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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application 154/2009

Date of Order: 25.04.2012

CORAM:

HON'BLE Dr. K. B. SURESH, JUDICIAL MEMBER

HON'BLE Mr. SUDHIR KUMAR, ADMINISTRATIVE MEMBER

Roop Singh S/o Shri Lal Singh, aged about 50 years, R/o Nav Durga Colony, House No.34, Near Jhalamond Chouraya, at present employed on the post of Shunter under DME (P), North Western Railway, Jodhpur.

...Applicant

Mr. J.K. Mishra, Counsel for Applicant.

Versus

1. Union of India, through General Manager, North Western Railway, Jaipur.
2. Chief Operation Manager, North Western Railway, Jaipur.
3. Additional Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur.
4. Sr. Divisional Mechanical Engineer (P), North Western Railway, Jodhpur Division, Jodhpur.
5. Additional Divisional Mechanical Engineer, North Western Railway, Jodhpur Division, Jodhpur.

...Respondents.

Mr. Manoj Bhandari, Counsel for Respondents.

ORDER

(Per Sudhir Kumar, Administrative Member)

The applicant of this O.A. is working on the post of Shunter grade Rs.4000-6000, under Divisional Mechanical Engineer (P), Jodhpur, in the North Western Railway. In respect of an occurrence, which took place at Basani Railway Station on 11/12.11.2006, he and one Shri Prahlad Puri, Mail Driver, were issued notices that they had failed to maintain high degree caution, and had passed the advance signal in on position, for which a



major penalty charge sheet in SF-5 was issued to him through Annexure-A/1. He denied the allegations levelled against him, and quoted the Rules of the Railway in his reply. However, the respondent authorities decided to proceed ahead with the departmental enquiry and started to conduct a joint enquiry against both the delinquent employees. The applicant was allowed to appoint a defence helper also, of his choice.

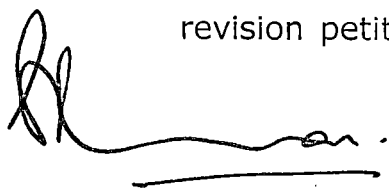
2. The applicant has submitted that he had made a protest against conducting a common enquiry, but no heed was paid by the Enquiry Officer, and because of the common enquiry, he was denied an opportunity to call the other delinquent official, Shri Prahlad Puri, Driver, as a witness and cross examine him. He has also submitted that his defence helper did not also conduct his case properly on his behalf, but was rather more interested in saving the Driver, Shri Prahlad Puri, whereby his defence was seriously prejudiced.

3. The applicant has alleged that the enquiry was conducted in a very peculiar manner, and questions were mainly asked only from the other delinquent official, Shri Prahlad Puri, Driver, during the enquiry, and he was asked only as to whether he agreed with those questions and answers or not. No witness deposed anything against the applicant, and he was thus denied an opportunity of cross examining the witnesses also. No defence brief was called for from the applicant, and the enquiry was completed after asking questions from him only in a question and answer form as at Annexure A/6, pages 29 to 43 of the O.A.



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4. The Enquiry Officer thereafter submitted a common/joint Enquiry Report through Annexure-A/7, dated 07.06.2007, and held the charges as proved against both the co-delinquent officials, Driver Shri Prahlad Puri, and the applicant, and holding them responsible for having violated the safety regulations prescribed through GPSE para 14.08(iv); 14.09 and 3.78(i)(B). The applicant has alleged that on the basis of the finding of the joint Enquiry Report, the 4th respondent, under whom he has stated that he was working, but who could not have acted as his Disciplinary Authority, imposed upon him the penalty of compulsory retirement with immediate effect through his order dated 13.09.2007 (Annexure-A/1). The impugned order itself mentioned that the applicant could file an appeal against that order within 45 days, which he did through Annexure-A/8, dated 22.10.2007. The respondent No.3, the Additional Divisional Railway Manager, then considered his representation, and through his detailed two pages noting dated 20.12.2007, (pages 24 and 25 of the O.A.), ordered that the punishment awarded will stand good, which was communicated to the applicant through Annexure-A/3, dated 03.01.2008. The applicant then submitted his revision representation to the Chief Mechanical Engineer, North Western Railway, a copy of which he has not filed, but he has submitted that his revision petition to the Chief Mechanical Engineer, was also turned down on 05.05.2008, merely by stating that the applicant has used the terms "biased" and "mischievous" in the revision petition, and he was directed to file his revision petition representation again. Thereafter, the applicant filed his revised revision petition through Annexure-A/9, dated 18.05.2008, and in



