

GAHC010033352016



In the Gauhati High Court

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
PRINCIPAL SEAT AT GUWAHATI

WP(C) NO. 7682 OF 2016

Sri Diganta Haloi.
Resident of Tezpur Law College Road, Tezpur, Pin-
784001, Assam.

.....*Petitioner*

-Versus-

1. Numaligarh Refinery Limited,
A Government of India Undertaking, having its
registered office at 122—A, G.S. Road, Christian
Basti, Guwahati, Kamrup(M), Assam, Pin-781005.
2. The Chairman, Numaligarh Refinery Limited,
122—A, G.S. Road, Christian Basti, Guwahati,
Kamrup(M), Assam, Pin-781005.
3. The Managing Director, 122—A, G.S. Road,
Christian Basti, Guwahati, Kamrup(M), Assam, Pin-
781005.
4. The Director (Technical), Site Office,
Numaligarh Refinery Limited, District-Golaghat,
Assam, Pin-785699.
5. The Senior General Manager (HR), Site Office,
Numaligarh Refinery Limited, District-Golaghat,
Assam, Pin-785699.

.....*Respondents*

WITH
WP(C) NO. 6151 OF 2016

Sri Pankaj Boro,
S/o Sri Mahendra Nath Boro,
Quarter No. Charndrika-54
NRL Township, P.O:NRP
District: Golaghat-785699.

.....***Petitioner***

-Versus-

1. Numaligarh Refinery Limited,
A Government of India Undertaking, having its registered office at 122—A, G.S. Road, Christian Basti, Guwahati, Kamrup(M), Assam, Pin-781005.
2. The Chairman, Numaligarh Refinery Limited, 122—A, G.S. Road, Christian Basti, Guwahati, Kamrup(M), Assam, Pin-781005.
3. The Managing Director, 122—A, G.S. Road, Christian Basti, Guwahati, Kamrup(M), Assam, Pin-781005.
4. The Director (Technical), Site Office, Numaligarh Refinery Limited, District-Golaghat, Assam, Pin-785699.
5. The Senior General Manager (HR), Site Office, Numaligarh Refinery Limited, District-Golaghat, Assam, Pin-785699.

.....***Respondents***

Advocate for the Petitioner (s): Mr. P. Mahanta, Advocate, Mr. R. Sarma and Mr. A. Sandilya, Advocate.

Advocate for the Respondent(s) : Mr. A. Dhar, Advocate and Ms. A. Verma, Advocate.

- B E F O R E -

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Date of Hearing : 30.03.2023, 08.08.2023, 21.09.2023, 05.10.2023,
 02.04.2024 and 09.04.2024.

Date of Judgment : 15.07.2024.

:: JUDGMENT AND ORDER (CAV)::

These two writ petitions are directed against the orders passed by the Disciplinary Authority as well as the Appellate Authority on the basis of enquiries conducted against the writ petitioners, whereby the writ petitioners were removed from service which shall not be a disqualification for future employment. Subsequently, on appeal the Appellate Authority modified the order of removal to that of compulsory retirement.

2. The writ petitioner in WP(C)/7682/2016 (namely, Sri Diganta Haloi) was appointed as a Graduate Engineer Training in Numaligarh Refinery Limited (NRL) in June, 2005. At the time when the enquiry was instituted, he was working as Assistant Manager. The writ petitioner in WP(C)/6151/2016 (namely, Sri Pankaj Boro) was employed as Senior Manager (Materials) in Numaligarh Refinery Limited (NRL) at the relevant point in time.

3. In the month of May, 2013, there was a fire incident in Numaligarh Refinery Limited (NRL) leading to damage of some articles. These articles comprising mostly of burnt cables and other scrap materials were approved for disposal by the higher authorities of Numaligarh Refinery Limited (NRL). These items were decided to be auctioned off in two lots. Lot No.1 comprised of ferrous and non-ferrous scrap items and Lot No. 2 comprised of burnt cables. Thereafter, an e-

tender was called for and the disposal of the scrap materials were awarded to one M/S Steelex (India Ltd). On 15.03.2014 these scrap materials were loaded in three different trucks by the said M/S Steelex (India Ltd) within the Numaligarh Refinery Limited (NRL) complex premises. On the same day, an FIR was lodged by a few local Journalist of Golaghat and nearby areas alleging that in the name of scrap, useful materials were taken out. On the basis of that FIR lodged, the police seized the trucks on the same day. The concerned Officer-In-Charge of the local police out-post addressed a letter to the Numaligarh Refinery Limited (NRL) In-Charge to depute an officer for verifying the items/materials. On that basis a General Manager (Commercial) of Numaligarh Refinery Limited (NRL) was deputed to the police station.

4. The General Manager (Commercial) upon verification of these items/materials submitted a report on 20.03.2014 to the higher authorities of Numaligarh Refinery Limited (NRL). In the said report it was stated that these three trucks were brought inside the Refinery premises and the goods, which were loaded on the trucks were unloaded with the help of cranes and labourers for due examination and verification. These trucks were examined by the General Manager (Commercial) in the presence of Police, a Magistrate, two employees of the ASEB (now APDCL) and 8 (eight) persons representing the complainants. The materials in 2 (two) trucks were certified to be scrap materials by the technical persons of the refinery however. In respect of a third truck 2 (two) coils of cables of quite large dimension were seen and the complainants insisted that they were new cables. These 2 (two) coils of cables were inspected on the truck by the Police, the Magistrate and the technical persons of the Numaligarh Refinery Limited (NRL) along with the complainants. The Magistrate ordered for sealing of these cables for further testing. The

drivers of the trucks were asked by the Magistrate and the Police to show the locations within the refinery from where the materials were loaded and accordingly, it was pointed out by the driver of the third vehicle that the location was within the premises of a Ware house from where, these 2 (two) rolls of cables were loaded. It was also pointed out that these materials were loaded by a crane in the presence of NRL representative and CISF personnel. Accordingly, the said report was submitted by the Chief Manager (Commercial) to the higher Authorities that *prima facie* there appears to be involvement of officers of NRL Ware House, which needs to be investigated in detail.

5. On the basis of the report submitted by the Chief Manager (Commercial), the petitioners, who were at the relevant point in time employed as an Assistant Manager and Senior Manager (materials) respectively, were placed under suspension pending departmental enquiry. Pursuant thereto, the charges were framed against the writ petitioners alleging misconduct under the 'Conduct, Discipline and Appeal Rules for Management Staffs' of the NRL, to which they submitted their replies. The Enquiry Officer and a Presenting Officer was appointed and the enquiry commenced. There were 5 (five) charges brought against Sri Diganta Haloi and 6 (six) charges brought against Sri Pankaj Boro. Out of the 5 (five) charges against Sri Diganta Haloi, 4 (four) were held to be partially proved and the 5th charge was held to be proved. In so far as Sri Pankaj Boro is concerned, out of the 6 (six) Chagres brought against him, charge Nos. 1, 2 and 5 stood proved, charge Nos. 3, 4 and 6 stood partially proved. The Enquiry Officer submitted its report to the Disciplinary Authority. In the enquiry report it was mentioned that the Presenting Officer in his summary or reference of evidences of imputation of misconduct in support of the articles of charges had referred to photographs of cables taken on the truck

subsequently while the truck was under police custody. However, such availability of photographs were not disclosed by the Presenting Officer during the mutually agreed period of disclosure of documents by the Presenting Officer and defendants nor did he furnish any such photographs before the Enquiry Officer. The Disciplinary Authority however, directed the Enquiry Officer to conduct further enquiry on the basis of a DVD containing soft copy of total 20 numbers of video clips and 6 numbers of still images or photographs furnished by the Presenting Officer. On the basis of such directions by the Disciplinary Authority, further enquiry was initiated in respect of Charge No.4 brought against Sri Diganta Haloi and Charge No.6 in respect of Sri Pankaj Boro on the basis of the DVD containing soft copies of the video clips and still photographs of the cables. In the subsequent enquiry report which was submitted it is held by the Enquiry Officer that Charge No.6 brought against Sri Pankaj Boro and Charge No.4 brought against Sri Diganta Haloi stood proved.

6. The Disciplinary Authority on the basis of the findings arrived at by the Enquiry Officer imposed a punishment of the penalty of removal from services which shall not be disqualification for future employment with effect from 21st of March, 2014 in respect of both the petitioners.

7. Subsequently, against the order of dismissal, both the petitioners filed appeals before the Appellate Authority and by order dated 26th of January, 2016 the penalty imposed was modified to that of compulsory retirement. Thereafter, further appeals are filed before the Chairman, Numaligarh Refinery Limited (NRL) came to be dismissed sustaining the punishment imposed by the Appellate Authority, namely, compulsory retirement. The gratuity payable to the petitioners were also forfeited.

8. Learned counsel for the writ petitioners submits that both the petitioners were made *scapegoats* in connection with the auction of the burnt cables and other scrap materials. It is submitted that the auction was conducted in terms of the procedure prescribed and only because certain complaints made by the local members of students' union etc., the enquiry was conducted and the petitioners were proceeded against on charges of misconduct and on the basis of the enquiry conducted the punishments were imposed. Learned counsel for the petitioners submits that during the enquiry proceedings, the charges framed against the writ petitioners and the evidence led did not conclusively prove any of the charges that the acts or the omissions alleged to have been committed by the writ petitioners could be construed to be misconduct under the Rules calling for imposition of major penalty, like removal from service or compulsory retirement. It is submitted that except for Charge No.,5 in so far as the writ petitioner, Sri Diganta Haloi in WP(C)/7682/2016 is concerned, none of the chrges were found to be completely proved. Charge No. 5 was the charge brought against the petitioner that he had allowed the goods to be lifted on a Sunday, which is a holiday. Such act of the writ petitioner was done with full knowledge and intimation to the higher authorities and it was also not shown as to which rule came to be violated, thereby leading to misconduct as alleged. A perusal of the enquiry report will reveal that all the other 4 (four) charges were found to be partially proved. However, in the enquiry report there is no findings or conclusion in respect of the charges which have been found to be proved or partially proved and as to how the same can be construed to be misconduct under the Rules. Learned counsel for the petitioners further submit that the Enquiry Report submitted by the Enquiry Officer was not accepted and the Enquiry Officer was directed to conduct further enquiry in respect of the

photographs and videos found in the DVD showing the cables, which were alleged to be not scrap or unusable and which was unauthorizedly handed over to the scrap dealer who was short listed during the auction proceedings. It is submitted that during the process of the enquiry, which is also evident from the first enquiry report, that these DVDs containing the photographs and video clips were not presented during the enquiry proceedings by the Presenting Officer. It is only after the direction of the disciplinary authority leading to a further enquiry that the copies of these DVDs were handed over to the writ petitioners and further enquiry on these were conducted by the Enquiry Officer and thereby the Enquiry Officer returned the findings that Charge no. 4 and Charge No.6 has been found to be fully proved against the writ petitioners respectively. It is submitted that in respect of these DVDs presented during the further enquiry, no evidence was led as to who was the author of the DVD and under whose directions the same were recorded and for what purpose. In fact, during the enquiry proceedings, it was stated that the said DVD was recorded when the trucks were under police custody. The author of the DVD was never examined. It is further submitted that placing reliance on these DVDs without the proper proof as mandated under the law does not permit such evidence to be accepted and relied upon as have been done by the authorities concerned. Learned counsel for the petitioners further submits that during the initial verification conducted by the Chief Manager (Commercial), the same was conducted in the presence of APDCL officers, Magistrate, Police Personnel as well as the complainants and the technical persons of the NRL. Nowhere in the report has there been any finding given by the Chief Manager (Commercial) that the petitioner was responsible for handing over any cable or goods or items to the scrap dealer pursuant to the auction proceedings over and above the goods

