



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 1715 OF 2013

Bharat Petroleum Corporation Ltd.
a government company incorporated
under the Companies Act, 1956 having
its registered office at Bharat Bhavan,
Ballard Estate, Mumbai – 400 001.

.. **Petitioner**

Versus

1. [REDACTED]
(Deceased through Legal Heirs)

1(a) [REDACTED]
Age – 66 years,
Wife and legal heir of
Deceased Respondent No.1,

1(b) [REDACTED]
Age – 40 years,
Daughter and legal heir of
Deceased Respondent No.1,

2. **Shri. K.B. Katake,**
Presiding Officer, Central Government
Industrial Tribunal No.2, having his
Court at 2nd Floor, Shramraksha Bhavan,
Opp. Priyadarshini, Sion – Trombay Road,
Chunabatti, Mumbai.

.. **Respondents**

WITH
WRIT PETITION NO. 641 OF 2015

1.

1(a)

2(b)

3(c)

4(c)

Petitioners

Versus

1. **Bharat Petroleum Corporation Ltd.**
a government company incorporated
under the Companies Act, 1956 having
its registered office at Bharat Bhavan,
Ballard Estate, Mumbai – 400 001.

2. **The Presiding Officer,**
Central Government
Industrial Tribunal No.2, 2nd Floor,
Shramraksha Bhavan, Sion,
Mumbai – 400 022.

.. Respondents

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- Mr. Anand Pai a/w. Mr. Rahul Sanghvi i/by Mr. Sanjay Udesh & Co., Advocates for Petitioners in Writ Petition No.1715 of 2013 and for Respondents in Writ Petition No.641 of 2015.
 - Mr. Jaiprakash Sawant, Advocate for Petitioners in Writ Petition No.641 of 2015 and for Respondents in Writ Petition No.1715 of 2013.

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CORAM : MILIND N. JADHAV, J.
RESERVED ON : OCTOBER 10, 2023.
PRONOUNCED ON : NOVEMBER 28, 2023.

JUDGMENT:

1. Writ Petition No.1715 of 2013 is filed by the Bharat Petroleum Corporation Limited (employer) (for short “**Corporation**”) taking exception to the Award Part-I dated 11.03.2013 passed by the Central Government Industrial Tribunal No.2, Mumbai (for short “**CGIT**”) in Reference No. CGIT-2/63 of 2010. Originally it was filed against [REDACTED] – Respondent No.1 (contesting Respondent). In the interregnum, Respondent No.1 expired on 24.12.2017. Hence, his legal heirs i.e. Respondent No.1(a) (widow) and Respondent No.1(b) (daughter) have been impleaded. After filing of the above Petition, original Respondent No.1 i.e. the employee filed Writ Petition No.641 of 2015 partly challenging the Award Part-I dated 11.03.2013 i.e. the same Award passed by CGIT-2 to the extent of holding that the departmental enquiry conducted by the Enquiry Officer was fair and proper.

2. Both the Writ Petitions are decided by this common judgment and order.

3. Such of the relevant facts which are necessary for adjudication of the Writ Petitions are outlined herein under:-

3.1. Petitioner – Corporation is a Government Company engaged in the business of refining and marketing of petroleum products having one of its refineries at Mahul, Mumbai. Original Respondent No.1 was employed in Grade-7 capacity with the Petitioner – Corporation and had joined the services of the Petitioner on 16.08.1985. He was working as a General Operative in the Refinery Learning Centre of the Petitioner – Corporation at the time of incident.

3.2. Report dated 23.12.2008 was filed by 3 officers of the Petitioner – Corporation alleging that original Respondent No.1 was found indulging in an unnatural sexual act with a dog on the first floor of terrace of the Refinery Learning Centre Building. It was stated in the report that the 3 officers had seen the original Respondent No.1 committing the act at about 01:25 p.m. on 23.12.2008.

3.3. Considering the seriousness of the misconduct alleged, the Petitioner – Corporation suspended original Respondent No.1 by order dated 29.12.2008. Chargesheet was issued to original Respondent No.1 on 14.01.2009 charging him for committing an indecent act of disorderly behavior in the premises of the Petitioner – Corporation

which constituted a serious act of misconduct under the Certified Standing Orders.

3.4. Original Respondent No.1 filed reply to the chargesheet denying the allegations leveled against him. Departmental enquiry was initiated. The Petitioner – Corporation appointed Mr. Chetan Prabhu, Advocate as Enquiry Officer to hold and conduct enquiry against original Respondent No.1. Enquiry proceedings commenced from 25.02.2009. Original Respondent No.1 appointed Mr. M.S. Masavkar, Vice President of the Bharat Petroleum Corporation Refinery Employees Union as his defence representative.

