

GAHC020006482023

2025:GAU-NL:489



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : WP(C)/283/2023

SMTI MERINA RHI
W/O LATE ZUVEO KHUSOH
THUVOPISU VILLAGE, CHOZUBA, PHEK NAGALAND

VERSUS

UNION OF INDIA AND 3 ORS
THROUGH THE SECRETARY
MINISTRY OF HOME AFFAIRS
NEW DELHI-110001

2:THE DIRECTOR GENERAL OD ASSAM RIFLES
HEAD QUARTER SHILLONG
MEGHALAYA
C/O 99 APO

3:THE INSPECTOR GENERAL ASSAM RIFLES (NORTH)
NAGALAND KOHIMA
C/O 99 APO

4:THE COMMANDANT
10TH ASSAM RIFLE
C/O 99 AP

Advocate for the Petitioner : WATI JAMIR, S.IMLI,ALITO SWU,N. LONGKUMER

Advocate for the Respondent : CGSC,

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates

For the Petitioner	: Mr. Wati Jamir, Adv
For the State respondents	: Mr. Yangerwati, C.G.S.C
Date of Hearing	: 15.09.2025
Date of Judgment	: 25.09.2025

JUDGMENT & ORDER (CAV)

The instant Writ petition has been filed by the petitioner praying for grant of family pension in respect of her deceased husband.

1. The case of the petitioner is that her late husband was enrolled in Assam Rifle on 29.11.2003 and passed away on 14.05.2019, when he was still in service. Her late husband had rendered service for more than 15 years. It is stated that in the year 2015 her late husband was declared mentally unstable and was treated at the Sukhovi Assam Rifles Hospital, Dimapur, Nagaland from 13.08.2015 to 17.02.2018. In view of his health condition, the petitioner's late husband was again granted leave from 13.11.2018 to 31.12.2018. Subsequently his leave was further extended with effect from 16.01.2019 to 14.02.2019. When the petitioner's husband

returned home on leave he told the petitioner that he was made to sign on some papers for voluntary retirement.

2. The petitioner being apprehensive submitted representation on behalf of her husband dated 18.01.2019 and 25.01.2019 requesting the authorities to cancel/revoke the voluntary retirement application that might have been submitted by her late husband. While the said representation was yet to be disposed of, the petitioner's husband expired on 14.05.2019 leaving behind two minor children of 6 years and 2 years.

3. After the death of the petitioner's late husband she submitted two representations dated 27.09.2019 and 08.04.2021, praying for grant of family pension in respect of her deceased husband. The respondent authorities however, failed to take any action in response to her representation and as such the petitioner filed WP(C)/164(K)/2022 with a prayer seeking a direction to the authorities to dispose of the pending representation for family pension. By the impugned letter dated 08.05.2023, the representation of the petitioner was rejected and family pension was denied. In view of this development, this Court vide order dated 03.07.2023 closed and disposed of WP(C)/164(K)/2022.

4. By the impugned letter dated 08.05.2023, the grant of family pension to the petitioner was denied on the ground that the petitioner's late husband himself applied for discharge from service and accordingly, on the strength of the approval of the impugned Director General Assam Rifles letter No. I.31022/10AR/AdmIV/2019/19 dated 15.01.2019, her late husband was discharged w.e.f., 31.01.2019. It was also mentioned in the

letter dated 08.05.2023 that since the petitioner's late husband did not approach the authorities for withdrawal of his application, his discharge attained finality on 31.01.2019.

5. The petitioner also states that the application allegedly submitted by the petitioner's late husband, by which the petitioner's husband allegedly applied for discharge is suspected to have been prepared and signed by the respondent authorities themselves taking advantage of his mental instability. The petitioner on behalf of her husband had submitted representation dated 18.01.2019 and 25.01.2019 to revoke any application that might have been submitted by her late husband for voluntary retirement/discharge. However, without considering the said representations, the petitioner's late husband was discharged from his service w.e.f., 31.01.2029. Being aggrieved the petitioner has come before this Court.

6. Heard learned counsel for the petitioner, Mr. Wati Jamir. Also heard Mr. Yangerwati, learned C.G.S.C for the respondent.

7. The petitioner's case is that the entire process of alleged submission of the application for discharge and the undertakings where the petitioner's late husband allegedly signed in the readymade format has been done behind the back of the petitioner as well as her late husband which is apparent on the face of the record. It is submitted by the learned counsel for the petitioner that the mischievous act of the respondent is more clear from the documents produced in the earlier writ proceeding where in the application format it has been mentioned as request for

discharge, whereas in the undertaking it has been mentioned as resignation. It is also submitted that the signature of her late husband in the request application and undertaking produced by the respondents does not tally with his signature in other documents.