identified and awarded in the auction proceedings. Learned counsel for the petitioners have referred to a communication dated 22.03.2014 issued by the Sub-Divisional Engineer, Komargaon Electrical Sub-Division, A.P.D.C.L to the Assistant General Manager G.E.D, which is enclosed as Annexure 6 to WP(C)/7682/2016 (Sri Diganta Haloi). Referring to the said document, the learned counsel for the petitioners submits that by this communication the competent authority in the A.P.D.C.L has categorically held after proper examination that after inspection of the materials, which were unloaded from the three trucks bearing Nos. 1. WB-23C/1955, 2. WB-23D-1134 and 3. WB-23B-9955, the competent authority found the different types of assorted sizes cut pieces of L.T and H.T cables which were not in serviceable condition and also not suited for any purposes. He, therefore submits that where the competent authority in the APDCL has clearly certified that the materials which were unloaded from these three trucks were found to be scrap material and not suited for any purposes there is no occasion for the NRL authorities to further proceed in the matter initiating a departmental proceeding and holding the charges to be proved without due and fair consideration of the report by the APDCL authorities. It is further submitted that this certificate or communication was issued by the APDCL authorities, as is evident from a perusal of the said communication, on the request of the NRL authorities. Inspite of that, the authorities failed to take note of this fact and instead proceeded to hold that the charges of misconduct have been proved in respect of the writ petitioner on the basis of certain video clips and photographs, which were subsequently taken by unknown persons when the vehicles were under police custody. He has also referred to an order passed by the Chief Judicial Magistrate, Golaghat dated 21.07.2014, which deprecates the attitude of the NRL authorities in respect of

the allegations regarding the cables in question. Learned counsel for the petitioners therefore submits that the entire disciplinary proceedings initiated against the writ petitioner, was an eye wash and the procedure prescribed under the Rules have not been followed and there was no iota of evidence to drive home the charges of misconduct against the writ petitioners. The manner in which the authorities arrived at a finding of misconduct in respect of these two coils of cables alleged to be not the part of scrap items overlooking the report of the APDCL authority is violative of the established norms and procedures and being violative of the principles of natural justice is therefore arbitrary and contrary to the principles laid down under Article 14 of the Constitution of India. He, therefore submits that the impugned findings of the Enquiry Officer, the orders passed by the Disciplinary Authority, First Appellate Authority and the Second Appellate Authority should be set aside and quashed and the petitioners be reinstated in service with full back wages and all service benefits due to the writ petitioners.

9. Learned counsels for the petitioners strenuously urged with regard to each charge mentioned in the charge-sheet and the findings of the Enquiry Officer in respect of the each of the charges are perverse and not based on evidence. He has referred to the Judgment laid down in *Roop Singh Negi Vs Punjab National Bank and Others* reported in (2009) 2 SCC 570 to submit that even in disciplinary proceedings documents standard has to be exhibited and proved. Mere tendering of a document in evidence will not amount to proving the same and the said document will not have any evidentiary value. He has also referred to a Judgment of this Court rendered in *Ranjeet Kumar Das Vs State of Assam and Ors.* reported in (2018) 2 GLR 768, wherein the principle culled out in *Roop Singh Negi (supra)* has been relied upon. Placing reliance on these Judgments,

the learned counsel for the petitioners submits that in so far as the further enquiry is concerned the DVDs containing the video clips and the still photographs although produced in evidence were never proved as is required to be done as per procedure prescribed in law. As to how documents in electronic form are required to be proved, the learned Counsel for the petitioners in support of such submissions has relied on the Judgment of the Delhi High Court rendered in *Naresh Kumar Gandhi Vs Cambridge Foundation School and Ors.* reported in *2023 SCC Online Del 4354*. He further submits that since the DVDs were never proved in evidence during the further course of enquiry, there was no occasion for the Enquiry Officer to return a finding that the Charge No. 4 against the petitioner have been held to be proved. No certificate as is required under Section 65 (B) of the Evidence Act, 1872 in support of the DVD from the author or the person entrusted with the responsibility of making the videos or the still photographs have been produced during evidence. That not having been done, the disciplinary authority ought not to have accepted the findings of the Enquiry Officer, more particularly, in respect of the further enquiry conducted subsequently. It is further submitted that the Disciplinary Authority did not apply its mind independently while upholding the findings of the Enquiry Officer while imposing the punishment of removal from service, which shall not be a disqualification for further service. It is submitted that there is a responsibility cast on the Disciplinary Authority to have independently considered the findings *viz-a-viz* the evidence led to arrive at a conclusion that the major penalty of punishment from removal from service is to be imposed. The learned counsel for the petitioners also submits that the first Appellate Authority also did not apply its mind while modifying the punishment of removal from service which shall not be a disqualification to that of compulsory

retirement. It is submitted by referring to the Rules that under the Rules providing for major penalty, there is no penalty of compulsory retirement. Therefore, a penalty which is not prescribed under the Rules could not have been imposed by the Appellate Authority. Consequently the order passed by the second Appellate Authority sustaining the punishment imposed by the first Appellate Authority is also contrary to the Rules and therefore requires interference. Learned counsels for the petitioners therefore submits that the impugned findings of the Enquiry Officer, the orders passed by the Disciplinary Authority, First Appellate Authority and the Second Appellate Authority should therefore be set aside and quashed and the petitioners be reinstated in service with full back wages and all service benefits due to the writ petitioners.

10. Mr. A. Sandilya, the learned counsel appearing in WP(C)/6151/2016 (Sri Pankaj Boro) has made similar submissions and also relies on the Judgments referred to by the learned counsel appearing in WP(C)/7682/2016 (Sri Diganta Haloi) in support of his contentions.

11. The respondents have contested the case projected by the writ petitioners. They have filed their counter affidavit disputing the claims and submissions made by the writ petitioners. The learned counsel for the respondents submits that the opinion rendered by the Sub-Divisional Engineer, Komargaon Electrical Sub-Division, A.P.D.C.L vide communication dated 22.03.2014 in respect of the cables loaded in the trucks, which however is completely silent in respect of the 2(two) number of cables, which were inside the third truck and which were not unloaded for verification and enquiry from the third truck as it was felt by the NRL authorities that the process of unloading may cause damaged to these cables. It is submitted that the certificate of the APDCL, Sub-Divisional Engineer does not reflect on the status/usability of these 2 (two) number of cables, which

were loaded on the third truck and therefore, in respect of these 2 (two) cables the said opinion has no relevance. The learned counsel for the respondents strongly disputes the contentions of the writ petitioners that the procedure prescribed under the Rules while conducting the disciplinary proceedings have not been adhered to. Referring to Rule 6(3) of the Conduct, Discipline and Appeal Rules for Management Staff it is submitted that the Disciplinary Authority is not required to show any documents listed with the Charge-Sheet or any other documents at the stage of Notice to the Management Staff, namely, '*the writ petitioners*'. However, after receipt of the written statements copies of these documents were duly furnished as per the procedure prescribed under the Rules. Referring to Rule 6 (21) of the Conduct, Discipline and Appeal Rules for Management Staff, the learned counsel for the respondent submits that the Disciplinary Authority is empowered, for reasons to be recorded in writing, to remit the case to the Enquiring Authority for fresh or further enquiry and report and thereupon the Enquiring Authority shall proceed to hold such further enquiry according to the provisions of the rules. It is also submitted that by communication dated 13.06.2015 the Management Staff, namely, the writ petitioners were furnished with a DVD containing soft copies of total 20 nos. of video clips and 6 nos. of still photographs furnished by the Presenting Officer in support of the charges against the writ petitioners. During the hearing on 18.06.2015, the Presenting Officer displayed the photographs and the video clips in presence of the Enquiry Officer and Management Staff and their Assisting Officers. Although the Management Staff raised objections regarding non-opening of the contents of the DVD and non-visibility of the item code of the cables, however there was no objection regarding the presentation and display of the photographs and the videos during the hearing held on

18.06.2015. It is submitted that as per provisions of Rule 6 (12) of the Conduct, Discipline and Appeal Rules for Management Staff, before the closure of the case the Enquiring Officer may in its discretion allow, the Presenting Officer to produce documents and/or witnesses not included in the list of documents or call for new evidence by giving an opportunity of the Management Staff to inspect the documentary evidence before it is taken on record or cross examine of witnesses. The learned counsel for the respondent therefore strongly disputes the submissions made by the learned counsel for the petitioners that there was no opportunity to the petitioners to verify into the contents of the DVD containing the video clips and still photographs or that there was any infirmity in taking into consideration the photographs and video clips while the concerned truck was under the police custody. The learned counsel for the respondents submits that while examining disciplinary proceedings in judicial review, a writ court is not expected to act as a court of appeal. The Court is required to examine and see whether the procedure prescribed under the Rule has been followed or whether Rules of natural justice have been complied with or that the findings of misconduct is based on some evidence or where the findings of the Disciplinary Authority suffer from perversity or where the penalty is disproportionate to be proven misconduct. In support of his contentions the learned counsel for the respondent has pressed into service the Judgment of the Apex Court rendered in *State of Karnataka and Anr. Vs Umesh* reported in (2022) 6 SCC 563. It is submitted that in the facts of the present proceedings, no such circumstances arise. The departmental proceedings carried against the writ petitioners do not suffer from any of the instances laid down in *Umesh (supra)* and therefore no interference is called for at this stage. The learned counsel for the respondent further submits that in response to the query made

by the Court during the hearing as to the financial benefits that was paid to the petitioners pursuant to the imposition of the order of penalty, he refers to the communication dated 27.12.2016 issued separately to both the writ petitioners showing their entitlement after forfeiture of gratuity and other amounts due from both the writ petitioners. In so far as the petitioner in WP(C)/7682/2016 (Sri Diganta Haloi) is concerned he was paid Rs.6,62,081/- (Rupees Six lakhs Sixty Two Thousand Eighty One) only as final settlement after taking into account the payments made to the petitioner and the amounts due from the said petitioner. In so far as the petitioner in WP(C)/6151/2016 (Sri Pankaj Boro) is concerned by the separate communication also dated 27.12.2016 and after settling of the accounts total amount due from the petitioner was found to be Rs.4,06,118/- (Rupees Four Lakhs Six Thousand One Hundred Eighteen) only excluding the house rent and other amounts of associated agencies indicated in the letter.

12. Learned counsel for the respondent therefore, submits that there was no violation of the procedure prescribed. The evidence adduced during the process of the enquiry was sufficient to impose major penalty as has been correctly imposed by the Disciplinary Authority and which was subsequently modified to that of compulsory retirement. Therefore, no interference at this stage is called for by writ Court under judicial review as has been prayed for. The writ petitions are devoid of merit and should therefore be dismissed. The learned counsels for the respondents have also placed before the Court the relevant records of the proceedings for due perusal by the Court.

13. Learned counsels for the parties have been heard. Pleadings available on record have been carefully perused. The records presented before the Court have also been perused. Judgments cited at the bar have also been carefully

taken note of. The facts which are not disputed in the present proceedings are that pursuant to a fire incident which took place in the Numaligarh Refinery Limited, complex, the NRL authorities had decided to auction scrap materials and burnt cables in two lots and for the said purposes had called for an NIT. One M/S Steelex (India) was short listed as the highest bidder and accordingly, the contract for lifting and disposal of the scrap materials and the burnt cables were issued to the said scrap dealer shortlisted. A reference to the approval for disposal of the CDU/Video scrap items as is available in the pleadings dated 30.12.2013 reveals the background as to the decision of the NRL authorities for disposal of the scrap materials and the burnt cables. The approval for disposal is quoted below:-

“NUMALIGARH REFINERY LIMITED

Ref: NRL.NG/MAT/000

Date December, 30, 2013

Subject: Approval for disposal of CDU Fire damaged items.