3.5. In the enquiry proceedings before the Enquiry Officer, the Petitioner – Corporation examined 3 witnesses namely: (i) Mr. S.P. Gharat, Manager, Refinery Learning Centre; (ii) Mr. R.V. Sadanand, Dy. Manager, Refinery Learning Centre and (iii) Mr. R.V. Chalam, Dy. Manager, Training and Development who testified that they all witnessed the incident. On behalf of original Respondent No.1, he examined himself and another witness namely Mr. P.R. Shilwant. After witness action was over before the Enquiry Officer, on the basis of the evidence led in the enquiry and the documents and written arguments put forth by the parties, the Enquiry Officer submitted his Enquiry Report and findings dated 28.04.2009 holding the original Respondent No.1 guilty of the charges levelled against him.

3.6. Copy of the Enquiry Report and findings were forwarded to original Respondent No.1 to which he submitted his representation on 04.06.2009 denying the charges. The General Manager of the Petitioner – Corporation after considering the Enquiry Report and findings of the Enquiry Officer and the representation received from original Respondent No.1 accepted the report and findings of the Enquiry Officer. The Disciplinary Authority by its order dated 18.06.2009 dismissed original Respondent No.1 from the services of the Petitioner – Corporation. Original Respondent No.1 filed Appeal against the order of dismissal before the Appellate Authority i.e. the Executive Director (HR). By order dated 14.08.2009, the Appellate Authority dismissed the said Appeal. Original Respondent No.1 thereafter raised a demand for his reinstatement with full backwages. Conciliation resulted in failure and the appropriate Government Officer referred the dispute raised by original Respondent No.1 for adjudication to the CGIT.

3.7. Statement of claim dated 28.12.2010 was filed by original Respondent No.1 denying all charges levelled against him stating that the enquiry held was against the principles of natural justice and the findings were perverse. The Petitioner – Corporation filed its written statement in reply to the statement of claim stating that original Respondent No.1 had participated in the enquiry proceedings fully and the charges leveled against him were duly proved pursuant to the

witness action and in view of the seriousness of the charges / misconduct, original Respondent No.1 did not deserve any sympathy.

3.8. The CGIT by its order dated 11.03.2013 framed the following two preliminary issues namely; (i) whether the enquiry conducted was fair and proper? (ii) whether findings of the enquiry were perverse?

3.9. Before CGIT, the Petitioner – Corporation examined the Enquiry Officer i.e. Mr. Chetan Prabhu who filed his Affidavit-in-lieu of Examination-in-chief dated 20.10.2011. He was duly cross-examined by the Advocate for original Respondent No.1.

3.10. The CGIT by Award Part-I dated 11.03.2013 held that the enquiry was fair and proper, however the findings of the Enquiry Officer were perverse.

3.11. Being aggrieved, the Petitioner – Corporation filed Writ Petition No.1715 of 2013 on 08.07.2013 to challenge the Award Part-I on the ground that while concluding that the findings of the Enquiry Officer are perverse, the CGIT applied the strict rules of evidence contrary to the settled principles of law applicable to the domestic enquiry and held that in the absence of a police complaint against original Respondent No.1 for committing the offence under Section 377 of the Indian Penal Code, 1860, the findings of the Enquiry Officer were perverse.

3.12. On 02.03.2015, original Respondent No.1 filed Writ Petition No.641 of 2015 to the extent that it held that the departmental enquiry conducted by the Petitioner – Corporation against original Respondent No.1 - workman on the basis of the chargesheet dated 14.01.2009 was fair and proper. The principal ground for filing the Petition by original Respondent No.1 was that the enquiry was not concluded in a fair and proper manner and contrary to the principles of natural justice, that it was biased since the Enquiry Officer was an Advocate appointed by the Petitioner – Corporation on payment fees by the Petitioner – Corporation to him etc.

3.13. During the pendency of the above Petitions, Respondent No.1 – [REDACTED] expired on 24.12.2017. By orders dated 22.11.2022 and 13.12.2022 the legal heirs of original Respondent No.1 were brought on record.

