

**IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI**

OA - 10 of 2019

PRESENT

**HON'BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER (J)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (A)**

Smt. Bina Boruah Saikia
W/o-No. 4358703P Ex-Naik
Nutul Saikia @ Nitul Saikia
Village- 2 No Bongaon
PO-Kacharihat
Dist-Golaghat (Assam)
Pin-785621

..... Applicant

By legal practitioners for
Applicant.
Mr. A.R.Tahbildar

-VERSUS-

- 1. The Union of India,**
Represented by the Secretary,
Ministry of Defence,
Sena Bhawan, New Delhi-1
- 2. Records The Assam Regiment**
PIN-900332
C/O- 99 APO
- 3. Additional Directorate General**
Personnel Services, PS -4(d)
Adjutant General's Branch
IHQ of MOD (Army), DHQ
PO-New Delhi
- 4. The Principal Controller of Defence Accounts,**
(Pension), Allahabad, Uttar Pradesh, PIN-211014.

..... Respondents

By Legal Practitioner for the
Respondents
Mr. P.K.Garodia, CGSC.

Date of Hearing : 06.05.2019
Date of Judgment & order: 06.05.2019

JUDGMENT & ORDER

(Per Dr(Mrs) Justice Indira Shah, Member (J))

1. Heard Mr.A.R.Tahbildar, learned Counsel appearing for the applicant. Also heard Mr.PK Garodia, learned CGSC assisted by Capt. Nisha Thomas, OIC, Legal Cell, for the respondents.

2. Ex Naik Nutul Saikia @ Nitul Saikia bearing Force No.4358703P was enrolled in the Assam Regiment on 04.08.1987 and on completion of the terms of his tenure was discharged from service on 31.08.2009. After discharge he was granted pension and other retirement benefits . Nitul Saikia was unmarried when he retired from service. After his retirement, he solemnized marriage with the applicant on 22.04.2012 as per Hindu rites and rituals. After marriage the couple started living in applicant's matrimonial house situated at Village No.2 Bongaon under District Golaghat, Assam. Ex-Naik Nitul Saikia died of kidney failure on 10.01.2015 leaving the applicant as his sole heir. After the death of her husband, the applicant on 13.02.2015 through the Zila Sainik Welfare Officer, Jorhat, applied for grant of family pension to Records of the Assam Regiment, Happy Valley Shillong, annexing all the relevant documents. Her aforementioned application was forwarded by the Zila Sainik Welfare Officer to the Records, The Assam Regiment on the same date for necessary follow up action. In response, Records, the Assam Regiment vide letter No.03.03.2015 addressed to the Welfare Officer, Zila Sainik Welfare Officer, Jorhat, informed that as Ex-Naik Nitul Saikia was bachelor at the time of his discharge from service, no action can be taken on applicants claim for pension.

3. The applicant again submitted a petition to the Record, The Assam Regiment detailing the factum of her marriage with Ex-Naik Late Nutul @ Nitul Saikia along with death certificate of Late Nitul Saikia, a

certificate issued by the Gaon Bura (Village Head Man) pertaining to her marriage with Nutul Saikia, the Next of kin certificate issued by the Deputy Commissioner, Golaghat, Voter ID Card etc. for consideration. This application was again forwarded by Zila Sainik Welfare Officer. Record, The Assam Regiment vide letter dated 24.05.2016, issued to Zila Welfare Officer requested to obtain the original copies of marriage certificate duly issued by the Registrar of Marriage or any competent authority, a declaration through an affidavit sworn verifying applicant's marriage etc. Accordingly, the applicant through Zila Welfare Officer vide letter No.20.09.2016 forwarded declaration through an affidavit sworn before Notary, Golaghat regarding her marriage with Late Nitul Saikia, her birth certificate, marriage certificate issued by the village Headman, her School Certificate and Voter Card.

4. Records, The Assam Regiment vide letter dated 18 Feb 2017 stated interalia that marriage certificate is a mandatory requirement and it is more so as the name of the applicant was not entered in the service record and that the name of the deceased husband in the death certificate submitted by the applicant is Nitul Saikia whereas as per service document it is "Nutul Saikia".

5. Section 66 of Pension Regulations for the Army Part I-2008 defines the family. Section 66 (2) reads :-

*"In case service personnel get married after release/retirement/discharge/invalidment the marriage should be registered with the Registrar of the Marriages or other competent authority under the law. **In case where such marriage is not registered for some valid reasons, an affidavit sworn before a Magistrate or legal heirship certificate can be furnished.**"*

6. In the instant case the applicant has categorically pleaded that her marriage with Late Nutul Saikia bearing Force No.4358703P was

solemnized after his discharge from his service. In support of her contention applicant's sworn in affidavit (Annexure E), the next kin certificate issued by the office of the Deputy Commissioner, Golaghat District, certificate issued by Govt. Gaonburha, Bongaon, Dist. Golaghat and the Death Certificate of Late Nitul Saikia @ Nutul Saikia issued by Department of Health Services etc. were forwarded to Record, the Assam Regiment and copies are annexed with this O A application.

7. Record Officer, Record, The Assam Regiment has observed that correct name of deceased as per service record is "Nutul Saikia" whereas in the death certificate his name has been shown as "Nitul Saikia". Copy of death certificate No.0125183 available with the record contains the name "Late Nitul saikia @ Nutul". Therefore, there is no such discrepancy as pointed out by the Record Officer. The applicant in her affidavit has disclosed that no child was born out of her wed lock with Nutul Saikia.

8. In view of above and considering the provisions of Section 66 (2) of Pension Regulations for Army Part I 2008, we hold that the applicant is entitled to family pension. Accordingly, the respondents are directed to issue family pension and arrear family pension to the applicant with effect from the date of death of her husband namely Late Nutul Saikia on 10.01.2015 with interest @ 9 % per annum and all other retirement benefits to which the applicant is entitled on death of her husband Ex-Naik (Late) Nitul Saikia @ Nutul, a Pension holder.

9. This OA is accordingly allowed.

10. No costs.

MEMBER (A)

MEMBER (J)