<i>Reference</i>	<i>E-mail from Finance dated 17.12.2013</i>
<i>Background</i>	<p><i>One fire accident took place May'13 at CDU unit. As per procedure insurance claim was lodged by Finance to the insurance company.</i></p> <p><i>While finalizing our claim, the insurance company will deduct/adjust the salvage value of damaged material. Hence to get the salvage value of the declared fire damage items Finance has requested warehouse4 to arrange for disposal of the damaged/scrap items generated due to this fire accident.</i></p>

	<p><i>The scrap materials ferrous and non ferrous metal items including burnet cables generated due to the above fire accident are dumped at scrap yard and kept in separate lot. As the repairing jobs were taken up on war footing basis and simultaneously housekeeping was to be maintained including site clearance from safety point of view, scrap materials were shifted to scrap yard even in night hours. As weighing was not done and evaluation of weight by segregating items by engaging manpower, lifting equipment, tractor trailer and weighing will incur substantial cost, these items are proposed to auction in lots viz. ferrous and non ferrous metals and burnt cables.</i></p>
<i>Reserve price</i>	<p><i>As the price to be obtained against auctioning of these items shall be deduct/adjust during settlement of the final claim of NRL by the insurance company, there will be no impact on fixing the reserve price for conducting e-auction of these materials.</i></p> <p><i>Hence no reserve price is proposed to be kept.</i></p> <p><i>Also, e-auction shall be conducted on open tender basis and the price obtain after auction shall be put up to the appropriate committee as per DOA.</i></p>
<i>Band range for Subject to Approval (STA)</i>	<i>NIL</i>

Total quantity in the lot	<i>LOT 1 : ferrous none ferrous scrap items</i> <i>LOT 2: Burnt cables</i>
Comment	<i>The following is considered for e-auction of Fire Damaged items:</i> 1. <i>No reserve price is considered and whatever bid received from the H1 bidder, shall be put up for approval.</i> 2. <i>All the fire damaged materials shall be offered as two lots and as is where is abisis.</i>
Taxes and duties applicable	<i>Excise duty-@12.36%</i> 2. <i>Either-CST @ 2.0% against 'C' form Or -VAT @ 5.0 %</i> 3. <i>TCS @ 1.0%</i>
Other conditions	<i>Payment term: Advance</i> <i>Lifting period:45 calendar days</i> <i>Loading charge, Transportation, cutting: Buyer's scope</i>
Proposed	<i>To dispose these fire accident damage materials for the above mentioned quantities through service provide as one lot.</i>

14. From a perusal of the approval for disposal it is revealed that there were 2 (two) lots put up for disposal. Lot 1 comprising of ferrous non-ferrous scrap items and lot 2 comprising of burnt cables. The approval for disposal notes also

reveals that these 2(two) lots are to be disposed of to the service provider as one lot. This disposal note contains the signatures besides that of the writ petitioners of other competent officers of the NRL. However, these two lots do not specify the particulars of the items included in each of the lots.

15. A perusal of the report of inspection by the Chief Manager (Commercial) dated 20.03.2014, which was a precursor to the disciplinary proceedings initiated against the writ petitioners is also necessary. The report clearly indicates that the three vehicles which were engaged by the service provider/the H1 bidder in respect of disposal of the scrap items and burnt cables were physically examined by the said Chief Manager (Commercial). The report of the Chief Manager (Commercial) is also extracted below:

“NUMALIGARH REFINERY LIMITED

Date : 20" March'2014

Sub: Report on the inspection of the fire damaged cables carried out inside the Refinery area on 20th March, 2014 afternoon.

As advised by the General Manager(C&L), undersigned participated in the physical inspection of fire damaged cables which were inside three trucks engaged by the H1 bidder of the e-auction (auction id no:42254). The report is as below:

1. On 15-03-2014 three truckloads of scrap cables were seized by police based on a complaint by a few Media Reporters and members of the local unit of a student organization. The complainants had approached the District Administration as well as NRL to make a high level enquiry. The allegation of the complainants were that in the name of scrap cable many good conditioned cables were loaded in the trucks and that they suspected involvement of NRL officials and CISF personnel.

2. After discussion among the District Administration, NRL & the complainants it was decided that the 3 trucks will be brought inside the

Refinery premises and the trucks will be unloaded in presence of representatives of the District Administration including Police, NRL and the complainants in order to verify the allegation.

3. On 20-03-201 -round 3.30 pm, the 3 trucks along with Police, a Magistrate, 2 employees of Assam State Electricity Board and 8 persons representing the Complainants entered the Refinery Premises. After taking the loaded wt on the Refinery Weiahbridge, the Trucks were taken to the yard near the Effluent Treatment Plant: NRE had made arrangement of Crane & laborers to unload the trucks.

4. The unloading of the 1st and 2nd truck took more than 3 hrs. The unloaded cables were inspected by the Police, the Magistrate, representatives of Assam State Electricity Board, Complainants and Technical persons from the Instrumentation Dept. & Electrical Dept of NRL. After examination of the cables, the technical persons of NRL certified that the same were not usable in the Refinery, reasons being the cables were either damaged, deformed or short of length. The complainants stated that the Tender was for 'CDU VDU burnt cables' but the cables did not took burnt. The technical persons of NRL stated that they are not aware of the tender, but reiterated that the cables of this first truck were scrap. The views of the employees of Assam State Electricity Board (who were brought as a neural inspection agency) were not known but It was heard that they -were unable to give any comment on the cables Si 1ce8 they he had not brought any 'instruments' with them. Police took statements from all concerned. Wt. of the unloaded truck was taken.

5. Unloading of the 3^{ra} truck (WB-23 / C1955) started in a similar fashion. After unloading almost the whole truck, at the bottom there were 2 coils of cables of quite large dimension. On seeing these cables, the complainants insisted that these were new Cables. Further, they insisted that these cables should not be unloaded as the crane may cause some 'damage' to the cables and taking this excuse NRL Technical persons will declare the cables as not acceptable.

6. These 2 coils of cables were inspected on the truck itself by the Police, the Magistrate, Complainants and Technical persons of NRL. The Magistrate ordered for sealing these cables for further testing.

7. The complainants then requested the Magistrate to question the Drivers of the trucks, because as per their information one of the trucks was loaded with few materials from the Stores Dept. in addition to the materials from the defined location of the Scrap Yard.

8. The Drivers were asked by the Magistrate and the Police to show the locations in the Refinery from where materials were loaded on their trucks. The drivers took the team of the Magistrate, Police and the complainants near the Sub-station 3 and confirmed that two trucks were loaded there. The whole team of the drivers, Magistrate, Police and complainants went to warehouse premises and the driver of the above vehicle (i.e. WB-23/C1955) showed the location within the premises of warehouse from where he has loaded the two roles of cable. The Driver also stated that he material in the Store premises was loaded by a Crane in the presence of NRL representative and CISF Personnel. Statements of the drivers were recorded by the Police. After this, it was decided that the materials will be reloaded the next morning and taken back to the police Station for keeping under Police custody.

Based on the above, prima facie, it appears that there is involvement of Officers of NRL Warehouse which needs to be instigated in details".

16. On the basis of this report, the proceedings were initiated and the writ petitioners were placed under suspension pending enquiry. The writ petitioner, Sri Diganta Haloi was served with a memorandum of charges on 10.06.2014 accompanied by the statement of Article of Charges and the statement of imputation of misconduct in support of the Articles of Charges. These were also accompanied by the list of documents and the list of witnesses.

"STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI DIGANTA HALOI, ASSISTANT MANAGER (COMMERCIAL), NUMALIGARH REFINERY LIMITED, NUMALIGARH

1. *Shri Diganta Haloi, while functioning as Assist. Manager (Commercial) at NRL Warehouse, Numaligarh was looking after all activities related to disposal including scrap besides supervision of receipt and issue of materials in store and preservation of his supervision. While posted and functioning as Asstt. Manager Numaligarh, Shri Diganta Haloi, dealt with the disposal of CDU fire damaged it*

E-auction ID : 42254 dated 17-02-2014 of CDU/VDU. The fire damaged burnt cables were kept at the designated Scrap Yard located in North of Road No 6 in between road no.5 & 7, but Shri Diganta Haloi on 15-03-2014, in connivance with Shri Pankaj Boro unauthorizedly had allowed M/s Steelelex to load 31.95 MT of cables which was not part of the auction from other areas viz. near the sub-station no. 3 open yard 01 and open yard 04.

2. *During the said period, Shri Diganta Haloi had raised the "Request for Official for witness' on 14-03-2014 where he had mentioned the quantity as 'Cut/damaged cables 60 MT (approx)', although the e-auction was held for CDU/VDU-burnt cables and no weight was taken prior to the e-auction.*
3. *Shri Diganta Haloi allowed the lifting of three (3) trucks of material from NRL premises by the buyer on 15-03-2014, which was not at all from the auctioned lot.*
4. *During disposal of the scrap material on 15-03-2014, Shri Diganta Haloi in connivance with Shri Pankaj Boro had allowed M/s Steelelex (India) to take away 2 coils of Copper Cable of length 685 metres with a book value of Rs.16.05 lakhs from the open yard 01 as part of the scrap, which was not part of the auction.*
5. *Shri Diganta Haloi in connivance with Shri Pankai Boro had preplanned to dispose scrap on [5-03-2014 which was an off day in NRL to M/s Steelelex (India) and issue non-auctioned materials as per his convenience by taking advantage of absence of other staff of the Warehouse.*

The above charges against Shri Diganta Haloi are found prejudicial to the interest of Numaligarh Refinery Limited which tantamount to the misconduct committed by him within the meaning of Sub Rule (1), (6) and (20) of Rule 1. Misconduct under Part — IIL: Discipline and appeal Rules of the Conduct, Discipline and Appeal Rules, 1995 for management staff of Numaligarh Refinery Limited, as applicable to him:

- i) *Theft, fraud, forgery, embezzlement, misappropriation, dishonesty in connection with the business or property of the company or of property of another person within the premises of the company.*
- ii) *Acting in a manner prejudicial to the interest of the Company*
- iii) *Breach of rules duly notified or violation of procedures laid down in connection with the company's business.*

Further, he acted in a manner prejudicial to the interest 'of the company and contravened rule 4(a), 4(b) & 4(c) of Rule 4 of part-II: Conduct Rules of the Conduct, Discipline and Appeal Rules, 1995 Or management staff of Numaligarh Refinery Limited.

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI DIGANTA HALOI, ASSISTANT MANAGER (COMMERCIAL), NUMALIGARH REFINERY LIMITED, NUMALIGARH

Shri Diganta Haloi, while functioning as Assist. Manager (Commercial) at NRL Warehouse was looking after all activities related to disposal including scrap besides supervision of receipt and issue of materials in store and preservation of materials etc. under his supervision.