8. It is also submitted that the undertaking produced by the respondents are dated 15th Nov and 16th Nov, 2018. However, it is pertinent that the petitioner was granted leave from 13th Nov 2018 to 31st Dec 2018 and during that period from 13th Nov 2018 to 31st Dec 2018 the petitioner's late husband was at home on leave, and therefore he could not have signed in the undertaking dated 15.11.2018 and 16.11.2018. It is also stated that the alleged discharge order was never served on the petitioner or on the husband of the petitioner. They were unaware about the discharge order dated 15.01.2019 although the impugned discharge order reveals that the petitioner's late husband had been discharged w.e.f., 31.01.2019. In fact the petitioner came to know about the impugned discharge order dated 15.01.2019 only through the letter dated 08.05.2023 by which the petitioner's application for grant of family pension was rejected stating that the petitioner's late husband had submitted an application for discharge from service, and that he had signed an undertaking certificate dated 15.11.2018 to the effect that he fully understands that in the event of his discharge at his own request he would not be entitled for any pensionary benefits for the service rendered by him.

9. The learned counsel for the petitioner further submits that the

documents allegedly signed by the petitioner's late husband praying for discharge and also the undertakings were made available to the petitioner and seen for the first time by the petitioner only in the affidavit filed by the respondents in WP(C)164(K)/2022. It was also seen that there are two applications on record (Annexures 'S' and 'T' to writ petition) requesting for discharge dated 6th Nov 2018. One has two witnesses' signatures and one does not have the signature of any witness. Even in these two applications dated 6th Nov 2018 the purported signatures of the petitioner's husband are different. It was only upon seeing the aforementioned documents that the petitioner found out that the alleged signature of her late husband in the above mentioned documents did not belong to her husband.

10. The learned counsel for the petitioner further submits that in terms of the provisions of the Central Civil Services (Pension) Rules, 1972 (as amended), the petitioner is entitled for family pension of her deceased husband as he had been in service for 15 years.

11. It is further stated that when the petitioner's husband passed away on 14.05.2019, the petitioner did not know that her husband was discharged from service. It is submitted that the respondents have taken a stand that no prayer for withdrawal of the discharge application was made within three months from the date of the application. However, the petitioner submits that she had submitted the withdrawal letter on behalf of her husband on 18.01.2019 which was much before the stipulated three months period. The petitioner also states that no person in his right

mind would sign an undertaking to the effect that he accepts the condition of the discharge that no pensionary benefit will be admissible to him after serving for more than 15 years. The petitioner in view of the above facts and circumstances has prayed for setting aside and quashing of the impugned letter No. 105319/10-AR/Pen/NE/FP Cell/2023/55 dated 08.05.2023, the impugned discharge letter No. I.31022/10AR/AdmIV/2019/19 dated 15.01.2019, the two applications for discharge dated 06.11.2018, and the undertakings dated 15.11.2018 and 16.11.2018 and prays for a direction to the respondent to grant family pension to the petitioner w.e.f., 14.05.2019 with other consequential benefits.

12. Learned C.G.C, Mr. Yangerwati appearing for the respondents submits that the petitioner late husband had submitted an application dated 06.11.2018 to the Director General Assam Rifles through proper channel for discharge from service owing to his domestic problems. He was interviewed by the Commandant 10 Assam Rifles and was informed that on the event of his discharge, he would not be eligible for any kind of pensionary benefits and he signed undertaking certificate dated 15.11.2018 to the effect that he fully understands that in the event of his discharge at his own request he would not be entitled in any pensionary benefits for the service rendered by him. His application was duly recommended and processed and his discharge from service was approved by the competent authority w.e.f., 31.01.2019 vide letter dated 15.01.2019. After submitting his application dated 06.11.2018 praying for premature discharge from service, the petitioner's late husband did not approach the authorities for withdrawal of his application and his

discharge from service attained finality on 31.01.2019.

13. Learned C.G.C states that the petitioner's late husband had resigned of his own free will and he was discharged from service w.e.f., 31.01.2019. Upon discharge, the Individual Running Ledger Account (IRLA) was finally closed by the Directorate General Assam Rifles with a debit balance of Rs. 65,180/- (Rupees sixty-five thousand one hundred eighty only). He was found entitled for payment of General Provident Fund amounting to Rs. 1,21,476/- (Rupees one lakh twenty-one thousand four hundred seventy-six only), and Assam Rifles Group Insurance Scheme fund amounting to Rs. 1,46,831/- (Rupees one lakh forty-six thousand eight hundred thirty-one only).