response to that he received the order dated 10.06.2008 (Annexure-A/4), signed by the Chief Operations Manager, stating as follows:-

"Sub:-DAR action against you.
Ref:- Your revision petition dated 18.05.2008.

I have gone through the case. In this case the prime responsibility was of the Driver and the Asstt. Driver had only secondary responsibility as part of the crew. As such, it is the quantum of punishment that deserves attention, and not the accuracy of the charges which undoubtedly stand proved beyond reasonable doubt.

As such I reduce the punishment from Compulsory Retirement to "withholding of increment for three years with cumulative effect". The period from Compulsory Retirement to coming back on duty may be treated as 'Dies Non'.

Sd.

(Ajay Shukla)
Chief Operations Manager"

5. The applicant has alleged that he had not violated any of the Rules, but he has been held responsible only to save the Driver of the train, who alone was the authority to start the train and cross the signal in on position. He has submitted that the Driver of the train has nowhere stated, during the course of the Disciplinary Enquiry, or afterwards, that as his assistant the applicant did not assist him properly. In the circumstances, the applicant has alleged that the disciplinary proceedings against him are arbitrary and illegal, and without jurisdiction and void ab initio. He has submitted that holding a common proceedings against the other delinquent official, Shri Prahlad Puri, Driver of the Train, and him together amounts to colourable exercise of power, and the whole proceedings/enquiry was therefore void, and liable to be quashed. He has further taken the ground that if the enquiry against him had been conducted separately, he could have examined and cross



examined the Driver in his defence, which opportunity was denied to him because of the joint enquiry, and, therefore, there has been violation of principles of natural justice in his case. He has submitted that there is no evidence which has come on record to show the guilt of the applicant, and the finding given by the Enquiry Officer is totally contrary to the records, as well as the evidence adduced, and has been arrived at without application of mind, and without appreciating the evidence by which his rights under Articles 14, 16 and 311 of the Constitution of India had been violated.

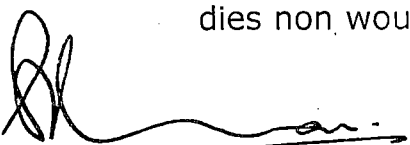
6. He has, therefore, prayed that the impugned orders of the Disciplinary Authority, and the Appellate and Revisional Authorities deserve to be quashed, and since the impugned order Annexure-A/4 passed by the Revisional Authority is also a non-speaking order, and even the Revisional Authority has agreed that in this case the primary responsibility was that of the Driver, and the applicant, as his assistant driver, has to shoulder only secondary responsibility as part of the crew, as such, once having arrived at this conclusion, the Revisional Authority was also wrong in still imposing penalty upon him, though the penalty was reduced from compulsory retirement to withholding of increment for three years with cumulative effect, and the period from the date of compulsory retirement to the date of coming back on duty was ordered to be treated as dies-non. He has further submitted that this order of Revisional Authority also suffers from illegality, as no prior show cause notice or pre-decisional hearing was given by the Revisional Authority to the applicant, and treating the intervening period as dies non would not only affect his whole service, but also his retiral

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benefits, as that period will now be excluded from the qualifying service for pension purposes, and, therefore, the orders of the Revisional Authority cannot also be sustained.