1. *Whereas during the said period and while functioning in the aforesaid office by Shri Diganta Haloi, a Delivery Order dated 13-03-2014 was issued on M/s Steelex (India) for CDU-VDU burnt cables against E-auction ID: 42254 dated 17-02-2014 for disposal of CDU Fire damaged items. For the said E-auction, the auctioned scrap cables were kept in the designated Scrap Yard located in North of Road No6 in between road no-5 &7 . However, during actual disposal on 15-03-2014, Shri Diganta Haloi allowed the buyer M/s Steelex (India) to load 31.95 MT of cables from other locations which were not part of the auction i.e. Substation-3, Open Yard 01 in 3 trucks i.e. Truck no. WB41D/1134-9.620 MT, Truck no. WB25B/9955 - 8.810 MT and Truck no. WB23C/195513.520 MT. Such unauthorized issue of materials which were not part of the auction from locations other than the location of the auctioned materials is gross violation of official rules-and amounts giving undue favour and pecuniary advantage to the buyer and causing loss to the organization. |*

2. *Whereas during the said period, Shri Diganta Haloi had raised the 'Request for Deputation of CISF Official for witness' on 14-03-2014 where he had mentioned the quantity as 'Cut/damaged cables : 60 MT (approx). Since the item description was mentioned as Cut/damaged cables' instead of CDU/VDU burnt cables as per E' . auction, it might not have been possible for the CISF personnel to raise any objection while unburnt cables | were being loaded on the trucks or when the materials were being taken out of the refinery gate,*

Further, shri Diganta Haloi had mentioned that the total weight of the scrap cables was assumed to be 60 MT based on 'eye estimation' and the same had to be estimated due to CISF requirement of quantification of materials going out of the refinery. A net weight of 31.95 MT materials, which is approximately 50% of the 'eye estimated' 60 MT, have been disposed by 3 trucks on 15-03-2014. (Truck no. WB41D/1134 - 9.620 MT, Truck no. WB25B/9955 -8.810 MT and Truck no. WB23C/195513.520 M7). However, back-up document like weighment sheet and entry in log book was not maintained. The change in item description by Shri Diganta Haloi could have been / done to deceive the CISF personnel. As for mentioning of the total weight of the auctioned materials as 60 MT based on 'eye estimation', the same was done without any basis and this was an arbitrary figure which could have been changed as per his convenience with a motive to give undue advantage to the buyer and causing loss to the organization.

3. That during the said period and while functioning in the aforesaid office Shri Diganta Haloi allowed lifting of three (3) trucks of material from NRL premises by the buyer M/s Steelex, which was not at all from the auctioned lot. The scrap materials, auctioned vide E-auction ID : CDU/VDU burned cables, were kept at the scrap yard located in North of Road No6 in between road no9 & 7 of the Refinery by the Instrumentation and Electrical maintenance Departments. However, Shri Diganta Haloi allowed two trucks of the buyer party M/s Steelex bearing registration nos. WB41D/1134 and WB25B/9959 to load cables weighing 9.620 MT and 8.810 MT respectively from the Sub station no. 3 area. This is evident from the fact that Shri Diganta Haloi was present at Sub station no. 3 area on 15-03-2014 at the time of loading of the two trucks and he had identified the materials to be loaded. Shri Diganta Haloi was also present in the open yard 01 and open yard 04 from where another truck bearing registration no. WB23C/1955 was allowed to load two coils of copper cables from the open yard 01 and some cables from open yard 04 and the weight of materials being 13.520 MT. In these two locations also he had identified the materials to be loaded. All these materials were not part of the e-auction ID : 42254 dated 17-02-2014. Shri Diganta Haloi signed the 3 invoices . no. 1101 600530, 1101600531 and 1101600532, 3 gate passes with serial nos. 343, 344 and 345 and 3 delivery challan nos. 421/2013-14, 422/2013-14 and 423/2013-14 all dated 15-03-2014 for the three trucks. NRL authority vide letter dated 17-04-2014 informed the In-charge of NRL Police outpost that the materials sold by : the E-auction no. 42254 dated 17-02-2014 are still lying with NRL and confirmed that the materials loaded in 3 (three)

trucks and seized by police on 15-03-2014 were not intended to be auctioned by NRL. The same has also been mentioned in the order dated 06-05-2014 of the Court of Chief Judicial Magistrate, Golaghat issued against petition filed by General Manager (Commercial & Legal). From the above it is evident that the auctioned materials are still tying with NRL in its premises i.e. the scrap yard and Shri Diganta Haloi allowed Ws Steelelex fo Toads (three) tricks of material; which were not part of the auction from NRL premises.

4. Shri Diganta Haloi in his examination stated that while the proposal for acceptance of bid of M/s Steelelex was under process, the bidder came to know that they had wrongly considered certain items for the 1st Lot and they are unable to accept their H1 bid. They insisted that this was due to wrong information given by Warehouse and they are likely to forfeit their EMD amounting to Rs. 1.75 lakhs for the 1st lot. They demanded Warehouse to refund their EMD or compensate their loss of Rs.. 1.75 lakhs. As per Shri Diganta Haloi, due to the pressure of the bidder, he jointly with Sr. Manager (Materials) decided to compensate the bidder by handing over old cramped twisted copper cable of around 1.5 tonne lying in the OY01 for a long period of time. Shri Diganta Haloi informed that approximately 1.5 tonne of the cable was given because earlier similar cable was sold for around Rs 85 per kg and considering this rate the value of the cable amounts to Rs. 1.27 lakhs.

After physical verification at Open Yard 01 and also from the photograph of the cables taken on the truck subsequently while the truck was under police custody, the cables dispatched unauthorisedly from Open Yard 01 on 15-03-2014 is confirmed to be Copper Cable with Tag no. E-CA-CU-300-A. During Physical verification carried out by Commercial Dept., it has been found that there is shortage of 685 metres Copper Cable with Tag no. E-CA-CU-300-A. The book value of the short quantity as per SAP record works out to Rs. 16.05 lakhs and the theoretical weight works out to 8.4 MT. The actual weight of the above 2 coils of cables loaded on the Truck no. WB23C/1955 was found to be 8.83 MT (which also includes weight of mud / debris which was observed on the truck) which is more or less in line with the theoretical weight.

Such unauthorized issue of materials, to compensate the buyer towards forfeiture of EMD or for whatever reasons, from the Open Yard of the Warehouse which were not part of the auction is gross violation of official rules and amounts to breach of trust giving undue favour and pecuniary advantage to the buyer and causing loss to the organization.

5. Whereas during the said period, Shri Diganta Haloi suggested to his senior Shri Pankaj Boro to allow disposal of scrap to the buyer M/s Steelex (India) on 15-03-2014 which was an off day. As per conditions of delivery of the E-auction, loading & delivery is permitted only on working days and during working hours of NRL Stores. Shri Diganta Haloi had stated that on 15-03-2014 he tried to contact Nakul Bora but he was not available. On being asked regarding the same, Shri Nakul Bora in his statement stated that he was neither informed nor contacted for the same and he was not aware of any decision to dispose scrap on 15-03-2014. He further Stated that Shri Diganta Haloi had subsequently called on his mobile phone and asked him to say in case someone inquires regarding the incident on 15-03-2014, then he should reply that Shri Diganta Haloi had asked him to come on 15-03-2014 but he could not come due to some personal problem.

From above it is evident that Shri Diganta Haloi had preplanned to dispose scrap on 15-03-2014 which was an offday to M/s Steelex (India) and issue non-auctioned materials as per his convenience by taking the advantage of absence of other staff of the Warehouse thereby giving undue favour and pecuniary advantage to the buyer and causing loss to the organization.

The above acts of commission and omission on the part of Shri Diganta Haloi are unbecoming on his part as a public servant and he failed to promote interest of NRL and showed lack of integrity and devotion to duty in contravention of Rule 4, Part - II: Conduct Rules of CDA rules for management staff of NRL in addition to the misconduct stated at Annexure I".

17. In response to the Articles of Charges and the statement of imputation of misconduct in support of the Article of Charges, writ petitioner Sri Diganta Haloi filed his written statement of defence on 12.07.2014 upon due extension granted by the Disciplinary Authority on such prayers made by the said petitioner. Thereafter a notice of enquiry was issued by the Enquiry Officer on 05.12.2014 directing the petitioner to appear before the Enquiry Officer on the

date and time fixed mentioned therein.

18. Similarly, the petitioner, Sri Pankaj Boro, was also issued a suspension order on 31.03.2014 pending departmental enquiry. He was served with a memorandum on 10.06.2014 containing the statement of Articles of Charges framed against the said petitioner along with the statement of imputation of misconduct and accompanied by the list of documents relied upon as well as the list of witnesses, which are extracted below:-

“MEMORANDUM”

1. *Numaligarh Refinery Limited proposes to hold an inquiry against Shri Pankaj Boro, Senior Manager (Materials) under Rule 6, Part — III: Discipline and Appeal rules of the Conduct, Discipline and Appeal Rules, 1995 for Management Staff of Numaligarh Refinery Limited. The substance of the Imputations of Misconduct in respect of which the inquiry 1s proposed to be held is set out in the enclosed statement of Articles of Charge (Annexure I). A statement of the Imputations of Misconduct in support of each Article of Charge is enclosed as Annexure II. A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed as Annexure III and IV.*
2. *As provided under Rule 6 (3) Part — III: Discipline and Appeal rules of the Conduct, Discipline and Appeal Rules, 1995 for Management Staff of Numaligarh Refinery Limited, Shri Pankaj Boro is directed to submit within 15 days of the receipt of this Memorandum, a written statement of his defense and also to state whether he desires to be heard in person.*
3. *Shri Pankaj Boro is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.*
4. *Shri Pankaj Boro is further informed that if he does not submit his written statement of defense on or before the date specified in para 2 above, or does not appear in person or through the assisting management staff of the company before the inquiring authority as provided in sub rule 6 of Part — III: Discipline and Appeal Rules of the Conduct, Discipline and Appeal Rules 1995 for Management Staff of Numaligarh Refinery Limited or otherwise fails*

or refuses to comply with any of the provisions of those rules, the Inquiring Authority may hold the inquiry ex parte.

5. *Attention of Shri Pankaj Boro is invited to Rule 16 (a), Part — II: Conduct Rules of the Conduct, Discipline and Appeal Rules, 1995 for Management Staff of Numaligarh Refinery Limited under which no management staff shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service in the Company.*

6. *The receipt of this Memorandum may be acknowledged ".*

STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI PANKAJ BORO, GER (MATERIALS), NUMALIGARH REFINERY LIMITED, NUMALIGARH

1. *Shri Pankaj Boro, while functioning as Sr. Manager (Materials) at NRL Warehouse was looking after all activities related to Warehouse including receipt, issue of materials and disposal including scrap besides some unrelated jobs such as sale of hydrocarbon products such as Sulphur, RPC / CPC Dust under his supervision. While posted and functioning as Sr. Manager (Materials) and dealing with the disposal of CDU fire damaged items he did not heed the advice of his superior viz. DGM (C&L), who had reservations for floating_auction with quantity as 'lot' and advised Shri Pankaj Boro to look into certain difficulties due to floating auction in 'lots'. Shri Boro acted upon an e-mail from M/s Steelex (India) and went ahead for accepting their bid for only the 2nd lot -CDU/VDU burnt cables, by an approving committee of lower rank as per DOA and did not inform the earlier committee members including his superiors about the same.*

2. *Shri Pankaj Boro allowed disposal of scrap on 15-03-2014 which was_an off day in NRL to M/s Steelex (India) in contravention of E-auction terms & condition without any approval and in absence of any other supporting C, staff other than Shri Diganta Haloi, Asstt. Manager (Commercial).*

3. *Shri Pankaj Boro allowed the lifting of three (3) trucks of material from NRL premises by the buyer on 15-03- 2014, which was not at all from the auctioned lot. 4, Shri Pankaj Boro did not effectively supervise the activities of his sub ordinate Shri Diganta Haloi and dependedon him for all facts without any verification at his end. The materials for the e-auction of*

CDU/VDU fire damaged burnt cables were kept at the designated Scrap Yard located in North of road no6 in between road no5 & 7 but Shri Boro in connivance with Shri Haloi had allowed the materials to be loaded from other areas viz. near the sub-station no. 3, open yard 01 and open yard 04.