14. It is further submitted that an application dated 25.01.2019 was received from the petitioner on 07.02.2019 seeking cancellation/revocation of the discharge order of her late husband. Her application was examined by the competent authority however, her request could not be considered as her late husband had not submitted any application from his end for withdrawal of his application for premature discharge within the stipulated time and his discharge had already attained finality on 31.01.2019. Another application dated 19.09.2019 was received from the petitioner with the request to grant family pension stating that her husband had expired on 14.05.2019. Her application was examined and found to be without merit in terms of Rule 26(1) of Central Civil Services (Pension) Rules, 1972. Accordingly, pension was not granted to her. However, she was found entitled for final payment of General Provident Fund amounting to Rs. 1,21,476/- (Rupees one lakh twenty-one thousand four hundred

seventy-six only), Assam Rifles Group Insurance Scheme fund amounting to Rs. 81,651/- (Rupees eighty-one thousand six hundred and fifty-one only), after deducting the IRLA debit balance of 65,180/- (Rupees sixty-five thousand one hundred eighty only). The same has been paid to her vide letter dated 19.11.2019 and 24.12.2019.

15. The stand of the respondent is that as far as the grant of family pension and other retiral benefits is concerned, the petitioner is not entitled to the same as family pension is entitled only to the family of an employee after his/her death only if the deceased employee was in receipt of pension. In the instant case, the petitioner's late husband was not receiving any type of pension due to his resignation w.e.f., 31.01.2019 at his own request on compassionate grounds. According to the respondents, the petitioner is not entitled for family pension under provisions of Rule 26 of Central Civil Services (Pension) Rules, 1972, which provides that resignation from service or a post entails forfeiture for past service and withdrawal may only be permitted by the competent authority before actual execution of resignation vide Rule 26 (4) (i) of Central Civil Services (Pension) Rules 1972. In the present case, the petitioner husband had not submitted any withdrawal application before the actual execution of resignation.

16. Learned C.G.C submits that the petitioner's late husband was not mentally unstable but he was an alcoholic, and was suffering from alcohol dependence syndrome. It is also stated in the affidavit of the respondent that the petitioner's late husband was initially granted thirty days earned leave from 11.08.2018 to 09.09.2018, and his leave was further extended

for twenty days w.e.f., 10.09.2018 to 19.09.2018. Thereafter, the petitioner had telephonically requested for leave from 20.09.2018 to 29.09.2018. On expiry of the said leave the petitioner's late husband rejoined duty. It is further stated that the petitioner's late husband was again granted leave w.e.f., 13th Nov, 2018 to 31st December, 2018 and further from 16.01.2019 to 14.02.2019. It is also submitted that the withdrawal letter written by the petitioner was not accepted as the discharge was already approved and it was signed by the petitioner and not by the employee concerned. As the petitioner's husband was a government employee, he had to sign the withdrawal application himself. It is also argued that there are two witnesses who have signed in the petitioner's request for discharge from service. And the witnesses can certainly certify regarding the genuineness of the signature of the petitioner's late husband.

17. Learned C.G.C therefore submits that the petitioner's husband during his life time had submitted an application for discharge from service at his own request and there was no coercion, threat, pressure or inducement whatsoever on him to put up the application. Moreover, the petitioner's husband had never submitted any representation for withdrawing the said application for discharge from service, learned C.G.S.C therefore submits that the discharge of the petitioner's husband from service is not in violation of any rules and the petitioner's entitled benefits like GPF balance and ARGIS balance has already been paid to her. And it is therefore submitted that the petitioner is not entitled for family pension under the provisions of Rules 26 of the Central Civil Services

(Pension) Rules 1972.

18. The submissions of the learned counsel for the parties have been duly noted and considered and the pleadings have been perused. It is not disputed that the petitioner's late husband had joined service on 29.11.2003. The petitioner has stated at paragraph 4 of the writ petition that the husband of the petitioner was declared mentally unstable from Battalion Mental Hospital in the month of August, 2015 when he was posted at Serchip, at Mizoram, and consequent upon the detection of his mental condition the petitioner's husband was referred to Sukhovi Assam Rifles Hospital, Dimapur, Nagaland for intensive treatment from 13.08.2015 to 17.02.2018. No medical reports to that effect has been enclosed by the petitioner, however the respondents in their reply to paragraph 4 of the writ petition have stated that the petitioner's husband was suffering from alcoholic dependence syndrome. It is also not denied by the respondents that the petitioner was treated at Sukhovi, Assam Rifles hospital from 13.08.2015 to 17.02.2018.

19. The petitioner has also stated at paragraph 5 of the writ petition that her late husband had also gone missing at one point of time during September 2018 due to his unstable mental condition. A missing report had also been filed vide FIR No. 37/2018 dated 20.09.2018 before the Officer-in-charge South Police Station, Kohima however, the said FIR had been withdrawn on 22.09.2018 and these documents are annexed in the writ petition. The respondents have also not denied the statement regarding the missing report in their affidavit.

