides:—

Any person subject to this Act who commits any of the following offences that is to say:

(1) begings, incites, causes or conspires with any other person to cause or joins in any mutiny in the military, naval or air forces of Bangladesh or any forces co-operating therewith; or

(2) being present at any such mutiny, does not use his utmost endeavour to suppress the same or

(3) knowing or having reasons to believe in the existence of any such mutiny or any intention to commit such mutiny or of any such conspiracy, does not without reasonable delay give information thereof to his Commanding or other superior officers; or

(4) attempts to seduce any person in the military, naval or air force of Bangladesh from his duty or his allegiance to the Government of Bangladesh.

Shall on conviction by Court Martial be punished with death or with such less punishment as is in this Act mentioned.

Unlike civil courts of Bangladesh, the Court Martial (Military Court) are not 'standing' in nature. Therefore, at the time of need, in accordance with the nature of the offence and rank of the offender a court martial is convened by the competent authority. As per note 4 to Army Act's Rule 133 a Court Martial is a 'Criminal Court' and also a 'Court of Justice'. Army Act's Section (Continued on page 8 col. 4)

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133 provides that no remedy shall lie against any decision of such Court Martial. So, for better deliberations and ensuring proper justice, a court martial is generally constituted with more than one but uneven number of members. As per provisions of Army Act and Rules these courts have inherent power to sit 'in camera' considering the security and discipline of the Army.

The Constitution of the Court

In the instant case (Chittagong Mutiny) considering the nature and gravity of the offence and the number, rank and position of the offenders the Chief of Army Staff convened a General Court Martial with the following officers to try the offenders. They were from different corps as provided under Army Act's Rule 31.

President—Major General Mohammad Abdur Rahman psc.

Members:—(1) Brigadier Nasrat Ali Quaishi

(2) Colonel Mohammad Matiur Rahman BP

(3) Colonel Mafizur Rahman Chowdhury

(4) Lieutenant Colonel Mohammad Masud Ali Khan Engineers.

(5) Lieutenant Colonel M. Maqbul Haider, Signals

(6) Lieutenant Colonel Mohammad Haris, ASC

THE PROSECUTION AND DEFENCE.

In accordance with the provisions of chapter VII of Evidence Act, in every Court Martial like Criminal Courts, the onus of proving the case lies with the prosecution with the help of all the concerned available witnesses and exhibits. But the provisions of Army Act's Rule 64 makes it mandatory for the prosecution to assist the court in the administration of Justice, to bring the

whole of the transaction before the court and not to take any unfair advantage of, or to suppress any evidence in favour of the accused. Therefore, with this end in view the convening authority detailed the following senior officers of different ranks and corps to act as prosecutors:—

(1) Brigadier Nazirul Aziz Chishti psc

(2) Colonel AMRA Amin, psc

(3) Lieutenant Colonel Abu Nayeem Amin Ahmed psc. EME.

Army Act's Rule 23 provides that when an accused is remanded for trial by a Court Martial, he should be provided with summary or abstract of evidence at least 24 hours before he is brought up for trial. Thereafter, he is given proper opportunity to prepare his defence.

Army Act's Rule 18 provides that at the trial accused may be represented either by counsel or by an officer subject to Army Act called 'Defending Officer' of his choice. But in pursuance of the power conferred upon by Army Act's Rule 23, the convening authority may allow the employment of Counsel to the Defence and Prosecution on the grounds of military exigencies and necessities of discipline. Choice in selecting 'Defending Officer' may also be kept suspended on the same ground under Army Act Rule 26.

In this case opportunities were extended to the accused persons for their defence. Defending officers were provided according to availability and the choice of the accused persons. The defending officers were senior officers and have versatility in experience encompassing with their ranks and have earned a good reputation in the Army as defending officers. They are conversant with civil and military laws and have sufficient experience in handling such cases. They were:—

(1) Brigadier M. Anwar Hossain

(2) Colonel Muhammad Aminuddin psc BP

(3) Lieutenant Colonel Syed Muhammad Ibrahim, BP, E. Bengal

In addition to this indirect counselling by some civilian lawyers to the defending officers were also allowed as per provisions of Military Law and a good number of lawyers offered their counsels in the case in favour and defence of the accused mutineers.

(To be continued)