5. Shri Pankaj Boro did not raise any objection or check the accuracy on the 'eye estimation' of 60 MT made by Shri Haloi to be the weight of the lot although the auction was held on 'lot' and weight of scrap was not taken initially at the time of approval for disposal of CDU fire damaged items.

6. Shri Pankaj Boro in connivance with Shri Diganta Haloi allowed M/s Steelex (India) to take away 2 coils of Copper Cable of length 68 685 metres with a book value of Rs. 16.05 lakhs from the open yard 01 as part of the scrap on 15-03-2014.

The above charges against Shri Pankaj Boro are found prejudicial to the interest of Numaligarh Refinery Limited which tantamount to the following misconducts committed by him within the meaning of Sub Rule (1), (6), (7), (10) and (20) of - Rule 1. Misconduct under Part — III: Discipline and appeal Rules of the Conduct, Discipline and Appeal Rules, 1995 for management staff of Numaligarh Refinery Limited, as applicable to him:

- i) *Theft, fraud, forgery, embezzlement, misappropriation, dishonesty in connection with the business or a property of the company or of property of another person within the premises of the company.*
- ii) *Acting in a manner prejudicial to the interest of the Company*
- iii) *Willful insubordination or disobedience, whether or not in combination with others of any lawful and reasonable order of his superior.*
- iv) *Neglect of work or negligence in the performance of duty including malingering or slowing down of work. eT : v) Breach of rules duly notified or violation of procedures laid down in connection with the company's business.*

Further, he acted in a manner prejudicial to the interest of the company and contravened rule 4(a), 4(b) & 4(c) of Rule 4 of part-II: Conduct Rules of the Conduct, Discipline and Appeal Rules, 1995 for management staff of Numaligarh Refinery Limited.

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI PANKAJ BORO, SR. MANAGER (MATERIALS), NUMALIGARH REFINERY LIMITED, NUMALIGARH

Shri Pankaj Boro, while functioning as Sr. Manager (Materials) at NRL Warehouse was looking after all activities related to Warehouse including receipt, issue of materials and disposal including scrap besides some / unrelated jobs such as sale of hydrocarbon products such as Sulphur, RPC / CPC Dust under his supervision.

1. *That during the said period and while functioning in the aforesaid office by Shri Pankaj Boro, an E-auction ID : 42254 dated 17-02-2014 for disposal of CDU Fire damaged items in 2 'lots' viz — 1lot of 'CDU/VDU Fire damaged Ferrous and non-ferrous scrap metals' and 1 lot of 'CDU- VDU burnt cables' was held. M/s Steelex (India) was the H1 bidder for both the lots. While the proposal for acceptance of the H1 bid was under process, one of the members of the approval Committee i.e. DGM (C&L) to whom the proposal was placed on 03-03-2014 had certain reservation for floating auction with quantity as 'lot'. Due to this DGM (C&L) discussed the matter over phone with Shri Pankaj Boro and told him that disposal should not be done in lots as there was chance' of party picking up items from nearby area which are not part of the auctioned lots. Pankaj Boro had ~ agreed that there will be difficulty to exercise control during dispatch of the scrap in lots especially the 1st lot of metal scrap which consisted of different ferrous & non-ferrous materials and agreed for segregation of this lot into different categories. As for the 2nd lot, although DGM (C&L) did not dwell on it in great details, a@ the issue of difficulty of disposing in lot remained the same albeit of lesser value, DGM (C&L) mentioned that there will the same problem as of the '1st lot. Further, he advised Pankaj Boro to look into these difficulties and returned the file without signing. Meanwhile, M/s Steelex (India) vide e-mail dated 04-03-2014 intimated that they had wrongly quoted for the 1s! Lot - CDU/VDU Fire damaged Ferrous and non-ferrous scrap metals and that they will not be able to lift this material. However, they intimated*

that their quoted price for the 2^o? lot - CDU-VDU burnt cables is in order. Subsequently, Shri Pankaj Boro advised Shri Diganta Haloi, Asstt. Manager (Commercial) vide mail on the same day to put up approval note for Lot no. 2 and accordingly approval was obtained for accepting the H1 bid of M/s Steelex (India) for only the 2TM4 lot - CDU/VDU burnt cables by an approving committee of lower rank as per DOA, than that of the earlier proposal and the same was not intimated to DGM (C&L) and other members of the earlier committee.

2. That during the said period and while functioning in the aforesaid office, Shn Pankaj Boro allowed disposal of scrap to a buyer M/s Steelex (India) on 15-03-2014 which was an off day and supporting staff for loading supervision and weighment of trucks & materials was absent. As per Clause no. 29.0 (a) of Conditions of Delivery under 'Conditions of the E-auction Sale', it is stated that 'Loading & delivery will be permitted only on working days and during working hours of NRL Stores'. However, in violation of this clause, the scrap cables were dispatched on an off day without any approval from any authority.

3. That during the said period and while functioning in the aforesaid office Shri Pankaj Boro allowed lifting of three (3) trucks of material from NRL premises by the buyer M/s Steelex, which was not at all from the auctioned lot. The scrap materials, auctioned vide E-auction ID : 42254 dated 17-02-2014 consisting of CDU/VDU burned cables, were kept at the scrap yard located in North of Road No6 in between road no5 & 7 of the Refinery by the Instrumentation and Electrical maintenance Departments. However, Shri Pankaj Boro allowed two trucks of the buyer party M/s Steelex bearing registration nos. WB41D/1134 and WB25B/9955 to load cables weighing 9.620 MT and 8.810 MT respectively from the Sub-station no. 3 area. This is evident from the fact that Shri Pankaj Boro was present at Sub-station no. 3 area on 15-03-2014 at the time of loading of the two trucks. Shri Pankaj Boro was also present in the same premises from where another truck bearing registration no. WB23C/1955 was allowed to load two coils of copper cables weighing 8.83 MT from the open yard 01, which was not a part of the said auction. Shri Pankaj Boro also signed the 3 invoices no. 1101600530, 1101600531 and 1101600532 and 3 gate passes with serial nos. 343, 344 and 345 all dated 15-03-2014 for the three trucks. NRL authority vide letter dated 17-04-2014 informed

the In-charge of NRL Police outpost that the materials sold by the E-auction no. 42254 dated 17-02-2014 are still lying with NRL and confirmed that the materials loaded in 8 (three) trucks and seized by police on 15-03-2014 were not intended to be auctioned by NRL. The same has also been mentioned in the order dated 06-05-2014 of the Court of Chief Judicial Magistrate, Golaghat issued against petition filed by General Manager (Commercial & Legal). From the above it is evident that the auctioned materials are still lying with NRL in its premises i.e. the scrap yard and Shri Pankaj Boro allowed M/s Steelex to load 3 (three) trucks of material, which were not part of the auction from NRL premises.

4. That during the said period and while functioning in the aforesaid office, Shri Pankaj Boro earmarked his subordinates Shn Diganta Haloi and Shri Nakul Bora for scrap disposal. For the said E-auction ID : 42254 dated 17-02-2014 for disposal of CDU Fire damaged items, the auctioned scrap cables were kept in the designated Scrap Yard located in North of Road No6 in between road no5 & 7 by Instrumentation and Electrical maintenance Department during recovery of the CDU/VDU plant after the Fire on May 2013. The Insurance Company surveyor had also visited this scrap yard for taking photographs of the auctioned lot in presence of NRL officers. However, during actual disposal on 15-03-2014, the buyer M/s Steelex (India) was allowed to load cables from other locations i.e. Substation-3, Open Yard 04 and Open Yard 01 in 3 trucks. As per Shn Pankaj Boro, Diganta Haloi had intimated him that the cables loaded in Substation-3 & Open Yard 04 (Cable Yard) are also part of the CDU/VDU damaged cables and part of the said E-auction. Being Head of Department of NRL's Warehouse, such action of complete dependence without verification, on part of Shri Pankaj Boro reflects malafide intention and utter negligence in supervision of works of his subordinates.

5. The auction for the said E-auction ID : 42254 dated 17-02-2014 for disposal of CDU Fire damaged cables were on ' 1 lot' basis and no weight was mentioned. However, in the 'Request for Deputation of CISF Official for witness' under description of materials, Shri Diganta Haloi had mentioned the quantity as Cut/damaged cables : 60 MT (approx). A net weight of 31.95 MT materials, which is approximately 50%, have been disposed by 3 trucks on 15-03-2014. (Truck no. WB41D/1134 - 9.620 MT, Truck no. WB25B/9955 - 8.810 MT and Truck no. WB23C/195513.520 MT). Shn Diganta Haloi in his statement had mentioned that the total weight of the scrap cables was assumed to be 60 MT based on 'eye estimation' by him and Shn Pankaj

Boro. On enquiry, Shn Pankaj Boro has denied making any assumption for the weight and instead stated that Shri Diganta Haloi had estimated the same due to CISF requirement of quantification of materials going out of the refinery.

There was neither any computer generated weighment slip from the Weigh Bridge nor any record of weighment in the Warehouse logbook. The record of the weights of the empty trucks were found written on the back side of the 'Request for Deputation of CISF Official for witness'. The mention of such quantity as 60 MT is arbitrary, without any basis and Shri Pankaj Boro did not raise any objection or failed to check the accuracy on the 'eye estimation.

6. That during the said period and while functioning in the aforesaid office by Shri Pankaj Boro, scrap cables were disposed against the E-auction ID : 42254 dated 17-02-2014. The officer responsible for disposal of scarp Shn Diganta Haloi in his examination stated that while the proposal for acceptance of bid of M/s Steelex was under process, the bidder came to know that they had wrongly considered certain items for the 1st Lot and they are unable to accept their H1 bid. They insisted that this was due to wrong information given by Warehouse and they are likely to forfeit their EMD amounting to Rs. 1.75 lakhs for the 1st lot. They demanded Warehouse to refund their EMD or compensate their loss of Rs. 1.75 lakhs. As per Shri Diganta Haloi, due to the pressure of the bidder, he jointly with Sr. Manager (Materials) decided to compensate the bidder by handing over old Cramped twisted copper cable of around 1.5 tonne lying in the OY01 for a long period of time. Shri Diganta Haloi informed that approximately 1.5 tonne of the cable was given because earlier similar cable was sold for around Rs 85 per kg and considering this rate the value of the cable amounts to Rs. 1.27 lakhs,

After physical verification at Open Yard 01 and also from the photograph of the cables taken on the truck subsequently while the truck was under police custody, the cables dispatched unauthorisedly from Open Yard 01 on 15-03-2014 is confirmed to be Copper Cable with Tag no. E-CA-CU-300-A. During Physical verification carried out by Commercial Dept., it has been found that there is shortage of 685 metres Copper Cable with Tag no. E-CA-CU-300-A. The book value of the short quantity as per SAP record works out to Rs. 16.05 lakhs and the theoretical weight works out to 8.4 MT. The actual

weight of the above 2 coils of cables loaded on the Truck no. WB 23 C/1955 was found to be 8.83 MT (which also includes weight of mud/debris which was observed on the truck) which is more or less in line with the therotical weight.