20. This Court upon going through the documents enclosed in the writ petition as well as in the affidavit of the respondents has found that the signature of the petitioner's late husband at Annexure-F to the writ petition, which is the order granting leave to the petitioner from 13.11.2018 to 31.12.2018 is a completely different signature when compared with the alleged signature of the petitioner's late husband in the request for resignation/discharge dated 06.11.2018 or in the undertaking certificate dated 15.11.2018 or undertaking dated 16.11.2018, which are apparent even to the naked eye. Even the purported signatures of the petitioner's husband in the two applications praying for discharge at Annexures 'S' and 'T' to writ petition does not tally. Further the respondents themselves in their affidavit-in-opposition have stated that the petitioner's husband was on leave from 13.11.2018 to 31.12.2018 which coincides with the petitioner's claim that her husband was on leave from 13.11.2018 to 31.12.2018 and that he was at home during that period. As admitted by the respondents, if the petitioner's husband had been on leave from 13.11.2018 to 31.12.2018, he could not have signed the undertakings dated 15.11.2018 and 16.11.2018. Moreover, it has also been observed that at Annexure-II (the undertaking) of the affidavit-in-opposition, two dates have been entered i.e., 15.11.2018 and 16.11.2018. it has also been observed that the request for discharge application and undertakings are ready made formats with blanks to be filed in and not an actual written application. As mentioned earlier the purported signature of the petitioner's late husband does not match in the request for resignation dated 06.11.2018, the undertaking dated 15.11.2018/16.11.2018 and the leave granting order dated 13.11.2018 (Annexure-F to writ petition).

21. The husband of the petitioner had completed 15 years of service as on 29.11.2018 and therefore he had completed the qualifying length of service for pension as per Rule 49 of the CCS Pension Rules 1972. In the cases of *Vijay Shankar Mishra Vrs Union of India, (2017) 1 SCC 795* and *Virendra Kumar Dubey Vrs Chief of Army Staff & others, (2016) 2 SCC 627*, the Hon'ble Apex Court had quashed the discharge orders of the petitioners who were Army personnel and who had served only for 13 years 8 months and 12 years respectively. In *Virendra Dubey (supra)*, the Apex Court held that, "*the authority exercising the power of discharge is expected to take into consideration all relevant factors. That an individual has put in long years of service giving more often than not the best part of his life to armed forces, that he has been exposed to hard stations and difficult living conditions during his tenure and that he may be completing pensionable service, ******".

22. Pension is a right earned by long service and unless forfeited under the law an employee cannot be deprived of the benefit of pension. Even assuming that the application for discharge and the undertakings were signed by the petitioner's husband, a perusal of the undertaking certificate would indicate that the undertaking was only to the effect that the employee understands that in the event of discharge at his own request being sanctioned, he would not be entitled to any pensionary benefits for the service rendered. The undertakings do not at all deal with the issue as to whether he had given the discharge application voluntarily or not and whether the authorities explained to him the implications of such discharge application in terms of his income, his pension, etc. A statement to this effect is entered by the Commandant 10 Assam Rifles

and signed by him. But the same is not stated by the employee in his undertaking. Any procedure adopted by the authorities while taking any administrative decision must be fair and reasonable keeping in mind the mandate of Article 14 of the Constitution.

23. The petitioner has already stated that her late husband was mentally unstable. A discharge order issued on the basis of a forged or false signature or fraudulent representation is unlawful. It is settled law that fraud vitiates everything. The fact that the petitioner/her late husband never received a copy of the impugned discharge order dated 15.01.2019 is not disputed. The petitioner came to know about the discharge only when WP(C)/164(K)/2022 was filed. Such discharge on the basis of a false signature is a violation of Article 14 and 21 of the Constitution of India. This Court is therefore of the view that the discharge of the petitioner's husband from service vide order No. I.31022/10AR/AdmVI/2019/19 dated 15.01.2019 is void ab initio and needs to be interfered with.

24. It is a settled legal position that if the initial action is vitiated all subsequent and consequential proceedings and orders would fall through. As a result, the impugned discharge letter dated 15.01.2019 is quashed and set aside, so also the impugned letter dated 08.05.2023 and the two discharge applications dated 06.11.2018, and also the impugned undertakings dated 15.11.2018 and 16.11.2018.

25. It is directed that the petitioner's husband shall be treated as if he had died in harness on 14.05.2019 and accordingly all consequential

benefits and family pension be released to the petitioner. No back wages shall, however, be admissible. The entire exercise shall be completed within a period of 5 (five) months from the date of the receipt of this order.

The petition stands disposed with the above observations and directions. No order as to costs.

JUDGE

Comparing Assistant