4. Mr. Pai, learned Advocate appearing for the Petitioner – Corporation would submit that the impugned order passed by the CGIT is a non-speaking order in the nature of failing to give any appropriate reasons as to why the report and findings of the Enquiry Officer's are perverse. He would submit that the Petitioner – Corporation examined 3 witnesses whereas original Respondent No.1 examined 2 witnesses before the Enquiry Officer and after considering the witness action, the Enquiry Officer found original Respondent No.1

to be guilty of committing misconduct as stipulated under orders 27(5) and 27(21) of the Certified Standing Orders applicable to the Petitioner – Corporation. He would submit that the Enquiry Officer scrutinized and analyzed documentary evidence placed before him to render the findings of fact. He would submit that the impugned Award passed by the CGIT is fallacious as it does not consider the observations made in the Enquiry Officer’s report at internal paragraph No.5 thereof and instead substitutes the said findings with its own findings without offering any reason therefor. He would submit that the impugned Award is directly contrary to the settled legal position governing interference with the findings of fact recorded in a domestic enquiry and would submit that in the enquiry, reliance placed on the photographs by the Petitioner – Corporation of the place of the incident had a direct line of vision from the place from where the 3 witnesses of the Petitioner – Corporation witnessed the incident. He would submit that the defence of original Respondent that he was applying medical ointment while in a sitting position on the first floor terrace during lunch hour is unbelievable and unsatisfactory considering the witnessing of the incident by 3 officers of the Petitioner – Corporation. He would submit that the enquiry was conducted by the Enquiry Officer in accordance with the principles of natural justice by following the due process of law by the Petitioner – Corporation. He would submit that the 3 eye witnesses of the incident

i.e. officers of the Petitioner – Corporation gave direct evidence of having witnessed the misconduct / act committed by original Respondent No.1. He would submit that all 3 witnesses were extensively cross-examined, but their testimony is not shaken. He would submit that on the basis of preponderance of probabilities depending upon the evidence placed before the Enquiry Officer, the Enquiry Officer had made correct observations and findings which required no interference whatsoever by the CGIT in the impugned order. He has taken me through the evidence of the 3 witnesses on behalf of the Petitioner – Corporation and 2 witnesses on behalf of original Respondent No.1 and would submit that on an overall reading of the same, no interference is warranted to the Enquiry Report and the findings returned by the Enquiry Officer and therefore the impugned Award Part-I to the extent of issue No.2 deserves to be quashed and set aside. He has prayed for dismissal of cross Writ Petition No.641 of 2015 filed by original Respondent No.1.

4.1. In support of his propositions and submissions, Mr. Pai has relied upon the decision of the Supreme Court in the case of *Union of India and Ors. Vs. Subrata Nath*¹ to contend that it is well settled that Courts ought to refrain from interfering with findings of facts recorded in the departmental enquiry except in circumstances where such findings are patently perverse or grossly incompatible with the

1 2022 SCC Online SC 1617

evidence on record or based on no evidence. He would submit that in the instant case, principles of natural justice have been followed to the hilt and all statutory regulations have been adhered to which leaves no scope for interference by the Court. He would submit that in exercise of powers of judicial review, the learned CGIT or for that matter the High Court cannot ordinarily re-appreciate the evidence to arrive at a different conclusion in respect of penalty imposed unless and until the penalty / punishment imposed would shock the conscious of the Court as being disproportionate to the offence or is found to be perverse.

4.2. Next, he has referred to and relied upon the decision in the case of *Union of India Vs. P. Gunasekaran*² to contend that in disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal and should not venture into re-appreciation of evidence. He has urged the Court to see whether the enquiry is held according to the procedure prescribed in that behalf; whether there is violation of the principles of natural justice in conducting the proceedings; whether the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case; whether the authorities have allowed itself to be influenced by irrelevant or extraneous considerations; whether the conclusion by the Authority / Enquiry Officer on the face of record is so wholly arbitrary and

2 (2015) 2 SCC 610

capricious that no reasonable person could ever have arrived at such conclusion; whether the Disciplinary Authority had erroneously failed to admit the admissible and material evidence; whether the Disciplinary Authority / Enquiry Officer has erroneously admitted inadmissible evidence should be seen by the Court in the present case. He would submit that the findings of the Enquiry Officer are correct as they adhere to the aforesaid propositions enumerated by the Supreme Court after duly considering the evidence of the 3 witnesses on behalf of the Petitioner – Corporation.

