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FORM NO. 4
[See rule 11(1)]
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 1

O.A. No. Nil of 2011

Smt. Rukmini Devi
By Legal Practitioner for Applicant

Applicant

Versus

Signal Mahanideshalaya and others.
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p>04.03.2011 <u>Hon'ble Mr. Justice A.N. Varma, Member (J)</u> <u>Hon'ble Lt. Gen. R. K. Chhabra, Member (A)</u></p> <p>By means of the instant Original Application the applicant has prayed for following reliefs:-</p> <p>(a) <i>This Hon'ble Court may graciously be pleased to quash the impugned order dated 27.07.2006 (Annexure No. 1) passed by the respondent No. 1.</i></p> <p>(b) <i>This Hon'ble Court may graciously be pleased to direct the applicant by considering his 100% disability (SCHEMIC CERBERUS VASCULAR ACCIDENT- 436) on duty period in the department.</i></p> <p>(c) <i>This Hon'ble court may further be pleased to pass such other and/or further order as deemed fit proper and necessary in the circumstances of this case.</i></p> <p>(d) <i>Award costs to the applicant.</i></p> <p>Relief No. 1 is in respect of quashing of the order dated 27.07.2006 by which the claim of disability pension of husband of applicant has been rejected.</p> <p>A preliminary objection has been raised by Shri Alok Mathur,</p>

learned Senior Central Government Counsel on the question of maintainability of Original Application. According to him husband of the applicant is alive still the Original Application is being preferred by wife (applicant) which is not maintainable. As per his submission provisions of Code of Civil Procedure has only limited application to the proceeding before the Tribunal.

According to him only those provisions of C.P.C. would apply which are enumerated in Sub Section 4 of Section 14 of the Armed Forces Tribunal Act as such even otherwise the defect can not be cured unless the applicant withdraws the petition and the same is filed afresh by the husband.

Learned Counsel for the applicant submitted that since the husband of the applicant is unable to move about independently and is not in a position to come to the Court, as such, it was thought proper that the applicant herself may file the Original Application before the Tribunal. He further submitted that even if the husband of the applicant has not been shown as a party, he is ready to substitute him if the Court so permits. He further submitted that it was a bona fide mistake that the applicant's husband is not substituted. According to him due to this bona fide mistake, the Original Application can not be thrown out on the sole ground that the Original Application has been filed in the name of wrong party or on the ground of mis joinder of the necessary parties.

Learned Counsel for the applicant drew our attention towards para 4(25) of the plaint. The averments made in the said paragraph are reproduced herein under :-

“4(25) That the applicant being simple house wife and interior village lady could not know about the legal position of the case and she has lost her hope after the order impugned dated 27-7-2006 that the said order can be challenge before this Hon'ble Court. The applicant also involved in looking after her family, specially to her husband who is still

unable to move independently and also unable to talk any thing."

Order I, Rule 1 of Code of Civil Procedure reads as follows:-

Order 1 Rule 1 lays down as to who may join as plaintiffs. All persons may be joined in one suit as plaintiff where :-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.

Rule 10 of Order I talks about Suit in the name of wrong plaintiff. Rule 10 says :-

Where a suit has been intituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has bneen instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

Perusal of the averments made in paragraph 4 (25) reveal that the husband of the applicant is not able to move independently as such she has come forward in the instant Original Application. Non substitution of the husband or instituting the application in the name of a wrong person appears to be on account of a mistake which is bonafide. Necessary orders as such can be passed by this Tribunal for substituting the husband Motilal Ram as applicant No. 2.

Though under Section 14 (4) of the Armed Forces Tribunal Act, 2007, there is no specific mention as to who should be parties to the proceedings, the principle regarding parties to the suit as set out in Order -1 of the Code of Civil Procedure shall apply.

In view of the aforesaid, objection raised by the learned Central Government Counsel, is over-ruled.

The applicant is directed to substitute/ add Motilal Ram as applicant No. 2 in the Original Application within a period of 10 days.

List on 16.03.2011.

(Lt. Gen. R.K. Chhabra)

Member (A)

(Justice A.N. Varma)

Member (J)