7. He has submitted that once the penalty of removal from service had been substituted with the penalty of withholding of increment for three years with cumulative effect, the same ought to have been ordered to be made applicable from the date of the initial order, by which the compulsory retirement penalty was imposed upon him, and treating the intervening period as dies non is, therefore, not sustainable in the eyes of law. He, therefore, prayed that all actions of the respondents ~~shall~~^{should} be declared illegal, arbitrary, discriminatory, and against the principles of natural justice, and prayed for relief for quashing of Annexure-A/1, Annexure-A/2, Annexure-A/3 and Annexure-A/4, and for respondents to be directed to allow to the applicant all consequential benefits including arrears of difference of pay along with market rate of interest. He also prayed for respondents being directed to produce the complete record of the enquiry proceedings for perusal by the Tribunal at the time of hearing, and any other order or directions, as well as costs to be awarded.

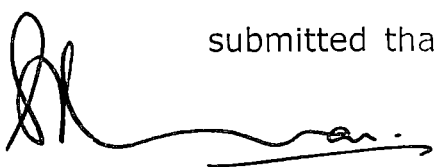
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8. The respondents filed their reply written statement on 13.07.2010, and also subsequently produced File No./A/10/M-1/06/11-12.11/Basani, relating to the departmental enquiry against the applicant, and File No./A/10/M-1/06/11-12/11/Basani, relating to departmental enquiry against the Driver Shri Prahlad Puri, against both of which the joint enquiry proceedings had been held.



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9. In the reply written statement, the respondents submitted that the services of the applicant had not been satisfactory even in the past, and he had been charged several times on account of refusal to report for duty, and for having been found absent from assigned duty, on which orders of penalty as well as Warning/Censure had been recorded against him on at least seven occasions in the past also. Giving the details of the actual incident concerned, the respondent authorities had explained as to how, when the signal was issued at Basani Station for starter only, the train was taken ahead, and even passed the advance starter in the on position, without proper authority, which could have led to an accident, and this showed culpability on the part of the applicant also. They pointed out that as per rule 3.83 of GPSR, the Assistant Drivers also have the responsibility of identifying each signal affecting the movement of the trains as soon as it becomes visible, and that alongwith the Driver, they also shall call out the aspects of the signals to each other, and the Assistant Driver also shall, when not otherwise engaged, assist the Driver in exchanging signals as required. They further denied the contention of the applicant that he had absolutely no role to play in the movement of the train up to the next Railway station in the correct signal position. It was submitted that proper disciplinary enquiry was conducted into the incident, full opportunity was given to the applicant, and the engine crew dealing with the said train was held responsible for not observing the "ON" aspect of the advance starter, and for entering the block section and taking the train forward up to the next station without proper authority. It was submitted that the applicant could have prevented this incident if



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he had been vigilant in examining the details of the authority issued for passing the Basani starter signal only, and ensuring proper aspect of the advance started ~~at~~ before entering the block section. It was submitted that it is wrong for the applicant to suggest that the enquiry proceedings were manipulated to save the Driver, Shri Prahlad Puri, and it was pointed out that the said Shri Puri was also punished with the punishment of compulsory retirement. su.

10. It was denied that at the stage of the departmental enquiry proceedings, the applicant had filed any representation for not holding joint enquiry, and, therefore, it was submitted that he cannot now raised a belated objection, which he did not take when the joint enquiry was under progress. It was also submitted that the applicant never submitted a communication stating that he wanted to produce any witnesses in support of his case, and never submitted any list of witnesses from his side, either during the enquiry, or even during his appeal before the Appellate Authority. su.

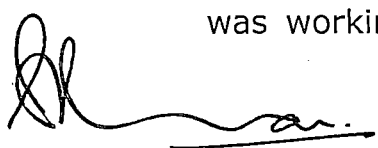
It was submitted that it is wrong for the applicant to contend that that the fourth respondent is not the Disciplinary Authority of the applicant, and it was submitted that the Enquiry Officer had submitted his report to the Disciplinary Authority, the ADME, who had recommended compulsory retirement as his punishment, but then the matter had been referred to higher authority, i.e. to Senior DME, who has considered the entire aspect of the matter, and had passed the order for imposition of only a major penalty other than ^{compulsory retirement} in the case of the applicant. su.