4.3. Hence he would submit that the Petition filed by the Petitioner – Corporation be allowed.

5. *PER -CONTRA*, Mr. Sawant, learned Advocate appearing for the legal heirs of deceased original Respondent No.1 would submit that the enquiry conducted by the Enquiry Officer was not fair and proper in view of the fact that the enquiry was conducted in English and original Respondent No.1 was not acquainted with English language. He would submit that at the time of incident the original Respondent No.1 was suffering from illness as he had undergone bypass surgery and was taking treatment for his swollen legs on 13.12.2008. He would submit that on the date and time of the incident after having his lunch on 13.12.2008, original Respondent No.1 went to the first floor terrace on the Refinery Learning Centre

and was applying ointment on the boils which he had suffered on his legs. He would submit that at that time he was all alone and there was no other person with him. He would submit that original Respondent No.1 was a heart patient having undergone bypass surgery and therefore it was not possible to believe the version of the officers of the Petitioner – Corporation that he indulged in any indecent act as alleged in the chargesheet. He would however submit that the entire incident is a fabricated incident and the evidence placed on record does not establish the fact that any of the officers who have deposed on the part of the Petitioner – Corporation have seen the presence of the dog leaving the Refinery Learning Centre terrace / building after the incident despite they having their offices in the same building on the first floor and on the ground floor thereof. He would submit that in this regard it needs to be considered by the Court that after the alleged incident, the Petitioner – Corporation did not send the original Respondent No.1 for medical examination nor filed any complaint against him considering that the charges levelled were extensively serious in nature and pertain to a public sector undertaking. He would submit that after the alleged incident as alleged by the Petitioner – Corporation, no attempt was made on behalf of the Petitioner - Corporation and its officers to locate or trace the concerned stray dog/bitch. He would submit that presence of stray dog on the first floor terrace on the Refinery Learning Centre

would therefore be a distinct improbability. He would submit that the standard of proof in a departmental enquiry cannot be merely limited to the preponderance of probabilities and the Petitioner – Corporation cannot claim to say that they need not prove the charges beyond reasonable doubt as required in a criminal proceeding in the peculiar facts and circumstances of the present case. He would submit that the evidence on record would clearly show that the allegation that original Respondent No.1 had committed an indecent act appears totally improbable since a stray dog would not allow any unknown person near him. He would submit that the alleged eye witnesses on behalf of the Petitioner – Corporation of having been witnessed the alleged incident has not stood the test of preponderance of probabilities and therefore the learned CGIT has correctly analyzed and scrutinized the evidence and held that the findings of the Enquiry Officer are found to be perverse giving further opportunity to the Petitioner – Corporation to lead additional evidence, if any, to prove the charges. He would submit that no fault can be found that the Award Part-I dated 11.03.2013 save and except the original Respondent No.1's contention that the enquiry was held to be fair and proper is not accepted by the original Respondent No.1.

6. I have heard Mr. Pai, learned Advocate for Petitioner - Corporation and Mr. Sawant, learned Advocate for the legal heirs of

deceased originally Respondent No.1 - workman and with their able assistance perused the record and pleadings of the case. Submissions made by Advocates have received due consideration by the Court.

7. At the outset, it needs to be stated that according to the Petitioner – Corporation, original Respondent No.1 was suspended and compulsorily retired from services as he was found indulging in committing an indecent act with a stray dog on the first floor terrace of the Refinery Learning Centre on 13.12.2008 during the lunch hour. Though it is argued by Petitioner – Corporation that the officers of the Petitioner - Corporation are independent witnesses and have no enmity with original Respondent No.1 whatsoever, the present case has to be viewed through the prism of appreciation of available evidence only. The charges levelled against the original Respondent No.1 are extremely serious. Record indicates that due to the said charges, original Respondent No.1 and his family have suffered a stigma as argued by the learned Advocate for the legal heirs of original Respondent No.1.

8. Be that as it may, record indicates that the Petitioner – Corporation have issued the suspension order dated 29.12.2008 followed by chargesheet dated 14.01.2009, received the Enquiry Officer's report and thereafter issued the order dated 18.06.2009 of compulsorily retiring the original Respondent No.1. It is seen that the

proceedings before the Enquiry Officer were also conducted by adhering to the principles of natural justice in so far as accepting the pleadings and replies on behalf of the parties is concerned and duly recording the cross-examination of all 5 witnesses. With the able assistance of Mr. Pai, I have perused the witness action of all 5 witnesses and I therefore say that in so far as the conduct of the enquiry is concerned, I am in complete agreement with the findings rendered by the learned CGIT in its order dated 11.03.2013 that the enquiry is held to be fair and proper.

