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O.A.No.31 of 2005

ORDER DATED: 24.10.2005.

Claiming to be the adopted daughter/legal heir of late Gandharba Parida, ex Darwan of Geological Survey of India; Kumari Sasmita Parida has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking for a direction to the Respondent-Department to release the D.C.R.G. amount of her late father Gandharba Parida, and for payment of family pension; as the said claim of the Applicant was directed by the Authorities (under Annexure-3 dated 10.03.1999) to be released only after satisfying the followings:-

1. Whether you are an adopted daughter of Late Gandharba Parida;
2. If so, proper declaration of your adoption by Late Gandharba Parida from the Court of law, may be submitted;
3. You have mentioned in your letter dated 23.12.1998 that Shri Jogindra Behera is your legal guardian. You are requested to give proper declaration from the court of law about legal guardianship of Shri J.Behera in respect of Km. Sasmita Parida;
4. In the legal heir certificate given by the Tahasildar, Sadar, Cuttack your address have been mentioned as Vill. Deopur, PS.Sadar, Dist. Cuttack;whereas, in your letter quoted above you have mentioned the address as Vill. Rajahansa, PS. Biribati Dist.Cuttack. The

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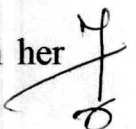
actual residence since adoption and till now, of yourself may be confirmed for further necessary action at this end;

An immediate reply is requested for further necessary action”

Respondents in their counter have stated that the deceased employee, during his life time, had nominated his nephew Shri Saroj Kumar Behera for GPF, CGEGIS and DCRG which was duly accepted by the Office and that, the service record of the deceased employee does not show that the Applicant is the adopted daughter of the ex employee – rather, in the meantime, a decree dated 10.05.2004 has been obtained by one Subash Chandra Parida @ Behera from the Court of the learned Civil Judge (Jr. Division) of Cuttack rendered in Title Suit No. 127 of 2001 declaring him to be the adopted son of the ex-employee late Gandharba Parida. In the circumstances, the Respondent-Department have opposed the prayer of the Applicant, as made in this O.A.

Heard Mr. Sanjib Mohanty, Learned counsel appearing for the Applicant and Mr. D.K.Behera, learned Additional Standing Counsel appearing for the Respondent-Department and perused the materials placed on record.

On scrutiny of the materials placed on record, more particularly the order dated 10.05.2004 of the learned Civil Judge (Jr. Division), Cuttack (under Annexure-2), it is seen that although on her



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prayer, the Applicant, was made a party to the said case, due to her non-appearance, at the final stage, the said decree was drawn ex-parte and until such ex-parte decree has been modified/set aside, the same is binding on all concerned. The Applicant has also not imp-lead~~ed~~ ~~the~~ said Subash Chandra Parida @ Behera as a party-Respondent to this Original Application to have his say in the matter. In essence, this case revolves round the point as to whether said Subash is the adopted son of the deceased Government servant or not and as to whether the present Applicant is the lawfully adopted daughter or not. Title of both of them appears to be under dispute; especially when the positive case of the Applicant (as disclosed by her Advocate) is that she has already approached the Civil Court to set aside the ex-parte decree in question. As it appears, the Applicant, virtually, resists the ex-parte decree obtained by Subash . But having not made him a party-Respondent, this case suffers from non-joinder. That-apart, an ex-parte decree of a Competent Civil Court is available ~~to~~ to be set-aside ^(a) by filing a Misc. Case in the said suit; (b) by filing a separate suit or (c) by approaching the Appellate Civil Court. Instead of pursuing the matter in appropriate Civil Court, the Applicant has wrongly approached this Tribunal.

While determining a similar grievance raised in another case, this Tribunal (in OA No. 893 of 2004, disposed of on 07.10.2005

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between **Ajay Kumar Nayak – vrs. – Union of India and others**) held that “ *this Tribunal is set up under the Administrative Tribunals Act, 1985 to resolve the matters pertaining to the service conditions of the Government of India employees/to resolve any dispute regarding payment of any dues etc. of the employees as also of their legal heirs. This Tribunal is certainly not vested with any power/ authority to either frame any Rules/Regulations governing the service conditions of any employee of the Government of India or to adjudicate the dispute regarding the relationship/legal heir ship/son ship of any body/a Government of India employee; which is , certainly, outside the scope and ambit of this Tribunal. It is for a competent Civil Court, set up under the Constitution of India , to decide/resolve all such disputes”.*

In view of the above, the Applicant, in all fairness of things, need approach the Civil Court to obtain necessary decree that she is the lawfully adopted daughter of the ex employee late Gandharba Parida (by making the Respondent-Department, Subash Ch. Parida @ Behera, Saroj Kumar Behera and all nears relatives as parties before the Civil Court) and only after the matter is settled in her favour , if the Department neglects to pay the legal dues to her then only she shall remain free to approach this Tribunal.



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In the result, this Original Application is disposed of as
aforesaid. No costs.

Jabant
24.10.2005

MEMBER(JUDICIAL)