Shri Pankaj Booro during his examination has admitted that Shri Diganta Haloi had intimated him regarding request for compensation by M/s Steelex (India) and that Shrt Diganta Haloi had suggested giving cables from the Open Yard 01. Although Pankaj Boro had stated that he declined Shri Diganta Haloi's suggestion, his involvement in the irregularity cannot be ruled out since he was also present in the Warehouse office on 15.03.2014.

The above acts of commission and omission on the part of Shri Pankaj Boro are unbecoming on his part as a public swervant and he failed to promote interest of NRL and showed lack of integrity and devotion to duty in contravention of Rule 4. Part-II Conduct Rules of CDA rules for management staff of NRL in addition to the misconduct stated at Anexure I."

19. The writ petitioner, Sri Pankaj Boro, thereafter submitted his written statement of defence on 23.07.2014 in response to the charges levelled against the petitioner. Notice of enquiry was served on Sri Pankaj Boro on 05.08.2014. And the notice of enquiry was also issued by the Enquiry Officer directing the petitioner to appear before the date and time mentioned in the said notice.

20. The enquiry report in respect of the writ petitioner, Sri Diganta Haloi was submitted on 09.04.2015, whereby out of the 5 (five) charges against the writ petitioner, Charges 1, 2, 3 and 4 were found to be partially proved and Charge No.5 was found to be proved. Similarly, the enquiry report in respect of Sri Pankaj Boro was submitted on 20.03.2015 by the Enquiry Officer, wherein Charges No. 1, 2 and 5 were found to be proved by the Enquiry Officer, and Charges No.3, 4 and 6 were found to be partially proved. On the basis of these findings, the Disciplinary Authority imposed a punishment of removal from service, which will not be treated to be a disqualification for further

employment. Subsequently, the Appellate Authority modified the penalty imposed to that of compulsory retirement, which was also sustained by the second Appellate Authority.

21. At the outset, it is necessary to record that none of the writ petitioners have raised any dispute regarding the competence of the Disciplinary Authority and/or the Appellate Authority as well as the Enquiry Officer and the Presenting Officer in initiating or conducting the enquiry as well as the imposition of the penalty on the basis of the enquiry report. The dispute in the present writ petition is with regard to the manner of appreciation of evidence in a departmental enquiry with regard to the charges levelled against the writ petitioner. More particularly, in respect of the documents in electronic form, namely, the DVDs containing the video clips and the photographs, which were supplied to the Enquiry Officer and further enquiry on the said materials was directed to be conducted by the disciplinary authority. Before embarking to decide on the question of correctness of the enquires conducted and the procedure followed as had been laid down under the Rules, it would be necessary to refer to the Rules, namely, the '*Numaligarh Refinery Limited, Conduct, Discipline And Appeal Rules for Management Staff*'. 'Misconduct' has been described under Rule 1 of part III. There are as many as 42 instances cited, which are considered to be 'misconduct' under the said Rule. Under Rule 2 of the 'Penalties', there are primarily 2 (two) penalties prescribed. namely, 1. Minor Penalties, comprising of Censure or warning and the Major Penalties comprising the following:

- a) Withholding of increments of salary with or without cumulative effect;
- (b) withholding of promotion;

- (c) recovery from salary or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the company by negligence or breach of orders;
- (d) reduction to a lower grade or post to a lower stage in a time scale;
- (e) removal from service which shall not be a disqualification for future employment;
- (f) dismissal from service which shall ordinarily be a disqualification for future employment.

22. The procedure for imposing of penalty is prescribed under Rule 6 (7) of the '*Numaligarh Refinery Limited, Conduct, Discipline And Appeal Rules for Management Staff*'. Under Rule 6 of the '*Numaligarh Refinery Limited, Conduct, Discipline And Appeal Rules for Management Staff*' it is provided that after definite and distinct charges are framed on the basis of the allegations against the Management Staff by the Disciplinary Authority, the charges together with the list of allegations, accompanied by the list of documents and the witnesses shall be communicated in writing to the Management Staff, who shall be required to submit the written statement of defence within a period of 15 (fifteen) days on whether he admits or denies any or all of the charges. Upon receipt of the written statements, an enquiry may be held by Enquiring Authority, so appointed by the Disciplinary Authority unless the charges are accepted by the authority in his written statements. Upon Enquiry Officer and Presenting Officer being appointed, the enquiry proceedings are to be completed as per the procedure prescribed. The Rules permit the management staff to take assistance of any other Management Staff of the company or any public servant but not a Legal Practitioner unless the case is presented by a

Legal practitioner or a Prosecuting Officer of the Central Bureau of Investigation or a Government Law Officer.

23. On the date fixed by the Enquiring Officer, Management Staff shall appear before the Enquiry Officer at the time and place specified in the notice and the Enquiry Officer shall ask the Management Staff whether he pleads guilty or has any defence to make. If the Management Staff does not plead guilty, the Enquiry Officer shall adjourn the matter to a later date not exceeding 7 days after which, the Management Staff may be permitted to inspect the documents, submit a list of additional documents be supplied with copies of statements of witnesses etc. Under Rule 21 of the Discipline and Appeal Rules, the Disciplinary Authority for reasons to be recorded in writing is empowered to remit the case to the Enquiring Authority for fresh or further enquiry and the Enquiry Authority shall thereupon proceed to hold further enquiry according to the provisions of law.

24. Rule 9 provides for pre-mature retirement of staff. Under Rule 9 pre-mature retirement of staff is permissible, where any employee attains the age of 50 years and is considered to be medically unfit, inefficient or of doubtful integrity. The criteria for judging medical unfitness, inefficiency of the doubtful integrity of the Management Staff proposed to be pre-maturely retired are prescribed under Rule 9 (2).

25. The relevant extract of Rule 6 and Rule 9 are reproduced below:-

“ 6. PROCEDURE FOR IMPOSING MAJOR PENALTIES

Subject to the provisions of Rule:

(1) The disciplinary Authority or an Authority as specified in Schedule I may impose any of the penalties specified in Rule above. Provided that no order imposing any major penalties specified in Rule shall be made except after

an inquiry is held in accordance with these rules.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiry into the truth of any imputation of misconduct or misbehavior against a Management Staff, it may itself inquire into or appoint any other public servant (hereinafter referred to as Inquiring Authority) to inquire into the truth thereof.

EXPLANATION

i When the Disciplinary Authority itself holds the inquiry, any reference in sub-rule (1) to sub-rule (20) to the Inquiring Authority shall be construed as reference to the Disciplinary Authority.

ii. The reference to any other public servant being appointed as the Inquiring Authority shall be deemed to include any retired Management Staff of the Company or any other Public Sector Undertaking or retired Government servant, or retired judge whose services are specifically engaged by the Company for speedy disposal of disciplinary Inquiries.

(3) Where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite and distinct charges on the basis of the allegations against the Management Staff. The charges, together with a list of allegations on which they are based a list of documents by which and list of witnesses by whom the charges are proposed to be sustained, shall be communicated in writing to the Management Staff who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days) a written statement whether he admits or denies any of or all the charges.

EXPLANATION

It will not be necessary to show any document listed with the charge sheet or any other documents to the Management Staff at this stage.

(4) On receipt of the written statement of the Management Staff, or if no such statement is received within the time specified, an inquiry may be held by an Inquiring Authority so appointed by the Disciplinary Authority or the Competent Authority under sub-clause (2). Provided that it may not be necessary to hold an inquiry in respect of the charges admitted by the Management Staff in his written statement. The Disciplinary Authority or the Competent Authority shall, however, record its findings on each such charge.

(5) Where the Disciplinary Authority or the Competent Authority appoints an Inquiring Authority for holding an inquiry, it may, by an order appoint a

member of the Management Staff or a public servant to be known as the Presenting Officer to present on its behalf the case in support of the charges.

NOTE

Where a case has been investigated by the Central Bureau of Investigation, the Presenting Officer may be an officer nominated by the CBI or Government Law Officer.

(6) The Management Staff may take the assistance of any other Management Staff of the Company, or any Public Servant {only in respect of cases where the Presenting Officer appointed is a public servant} but shall not engage a legal practitioner for this purpose unless the case is being presented by a legal practitioner or a Prosecuting Officer of the Central Bureau of Investigation or a Government Law Officer (such as Legal Adviser, Junior Legal Adviser).

(7) On the date fixed by the Inquiring Authority, the Management Staff shall appear before the Inquiring Authority at the time and place specified in the notice. The Inquiring Authority shall ask the Management Staff, whether he pleads guilty or has any defence to make and if he pleads guilt to any of the charges, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the Management Staff concerned thereon. The Inquiring Authority shall return a finding of guilt in respect of those charges to which the Management Staff pleads guilty.

(8) If the Management Staff does not plead guilty, the Inquiring Authority shall adjourn the case to a later date not exceeding 7 days, after recording an order 'that the Management Staff may, for purpose of preparing his defence;

i. Inspect the documents listed with the charge sheet :

ii. Submit a list of additional documents and witnesses that he wants to examint ;

iii. Be supplied with the copies of the statements of witnesses if any, listed in the charge sheet.

NOTE

Relevancy of the additional documents and these witnesses referred to in sub-clause 8 (ii} above will have to be given by the Management Staff

concerned and the documents and the witnesses shall be summoned if the

Inquiring Authority is satisfied about their relevance to the charges under inquiry.

(9) *The Inquiring Authority shall ask the Authority in whose custody or possession the documents are kept, for the production of the documents on such date as may be specified.*

(10) *On receipt of the requisition under sub-rule (9) the Authority having the custody or possession of the requisitioned documents, shall arrange to produce the same before the Inquiring Authority on the date, place and time specified in the requisition. Provided that the Authority having the custody or possession of the requisitioned documents may claim privilege if production of such documents will be against the public interest or the interest of the Company. In that event, it shall inform the Inquiring Authority accordingly.*

(11) *On the date fixed for the inquiry, the oral and documentary evidence by which a articles of charges are proposed to be proved shall be produced by or on behalf f the Disciplinary Authority. The witnesses produced by the Prese1. it Officer shall be examined by the presenting Officer and may be. cross examined by or on behalf of the Management Staff. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross examined but not cn a new m-t 'without the permission of the Inquiring Authority. The Inquiring Authority may also put such questions to the witness as it thinks fit.*

(12) *Before the close of the case for or on behalf of the Disciplinary Authority or the Competent Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce document and / or-witnesses not included in the list of documents and/or the list of witnesses communicated with the charge sheet or may itself call for new evidence or recall or re-examine any witness. In such a case, the Management Staff shall be given opportunity to inspect the documentary evidence before it is taken n record or to cross-examine a witness, who has been so summoned.*

(13) *When the case for the Disciplinary Authority or the Competent Authority is closed, the Management Staff shall be asked to present his defence and produce evidence.*

(14) *The Management Staff may examine himself on his awn behalf if he so prefers. The witnesses produced by the Management Staff shall then be examined and shall be liable to cross-examination and re-examination*

according to the provisions applicable to the witnesses for the Disciplinary Authority. The Management Staff shall be entitled to re-examine any of its defence witnesses on any new matter only with the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the defence witnesses as it thinks fit.

(15) The Inquiring Authority may, after the Management Staff closes his case, and shall, if the Management Staff has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Management Staff to explain any circumstances appearing in the evidence against him.

(16) The Management Staff concerned shall be supplied with a copy of the proceedings of the day, after conclusion of the day's sitting.

(17) After the completion of the production of the evidence the Management Staff and the Presenting Officer may file written briefs of their respective cases, within 15 days of the date of completion of the Production of evidence.