9. In so far as the challenge to the finding that the findings of the Enquiry Officer are found to be perverse is concerned, it would clearly be based upon the pleadings and the evidence recorded before the Enquiry Officer and comparing the same with the findings returned by the learned CGIT. It is seen that the case of the Petitioner – Corporation was that at about 13:25 hours it was observed that the original Respondent No.1 was in a compromising position indulging in an indecent / unnatural act with the stray dog on the first floor terrace behind Ruby Hall in the Refinery Learning Centre.

10. According to Petitioner – Corporation, 3 witnesses on behalf of the Petitioner - Corporation have deposed that they saw the original Respondent No.1 committing the alleged act. The first witness of the Petitioner – Corporation i.e. Mr. S.P. Gharat in his deposition has

stated that one of the employee of the contractor employed by the Petitioner – Corporation namely Mr. Raju Chavan came to him at about 13:20 hours and informed him that the original Respondent No.1 was indulging in an indecent act with a stray dog on the terrace of the Refinery Learning Centre. He has deposed that Mr. Raju Chavan also informed him that original Respondent No.1 was indulging in the said act with the stray dog since the last one week. On this being informed to Mr. S.P. Gharat, the most common question that would come to anybody's mind is why was he not informed about it during the past one week or on the first date of the incident when Mr. Raju Chavan found out about the said act. However without asking this question, Mr. S.P. Gharat went to verify the incident alongwith his colleagues namely Mr. R.V. Chalam and Mr. R.V. Sadanand and saw the original Respondent No.1 in a compromising position indulging in an indecent act with the dog as deposed by him and therefore they submitted the report. The second witness of the Petitioner – Corporation i.e. Mr. R.V. Chalam is a Senior Officer and in his deposition has stated that at about 13:20 hours on 23.12.2008 Mr. Raju Chavan, a contract worker came and told him about the incident and he went up alongwith Mr. Raju Chavan to the first floor of the Refinery Learning Centre where he found Mr. S.P. Gharat and Mr. R.V. Sadanand standing, waiting and watching the incident. He has deposed that all 4 persons namely Mr. S.P. Gharat, Mr. R.V. Chalam,

Mr. R.V. Sadanand and Mr. Raju Chavan, witnessed the incident. He has deposed that original Respondent No.1 was sitting on some object, the zip of his pant was open and he was holding the dog near him.

11. The deposition of Mr. R.V. Chalam about the original Respondent No.1 indulging in the indecent act with the dog as described is different than what is described by Mr. S.P. Gharat in his deposition. Next witness of the Petitioner – Corporation is Mr. R.V. Sadanand who in his deposition has stated that he went with Mr. S.P. Gharat on the first floor and witnessed the incident and thereafter was joined by Mr. R.V. Chalam. All 3 witnesses of the Petitioner – Corporation have stated that while witnessing the incident Mr. Raju Chavan was present. However, Mr. Raju Chavan has not been called as a witness by the Petitioner – Corporation though he was acquainted with the Petitioner – Corporation through his contractor was the person who gave the first information of the alleged incident. Once again one cannot lose sight of the fact that Mr. Raju Chavan informed Mr. S.P. Gharat that he had seen the original Respondent No.1 indulging in the alleged act for the past one week. This assumes significance because it shows that the stray dog was allowed to enter the Refinery Learning Centre by the CISF guarding the Refinery in the afternoon lunch hour for the entire week without being noticed by anybody. This is so because in the cross-examination of the Petitioner

– Corporation's witnesses, the witnesses have fairly stated that they had never seen any dog either leaving the building and/or entering the building on the date of incident or for that matter through out the preceding week. The colour of the stray dog is described as black by the 3 witnesses clearly shows one thing namely that none of the 3 have seen the original Respondent No.1 indulging in the unnatural act. All that they have deposed that original Respondent No.1 was sitting on some object, zip of his pant was open, his organ was protruding out of his trouser in an erect position and he was holding the dog near him.

12. Before I advert to the cross-examination of the 3 witnesses of the Petitioner – Corporation case of the defence needs to be highlighted. According to original Respondent No.1, he has deposed that he was working in the Corporation since his appointment on 16.08.1985 and had an unblemished and clean record as an employee. He has deposed that he was suffering from fits and had undergone heart bypass surgery and a valve was fitted in his heart. He has deposed that for the last four years he was working in the Refinery Learning Centre. He has deposed that 9 months before the incident, he had slipped from the stair case of the Refinery Learning Centre due to which his legs were swollen. He has deposed that due to the swelling on his legs and he had continued with treatment of his swollen legs

with hot water bag. Five days prior to the date of incident, on the date of incident he has deposed that he had big boils on both his legs. He has deposed that on 20.12.2008 his daughter had brought an ointment for him to apply on the boils on his legs. Three days prior to the incident, he had applied the ointment on the boils even after reporting for duty and was doing it daily. In this background, he has deposed that on the date and time of the incident he finished his lunch at about 12:30 hours and went up from the inside staircase area to the terrace for applying ointment on the boils on his two legs which were healing. He has deposed that for that reason he had removed his trouser. He has deposed that he was alone at that time and there was no dog near him. He has deposed that being a heart patient at that time, it was impossible and unfathomable for him to indulge in the unnatural act as alleged. He has deposed that neither his medical examination was done nor was the dog traced by the management nor any police complaint was lodged nor any person saw the dog coming down from the terrace area and this fact is confirmed by all 3 witnesses of the Petitioner – Corporation in their cross-examination. He has deposed that in the event of such an incident considering the Petitioner – Corporation's Refinery Centre being guarded by CISF, the CISF was also not informed. No log book entry was made. He has deposed that all installations of the Petitioner – Corporation are guarded by CISF by armed guards, but Mr. Raju Chavan informed the 3 management

witnesses that the alleged activity was being indulged for the past one week and the dog was alleged to have entered the premises of the Refinery Learning Centre for one full week.

13. On the strength of the above deposition, let us now consider the cross-examination of the Petitioner's 3 witnesses and whether the case agitated by the Petitioner – Corporation against the impugned Award is tenable or otherwise. All pleadings on record show that the suspension order dated 29.12.2008 issued by the Petitioner – Corporation states that at about 13:20 hours original Respondent No.1 was found to be in a compromising position indulging in an unnatural act with a dog on the first floor terrace in the Refinery Learning Centre and therefore it was decided to place him under suspension pending enquiry. This letter is issued 6 days after the date of incident. This is crucial and critical because from the language used in the said letter, it appears that the Petitioner – Corporation considered the alleged act very seriously against all human norms and morality. If that be the case, this letter placing the original Respondent No.1 under suspension pending enquiry ought to have been issued immediately on the next day. Reading of the said suspension letter, another thing is clear i.e. there is a main gate to the Refinery Learning Centre which is managed by the CISF Inspector. Considering the presence of the dog inside the premises of the Refinery Learning Centre which is inside the

refinery and away from the main gate, the Petitioner – Corporation ought to have also led the evidence of the security guards / CISF guards to give evidence about the presence of the dog not only inside the refinery premises but also Refinery Learning Centre building. It is seen that this has not been done.

14. In the cross-examination of Mr. S.P. Gharat working as the Manager in the Refinery Learning Centre, he has stated that his office has situated on the ground floor of Refinery Learning Centre and the terrace outside the Ruby Hall is situated on the first floor where the incident took place. He has stated that Mr. R.V. Chalam and Mr. R.V. Sadanand sit on the first floor and have their cabins on the first floor. He has deposed that when Mr. Raju Chavan came, he and Mr. R.V. Sadanand had just returned from lunch whereas Mr. R.V. Chalam was in his cabin on the first floor. In that regard, Mr. R.V. Chalam ought to have been first informed by Mr. Raju Chavan of the above incident as his cabin was immediately next to the Ruby Hall terrace whether the incident was occurring. Further if Mr. Raju Chavan was witnessing the alleged incident for the past one week on the first floor terrace one question that arises is as to why did Mr. Raju Chavan not inform Mr. R.V. Chalam and Mr. R.V. Sadanand whose cabins were situated on the first floor itself next to the Ruby Hall terrace. When Mr. S.P. Gharat was asked as to whether the said dog can be identified since it

was his statement that there were many dogs in the Petitioner - Corporation compound, he answered that it was difficult for him to identify the dog.

15. Next, Mr. S.P. Gharat has deposed that he did not call out to the original Respondent No.1 nor did he send him for medical examination after the incident nor he made an entry in the log book of the incident. On being specifically questioned as to how many times Mr. S.P. Gharat had seen the dog going to the first floor terrace of the Refinery Learning Centre, he has answered “never” prior to the incident. On being specifically asked whether did he see the dog going down from the first floor from the Refinery Learning Centre on the date of incident he has fairly answered that he did not see the dog nor was he aware whether the others had also seen the dog going out.