(18) if the Management Staff does not submit the written statement of defence referred to the sub-rule (3) on or before the date specified for the purpose or does not appear in person or through the assisting Management Staff of the Company or a public servant as provided in sub-rule (6) above, or fails otherwise fails or refuses to comply with any of the provisions of those rules, the Inquiring Authority may hold the inquiry ex parte.

(19) Whenever the Inquiring Authority, after having heard and recorded the whole or any part of the evidence in an Inquiry ceases to exercise jurisdiction therein and is succeeded by another Inquiring Authority which has, and which exercises, such jurisdiction, the Inquiring Authority so succeeding may act on the evidence so recorded by its predecessor and partly recorded by itself. Provided that if the succeeding Inquiring Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall examine, cross-examine and re-examine any such witnesses as herein before provided.

(20) i) After the conclusion of the inquiry, report shall be prepared and it shall contain :

(a) a gist of the charges;

- (b) a gist of the defence of the Management Staff in respect of each charge
- (c) an assessment of the evidence In respect of each charge :
- (d) the findings of each charge and the reasons therefore.

EXPLANATION

If in the opinion of the Inquiring Authority the proceedings of the inquiry establish any charge different from the original charge, it may record its findings on such charge ;

Provided that the findings on such charge shall not be recorded unless the on Management Staff has either admitted the facts on which such charge is based or has had a reasonable opportunity of defending himself against such charge, ii. The Inquiring authority, shall forward to the Disciplinary Authority or the Competent Authority the record of inquiry which shall include :

- (a) the report of the inquiry prepared by it under sub-clause (i) above ;
 - (b) the oral and documentary evidence produced in the course of inquiry;
 - (c) written briefs referred to in sub-rule (17), if any and
- (d) the orders, if any, made by the Disciplinary Authority or the Competent Authority and the Inquiring Authority in regard to the inquiry.*

(21) The Disciplinary Authority or the Competent Authority, may for reasons to be recorded by it in writing remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of this rule as far as may be.

(22) The Disciplinary Authority or the Competent Authority shall, if it disagrees with findings of the inquiring Authority on any charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(23) If the Disciplinary Authority or the Competent Authority having regard to its finding on all or any of the charges is of the opinion that any of the penalties specified in Rule 2 should be imposed on the Management Staff it shall, notwithstanding anything contained in Rule 7 make an order imposing such penalty.

(24) *If the Disciplinary Authority or the Competent Authority, having regard to its findings on all or any of the charges, is of the opinion that no penalty is called for. It may pass an order exonerating the Management Staff concerned."*

9. PREMATURE RETIREMENT OF STAFF

(1) *4 staff who has attained the age of 50 years and 1s considered to be medically unfit, inefficient or of doubtful integrity may be prematurely retired by the Competent Authority.*

(2) *The criterion for Judging medical unfitness, inefficiency or doubtful integrity of Management Staff proposed to be prematurely retired ts as follows :*

(a) *Medical Unfitness*

i) *if Management Staff has been on sick leave continuously for more than 6 months (after exhausting all available leave, including Special Sick Leave etc.), his case may be referred to a medical board for a thorough medical examination and report on:*

*-the disease he is suffering from;
— whether it is curable or incurable ;
— whether the disease is infeciious / contagious ;
— incase of curable disease, whether, the staff is likely to be fit to resume normal duties within a period of 18 months.*

ii) *If the Management Staff is not fii to resume dutics within a period of 18 months and in case of Management Staff suffering from an incurable and infectious / contagious disease cr suffering from lunacy or mental derangement and whose services cannot be utilised by the Company or whose attendance is ely to pose a health hazard to others, as may be certified by the Medical Board, premature retirement will be considered by the Competent Authority on recommendations of the concerned "Functional Director / Executive Director as the case may be.*

iii) *The above continued absence from duty would be where it occurs in addition to all leave (Sick Leave, Special Sick Leave, etc.), which has already been availed by the Management Staff for the same Illness.*

iv) *This premature retirement on medical grounds is independent of and without prejudice to the right of the Company under the contract of employment to dispense with the services of the Management Staff on one month's notice on any ground including inter-alia on grounds of medical unfitness in case of Management Staff who might not have attained the age of 50 years.*

v) *Wherever the management Staff is prematurely retired on medical grounds, he would be entitled to ex-gratia amount equivalent to 11/5 months emoluments (Basic + DA + Adhoc, wherever applicable}, for each completed year of service, or the monthly emoluments at the time of retirement multiplied by the balance months of service left before normal date of retirement, whichever is Jess. For e.g. Management Staff who has put in 24 years of service and has only one year of service for normal retirement will get ex-gratia payment of only 12 months emoluments and not 86 months emoluments, This amount would be in addition to any other benefits as would have been due on normal retirement.*

(b) *Inefficiency*

Inefficiency would be evaluated on the basis of the Appraisal Reports of the Management Staff. Where the Management Staff has secured "US" rating for a consecutive period of 5 years, the case may be considered for premature retirement on the recommendations of the Functional Director, provided that during this period of 5 years, its reports have been written by at least two different superiors. If not, an opportunity would be afforded to the individual staff to be assessed by another superior for at least a-year, if not more.

(c) *Doubtful integrity*

Management Staff who gets an adverse comment consecutively for 5 years on his integrity in his Annual performance Appraisal Report on the basis of proven instances of misconduct during each year may be recommended for premature retirement.

(3) All cases of premature retirement would be decided by the COMPETENT AUTHORITY ONLY.

(4) Management Staff on premature retirement would be entitled to all the normal retirement benefits which would have been due to them had they superannuated in the normal course.”

26. The enquiry which was initially conducted in respect of the writ petitioners resulted in an enquiry report, where charges Nos.1 to 4 were found to be partially proved and Charge No.5 to be proved in respect of the writ petitioner in WP(C)/7682/2016 (Sri Diganta Haloi) and in so far as WP(C)/6151/2016 (Sri Pankaj Boro) is concerned, the findings in respect of Charges Nos. 1, 2 and 5 were found to be proved and Charges No. 3 , 4 and 6 were found to be partially proved. What penalty would have entailed on these findings to be imposed by the Disciplinary Authority was not arrived at by the Disciplinary Authority on the basis of the enquiry report submitted by the Enquiry Officer. However, under the provisions of Rule 6 (21) of the Discipline and Appeal Rules, a further enquiry was conducted on the basis of the materials which were available on a DVD comprising of 20 numbers of video clips and 6 numbers of still images or photographs. Upon such directions of the Disciplinary Authority, the further enquiry was conducted and thereupon the Enquiry Officer returned a finding that Charge No.4 in respect of the writ petitioner, Sri Diganta Haloi, which was earlier found to be partially proved, stood proved and Charge No. 6 in respect of the writ petitioner, Sri Pankaj Boro, which was earlier partially proved, stood

fully proved. From perusal of materials placed before this Court these video clips and photographs contained in the DVD is seen to be in the possession of the Presenting Officer as per the first report of the Enquiry Officer. However, since these DVD containing the video clips and still photographs were not presented by the Presenting Officer during the process of exchange of documents, the Enquiry Officer did not permit the Presenting Officer to present the DVDs. However in view of the specific order passed by the Disciplinary Authority the further enquiry was conducted and these DVDs containing the video clips and the still photographs were presented during the course of the enquiry and on that basis the Charge No. 4 in respect of the writ petitioner, Sri Diganta Haloi and Charge No. 6 in respect of the writ petitioner, Sri Pankaj Boro were found to be proved. Consequently, the Disciplinary Authority imposed a penalty of removal from service without disqualification for further appointment.

27. The question as to how evidence is to be led in a departmental proceedings has been clearly laid down by the Apex Court in a series of Judgments. It is apposite to examine the law laid down by the Apex Court in this context.

28. The Apex Court in *Roop Singh Negi (supra)* has held that the departmental proceeding is a quasi-judicial proceeding. The Enquiry Officer performs a quasi-judicial function. The charges levelled against the delinquent Officer must be found to have been proved. The Enquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. In the context of the facts of *Roop Singh Negi (supra)* it was held that the evidence collected during investigation by the Investigating Officer against the accused by itself could not be treated to be evidence in disciplinary proceedings. No witness was examined to prove the said documents. The management

witnesses merely presented the documents and did not prove the contents thereof. The Apex Court further went on to hold, in the facts of *Roop Singh Negi (supra)*, that the only basic evidence on which reliance was placed by the Enquiry Officer was the purported confession made by the appellant before the police. It was held that on the basis of the contentions of the appellant therein that he was forced to sign to the said confession as in the police station, the Apex Court held that the appellant being an employee of the Bank, said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the Bank Draft Book. Admittedly, there was no direct evidence and there was no indirect evidence. Referring to earlier precedent rendered, the Apex Court in *Roop Singh Negi (supra)* held that the materials required to be brought on record pointing out to the guilt are required to be proved. A decision must be arrived at on some evidence which is legally admissible. The Apex Court held that the provisions of the Evidence Act may not be strictly applicable in a departmental proceeding but the principles of natural justice are. It was held in the facts of that case that the inferences drawn by the Enquiry Officer were not supported by any evidence. The Apex Court held that suspicion as is well known, however high under no circumstance shall be a substitute for legal proof.

29. Coming to the facts of the present proceedings, the imposition of penalty on the writ petitioners were on the basis of the recommendation of the Enquiry Officer in the further enquiry conducted pursuant to the direction of the Disciplinary Authority. The DVDs containing the video clips and the still photographs were used as materials to show the purported presence of two separate coils of large dimensions present in the third truck. What is also noticed from the enquiry report and the other relevant documents is that these

video clips were taken when the lorry or the truck was under the police custody. What is however not evident from the pleadings available or the records placed before the Court is the author or the person taking these video clips and still photographs and as to how these photographs drive home the charge that the petitioners are guilty of permitting the service provider/H1 bidder of the scraps to take away these two coils of large dimensions which were not a part of the lot 1 and lot 2. The records, which are available before the Court does not reflect as to whether these two coils of large dimensions can be treated to be scrap or useless materials or whether they were fresh or useable cables. No such finding or report on these two coils are available or placed before this Court to support the conclusions arrived at by the Enquiry Officer. Even if the DVDs containing the video clippings and still photographs are taken on face value, even then there must be some evidence to arrive at a conclusion that these two coils of large dimensions are not a part of the lots which were auctioned and that the same were unauthorizedly permitted by the petitioners to be lifted by the service provider. A reference is made to a purported confession by the petitioner, Sri Diganta Haloi that these cables were permitted to be lifted by the service provider in order to compensate him because of a short fall of the total weightage of the goods to be auctioned as per the auction note. The said confession, however, was subsequently withdrawn by the writ petitioner on the ground that the same was issued upon a duress by higher officials of the NRL. Under such circumstances, findings arrived at by the Enquiry Officer in the further enquiry, is not based on any material which are shown to be present in support of the charges brought against the writ petitioners. Further no material is placed before this Court alternatively nor any cogent material to suggest that the findings arrived at by the Enquiry Officer in

his first enquiry report submitted to the Disciplinary Authority have been accepted to impose the penalty of removal from service by the Disciplinary Authority. What transpires from the records and the materials placed before the Court is that the imposition of the punishment of removal from service was imposed by the Disciplinary Authority on the findings arrived at by the Enquiry Officer in the subsequent and /or the further enquiry conducted on the basis of the DVDs supplies as materials.