16. In the cross-examination of Mr. R.V. Chalam, he has deposed that somebody filed complaint in writing that the original Respondent No.1 was indulging in the said act for the past one week prior to the date of incident.

17. In the cross-examination of Mr. R.V. Sadanand, he has deposed that he was standing in the Ruby Hall and watching the alleged incident for about 30 seconds which is contrary to the deposition of the earlier two witnesses where they have stated that they had watched the incident for a few minutes. In answer to the

question as to whether he had seen the said dog going down from the first floor of Refinery Learning Centre, he has answered in the cross-examination that he has not seen the dog going down prior to the date of incident. He has fairly stated that he has no proof of the fact that Mr. R.V. Chalam had informed him that the original Respondent No.1 was indulging in the alleged act one week prior to the date of incident. He has also fairly answered in cross-examination that he has never seen the original Respondent No.1 take any dog with him to the first floor of the Refinery Learning Centre prior to the date of the incident nor he has seen any dog on the first floor of the Refinery Learning Centre prior to 23.12.2008. This deposition of Mr. R.V. Sadanand is contrary to the deposition of Mr. R.V. Chalam since Mr. R.V. Chalam has in his cross-examination stated that the dogs did come up from the stair case up to the first floor of the Refinery Learning Centre.

18. Juxtaposed with the above evidence on behalf of the Petitioner – Corporation, the evidence of original Respondent No.1 assumes significance. In his cross-examination that original Respondent No.1 has confirmed that he had boils on both his legs 3 days prior to the date of incident. He has also confirmed that 5 days prior to the date of incident his legs were swollen since he had fallen down on the stair case of the Refinery Learning Centre a few months

prior to December 2008. He has deposed that everybody in the Refinery Learning Centre knew about the fact that he was required to apply ointment on the boils on his two legs. The evidence of Mr. P.R. Shilwant, working with the Petitioner – Corporation for 30 years on behalf of original Respondent No.1 is also important because he has deposed that considering the health problems suffered by original Respondent No.1, he could never have indulged in the alleged incident / act.

19. On overall consideration of the above evidence, it is seen that the principal informer of the incident is Mr. Raju Chavan, an employee of the contractor to the Petitioner – Corporation. The Petitioner – Corporation has not examined Mr. Raju Chavan as its witness especially in view of the fact that it was he who informed Mr. S.P. Gharat, whose office was located on the ground floor of the Refinery Learning Centre that original Respondent No.1 was indulging in the alleged incident / act for the past one week. The least that was required to be done by the Petitioner – Corporation was to record the statement of Mr. Raju Chavan to support its contention / allegation against original Respondent No.1. This was not done. The next crucial thing that was required by the Petitioner – Corporation was to send the original Respondent No.1 for medical test in order to ascertain whether any act was performed or he was suffering from boils on his

legs to which he was applying ointment at the time of the alleged incident. The evidence given by all 3 witnesses on behalf of the Petitioner – Corporation is identical except that one of the officer has stated that he witnessed the incident for 30 seconds whereas the other two officers stated that they witnessed it for several minutes.

20. The fact that the original Respondent No.1 ought to have been examined by the Medical Board not only from the point of view of the alleged incident which took place but also to establish and prove whether the original Respondent No.1 was suffering from boils on both his legs for which he had applied ointment at the time of incident according to him. Merely because report was submitted by the 3 officers i.e. the 3 witnesses of the Petitioner – Corporation after 6 days cannot substitute the requirement of examination by a Medical Board or a Medical Authority of the original Respondent No.1. Considering the facts and seriousness of the incident, it was all the more imperative for the Petitioner – Corporation to have immediately called upon the CISF in-charge of guarding the refinery premises to enter the said alleged incident in the log book in view of the fact that a stray dog had entered the premises. However this was also not done. Further considering the fact that according to the Petitioner – Corporation and even otherwise the charges were extremely serious, nothing precluded and prevented the Petitioner – Corporation from lodging a criminal

complaint under the provisions of Section 377 of the Indian Penal Code. This was not done by the Petitioner – Corporation. Stand adopted by the Petitioner – Corporation that for proving the said charges, domestic enquiry would be sufficient and lodging a criminal complaint would not be necessary or required is not acceptable.