30. Coming to the question of admissibility of the DVDs in evidence, a reference to Section 65 (A) (B) of the Evidence Act, 1872 is necessary to be referred to. Section 65 (A) (B) of Evidence Act prescribed as under:-

“65A. Special provisions as to evidence relating to electronic record.— *The contents of electronic records may be proved in accordance with the provisions of section 65B.*

65B. Admissibility of electronic records.— *(1) Notwithstanding anything contained in this Act, any records. information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

(2)The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:-

(a)the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b)during the said period, information of the kind contained in the electronic record or of the kind from which the information so

contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,-

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. - For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]'

31. The provisions of the Evidence Act make it abundantly clear that any documents in electronic form can be considered to be an evidence only if the same is presented in the manner prescribed under Section 65 (A) and 65(B) of the Evidence Act. The question with regard to admissibility of electronic record as primary and secondary evidence was discussed by the Apex Court in *Anvar P.V. Vs P.K. Basheer and Ors.* reported in (2014) 10 SCC 473. The Apex Court while examining a matter pertaining to corrupt practice under the representation of Peoples' Act had the occasion to consider the admissibility of electronic record

as documentary evidence under the Evidence Act. The Apex Court held that electronic record produced for inspection of the Court is documentary evidence under Section 3 of the Evidence Act, 1872. Any documentary evidence by way of any electronic record under Evidence Act in view of Section 59 and 65 (A) can be proved only in accordance with the procedure prescribed under Section 65 (B) of the Evidence Act, 1872. The Apex Court held that purpose of these provisions is to sanctify secondary evidence in electronic form generated by a computer. The very admissibility of electronic record, which is called as computer output depends on the 4 (four) conditions prescribed under Section 65 (B) (2) of the Evidence Act, 1872. The Apex Court held that only if electronic record is duly produced in terms of Section 65 (B) of the Evidence Act, 1872 would the question arise as to the genuineness thereof and in that situation resort to Section 45 (A) of the Evidence Act, 1872 / opinion of examiner of electronic evidence can be sought for. It was held that Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65 (B) of the Evidence Act are not complied with as the law stands in India. It was held that proof of electronic record is a special provision introduced by Information Technology Act, 2000 amending various provisions under the Evidence Act. The vary caption of Section 65 (A) of the Evidence Act read with Section 59 and 65 (B) of the Evidence Act, thereof is sufficient to hold that special provisions on evidence relating to electronic record shall be governed by procedure prescribed under Section 65 (B) of the Evidence Act, 1872. That is a complete code in itself. Being a special law, the general law under Section 63 and 65 of the Evidence Act has to yield *generaila specialibus non derogent*: the special law shall always prevail over the general law. Hence, Section 63 and Section 65 of the Evidence Act have no application in the case of

secondary evidence by way of electronic record as the same is wholly governed by Section 65 (A) and Section 65 (B) of the Evidence Act. An electronic record by way of secondary in evidence shall not be admitted in evidence unless the requirements of Section 65 (B) are satisfied. Thus, in the case of CD/VCD etc., the same shall be accompanied by a certificate in terms of Section 65 (B) of the Evidence Act obtained at the time of taking the document, without which the secondary evidence pertaining to that electronic record is inadmissible. This Judgment of the Apex Court subsequently came to be reconsidered again by the Apex Court in *Arjun Pandit Rao Khotkar Vs Kailash Kushan Rao Gorantyal and Ors.* reported in (2020) 7 SCC 1. The Apex Court while considering this judgment along with a previous judgment of the Apex Court rendered in *SHAFHI Md. Reported in 2018 2 SCC 801* to the effect that Section 65 (A) and Section 65 (B) are not complete code on the subject and that the requirement of a certificate under Section 65 (B) (4) being procedural can be relaxed by Court, wherever the interest of justice show justifies, was overruled and the Judgment of the Apex Court in *Anvar P.V.* (*supra*) was upheld with the clarification in the last sentence of paragraph 24 of the judgment rendered in *Anvar P.V.* (*supra*).

32. Under such circumstances, it is now no longer *res integra* that documents in electronic form if required to be proved must be in the procedure prescribed under Section 65 (A) and Section 65 (B) of the Evidence Act, 1872. Juxtaposed with the law laid down by the Apex Court, the facts in the present proceedings revealed that no such requirement of law under Section 65 (A) and 65 (B) of the Evidence Act was followed by the respondent authorities during the further enquiry conducted in respect of Charge no. 4 in so far as Sri Diganta Haloi is concerned and Charge No. 6 in so far as Sri Pankaj Boro is concerned by the

Enquiry Officer on the basis of the DVDs presented by the Presenting Officer as per the direction of the Disciplinary Authority. There is no material to suggest that a certificate of the author as required under Section 65 (B) of the Evidence Act was brought in evidence and proved nor are there any materials to suggest that the author was examined in person, during the further hearing conducted.

33. Under such circumstances and in view of the law clearly stated as above, the DVDs containing the video clips and the still photographs, which were the basis of further enquiry cannot be considered to have been proved in evidence as per the procedure prescribed under Section 65 (A) and Section 65 (B) of the Evidence Act read with the findings of the Apex Court in *Anvar P.V. (supra)* followed in the subsequent Judgment of *Arjun Pandit Rao Khotkar (supra)* as discussed above. That being the position, it will have to be held that the findings of the Enquiry Officer in the further enquiry conducted in respect of the DVDs are not sustainable in law. The contents of the DVD cannot be held to have been proved in evidence which is acceptable in law as per the procedure prescribed under Section 65 (A) and 65 (B) of the Evidence Act, 1872. Consequently, the findings arrived at by the Enquiry Officer in the further enquiry are held to be based on no evidence. The further consequence of this finding is that the decisions of the Disciplinary Authority imposing the penalty of removal from service, which will not be a disqualification for further employment is also held to be a decision which is not permissible in law as the same was imposed on the findings/recommendations of the Enquiry Officer in the further enquiry. No independent view of the Disciplinary Authority is discernable from the impugned order. The enquiry report dated 08.07.2015 of the Enquiry Officer pursuant to the further enquiry conducted is held to be *non-est* in law. The impugned order of penalty imposed by the Disciplinary Authority which is based

on the findings of the Enquiry Officer pursuant to the further enquiry conducted therefore cannot be held to be sustainable in law.

34. In so far as the orders of the Appellate Authority is concerned, it is seen that the Appellate Authority by an order dated 26.01.2016 has modified the imposition of penalty of removal from service to that of compulsory retirement. As discussed above the provisions which calls for an order of compulsory retirement are described in detail under Rule 9 of the said Rules. The criterion for judging medical unfitness, inefficiency or doubtful integrity of the Management Staff proposed to be prematurely retired are specified under Rule 9 (2) of Conduct, Discipline and Appeal Rules for Management Staff. In the context of the present proceedings, there is no dispute that the enquiry conducted against the writ petitioners were on the charges mentioned in the show-cause notice, which was enclosed with the memorandum of charges accompanied by the statement of Article of Charges and the statement of imputation of misconduct in support of the Articles of Charges. A careful perusal of these documents revealed that there is no enquiry against the petitioners for compulsory retirement, on the grounds prescribed under Rule 9 of the of Conduct, Discipline and Appeal Rules for Management Staff. Rule 9 of Conduct, Discipline and Appeal Rules for Management Staff clearly prescribes the criterion under which a person can be the compulsory retired. It also specifically lays down the criteria of age for the staff concerned. The staff must have attained the age of 50 years. These writ petitions were filed in the year 2016 and on the date of the filing, none of the writ petitioners were anywhere near the age of 50 years. Under such circumstances, the Appellate Authority could not have modified the imposition of penalty by the Disciplinary Authority to that of compulsory retirement without adhering to the criteria and the procedure

prescribed under Rule 9 of the of Conduct, Discipline and Appeal Rules for Management Staff. Consequently, the findings of the Appellate Authority and the second Appellate Authority sustaining the findings of the first Appellate Authority being contrary to the provisions of the Rules are consequently interfered with and set aside.

35. In so far as the judgment referred to by the respondents are concerned, the principles laid down by the Apex Court in *State of Karnataka and Anr. Vs Umesh* reported in(2022) 6 SCC 563 are not in dispute. The Apex Court has clearly held that the writ court in judicial review will ordinarily not interfere with the findings of the enquiry proceedings. And the writ court is to exercise judicial review must restrict its review to determine the following:-

“22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:-

- (i) *The rules of natural justice have been complied with;*
- (ii) *The findings of misconduct is based on some evidence;*
- (iii) *The statutory rules governing the conduct of the disciplinary enquiry have been observed; and*
- (iv) *Whether the findings of the disciplinary authority suffer from perversity; and*
- (v) *The penalty is disproportionate to the proven misconduct”.*

36. In the context of the present proceedings, there is no specific material brought before this Court to point out the commission and/or the omission of the writ petitioners to project that they are violative of the provisions of Rule 1 of part III of the Conduct, Discipline and Appeal Rules for Management Staff and thereby has committed misconduct. As discussed, there are 42 instances, which are prescribed under the heading ‘Misconduct’. The enquiry proceedings

conducted does not reflect as to the specific misconduct alleged to have been committed by the writ petitioners. That apart, as discussed above, there are primarily 2 (two) grounds, which have been found to be fully proved against the writ petitioners namely, that both the writ petitioners conducted the delivery of the auction goods on a Sunday, which is a holiday without information of the higher officials. And that the DVD contains video clips and still pictures showing the two cables in the third truck and this truck along with two others were engaged by the service provider for lifting the auction goods. In so far as the charge of conducting the delivery of auction goods on a Sunday is concerned, there is no dispute that these goods were delivered to the service provider in the presence of CISF personnel and other staff of the NRL, but the conclusions arrived at do not reveal any specific finding as to how such a conduct will amount to a misconduct as prescribed under Rule 1 of the Conduct, Discipline and Appeal Rules for Management Staff. In so far as the further enquiry conducted in respect of the video clips and still photographs in the DVD are concerned, as discussed above, the same cannot be accepted to have been proved in evidence in the absence of the failure of the Enquiry Officer as well as the departmental authorities to follow the procedure prescribed under Section 65 (A) and Section 65 (B) of the Evidence Act, 1872. The findings of the Enquiry Officer in respect of the other charges, which were found to be partially proved also does not indicate or correlate with the conclusions arrived as to what misconduct has been committed and what penalty whether major or minor is required to be imposed. No such discussion is also discernable from the order passed by the Disciplinary Authority as to why the major penalty of removal from service which shall not be a disqualification for further employment was imposed. No such discussion is also found in the Appellate Authorities' order

whereby removal from service was modified to that of compulsory retirement.

37. Under such circumstances and in view of all the discussions above, this Court is of the considered view that the enquiry proceeding conducted against the writ petitioners was completely *dehors* the law in respect of Section 65 A and Section 65 B of the Evidence act and the law laid down by the Apex Court in the Judgments discussed above and to that extent the procedure prescribed under the Rules. Under such circumstances and in view of the discussions in the foregoing paragraphs, the findings arrived at by the Enquiry Officer as well as by the Disciplinary Authority are hereby interfered with, set aside and quashed. Consequently, the orders passed by the first Appellate Authority and the second Appellate Authority also stands quashed. The writ petitioners are directed to be reinstated in service with all service benefits accruable from the date they were held to be removed from service. In so far as back wages are concerned, considering that the writ petitioners have been out of service since their date of removal from service with effect from 25.01.2016 they would be entitled to 50% of their back wages/salary.

38. Writ petitions are accordingly allowed in terms of the above and disposed of. Costs easy.

39. The records are returned back to the learned Standing counsel, representing the Numaligarh Refinery Limited.

JUDGE

Comparing Assistant