21. In view of the above observations and findings, I find that the learned CGIT has returned cogent and reasoned findings in paragraph Nos.10 to 12 of the impugned Award Part-I to come to the conclusion that the findings of the Enquiry Officer are found to be perverse. For reference and convenience, paragraph Nos.10 to 12 are reproduced herein below:-

“10. In respect of the charge the ld. adv. for the second party has argued that the charge is not proved against the workman. He pointed out that neither any offence was registered against the workman nor he was sent for medical examination. He also pointed out that no attempt was made on behalf of the management to locate or trace out the concerned dog. It is further pointed out that, such an incident is totally improbable especially when the dog is not a pet dog. In this respect the ld. adv. for the first party submitted that, the witnesses of the management have seen the workman in compromising position and their evidence need not be discarded. According to the ld. adv. these witnesses are independent witnesses. They have no enmity with the workman. Therefore their statement was safely accepted by the IO and the same cannot be viewed with doubt. The ld. adv. for the first party further submitted that, in the departmental inquiry standard of proof is limited to preponderance of probabilities and the management need not prove the charges beyond reasonable doubt as required in a criminal proceeding.

11. In this respect at the outset I would like to point out that the incident of indulging in sex with animal amount to unnatural offence punishable under Section 377 IPC. Had it been a fact, question arises as to why the concerned witnesses or management did not lodge any police complaint against the workman. Had there been police complaint, the investigating

officer would have sent the workman for medical examination. He would have also traced out the dog concerned. Not lodging any police complaint against the workman is a serious flaw in the case of the management. No explanation is offered as to why they did not direct the concerned witnesses to lodge a police complaint against the workman.

12. No doubt in departmental inquiry, standard of proof is not as high as in criminal cases and mere preponderance of probability suffices the purpose. In this respect after perusing the evidence on record the incident appears totally improbable. A stray dog is not expected to allow a person even close to him. In the circumstances the incident of indulging in unnatural sex with a stray dog by the workman appears improbable especially as the workman is a married person having wife and children. In such circumstances the evidence on record cannot be said sufficient to prove the charge levelled against the workman. The management in this case has examined so called eye witnesses. However their evidence does not withstand the test of preponderance of probability as stray dog would not allow a person to indulge in such act. Furthermore neither the workman was sent for medical examination nor there is any medical or expert evidence on record. No doubt such an opportunity to lead any additional evidence could have been given to the management. However in the case at hand it appears that there is no such additional evidence with the management to prove the charges. In spite of that with all fairness I think it proper to give to the management an opportunity to lead additional evidence, if any to prove the charges. In the circumstances I hold that, though the inquiry is fair and proper, the findings of the Inquiry Officer are perverse. Accordingly I decide this issue no.2 in the affirmative and proceed to pass the following order:

ORDER

- (i) The inquiry is held to be fair and proper.*
- (ii) The findings of the Inquiry Officer are found to be perverse.*
- (iii) The first party is at liberty to lead additional evidence, if any, to prove the charges.”*

22. From the above and reading the same alongwith the evidence and cross-examination of the 3 witnesses of the Petitioner – Corporation, it is discernible that the findings arrived at by the Enquiry Officer of indicting the original Respondent No.1 are not proved and

considering the evidence on record the same are found to be perverse. In the present case, where a serious act is involved it is all the more necessary to have the highest standard of proof for considering the evidence placed on record.

23. Hence, while agreeing with the Award Part-I to the extent that the enquiry held by the Enquiry Officer was fair and proper, I find no reason to interfere with the findings returned by the Enquiry Officer that findings of the Enquiry Officer are found to be perverse.

24. The impugned Award Part-I does not call for any interference and the same is sustained. Consequentially the Writ Petition fails. In view of the above, Writ Petition No.1715 of 2013 is dismissed.

25. In view of the reasoned judgment and order passed in Writ Petition No.1715 of 2013 dismissing the Writ Petition, since I have held that the enquiry was fair and proper and agreed with the findings returned by the learned CGIT, Writ Petition No.641 of 2015 is dismissed.

26. Interlocutory Applications, if any, are also dismissed.

27. Writ Petition No.1715 of 2013 and Writ Petition No.641 of 2015 are disposed.

[MILIND N. JADHAV, J.]

28. After the Judgment is pronounced, Mr. Sawant, learned Advocate appearing for the legal heirs of deceased employee seeks a direction to the learned CGIT-2 to dispose Award Part-II proceedings in a time bound manner.

28.1. Considering the facts of this case and while adhering to the request of Advocate of Mr. Sawant, learned CGIT-2 is directed to complete the Award Part-II proceedings preferably within a period of three months from today.

[MILIND N. JADHAV, J.]

Ajay