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11. It was further submitted that the order passed on 20.12.2007 (Annexure-A/3) is a detailed and reasoned order, giving details of all the contentions raised by the applicant, and he had even been given a personal hearing on 19.12.2007 before passing the order the next date on 20.12.2007. Therefore, when the Appellate Authority also had given a separate personal hearing to the delinquent official, it was submitted that the orders passed could not be said to be on extraneous considerations, and without grounds.

12. It was denied that the Revisional Authority had first rejected the revision application of the applicant, and it was stated that the revision application was only returned for being filed once again in a polite language, and when the amended review application was filed by the applicant through Annexure-A/9, dated 18.05.2008, it was duly considered and the Revisional Authority reduced the penalty of compulsory retirement to that of withholding of increments for three years with cumulative effect. It was further submitted that since para 1343 (FR.54) of the Indian Railway Establishment Code, makes a clear provision in this regard, the period of the applicant's absence from duty from the date of compulsory retirement till the date of his rejoining had to be treated as dies non in accordance with law. It was, therefore, submitted that there was no infirmity in the conduct of the joint enquiry proceedings against the applicant. It was submitted that the applicant has failed to show as to in what manner the principles of natural justice had been violated in his case. It was submitted that on account of inaction on the part of the applicant when he was working as Diesel Assistant, the train was put to a position



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which could have turned into a severe accident, and the same could have caused loss of lives of hundreds of people, and that looking to this circumstance, the imposition of a major penalty on the delinquent official on the basis of charges proved against him is perfectly legal and justified, and that this Tribunal may not like to interfere with the orders passed by the appropriate disciplinary authorities in this case. It was, therefore, prayed that the O.A. is liable to be dismissed, and the applicant deserves to be penalized with exemplary costs. The relevant rules of the Railways were filed by the respondents as Annexure-R/1.

13. The applicant filed a rejoinder on 10.03.2011, again reiterating his contentions, and stating that once the Driver of the train was satisfied about having the authority to cross the signal in on position, and had started the train, as the Assistant Driver the applicant had no occasion/reason to disbelieve his senior. It was also submitted that the Rules cited by the respondents have been wrongly quoted as they are for approaching train stations, and not in the case of stopping train. It was further submitted that the effect of the order modifying the original penalty order can only be given effect to from the date of the original order, and the Revisional Authority could not have imposed the penalty of "Dies Non" upon him without giving a show cause or a pre decisional hearing.

14. Heard. Both the learned counsels of the applicant and the respondents argued their case vehemently on the lines of their pleadings and submissions, and on the basis of the contents of the two disciplinary proceedings files produced by the respondents as



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already mentioned above. In support of his contentions, the learned counsel for the applicant cited the case of **State of Uttar Pradesh vs. Singhara Singh & others**, : 1964 (4) SCR 485: AIR 1964 SCC 358, to state that under the Latin Maxim "expressio unius est exclusio alterius" the principle is that where a power is given to do a certain thing in a certain way, the thing must be done in that way, or not at all, and that the other methods of performance are necessarily forbidden. We do not, however, agree with the contention of the learned counsel for the applicant that in the instant case, the Disciplinary Authority, or the Appellate Authority, or the Revisional Authority, have in any manner not followed the procedure as prescribed for them for the conduct of such disciplinary enquiry, and for imposition of penalty thereafter. Infact we note that the Appellate Authority gave a separate pre-decisional hearing to the applicant, even though, under law, and as laid down by the Hon'ble Supreme Court also, there is no essential legal requirement for the Appellate Authority to give any pre-decisional personal hearing at the appeal stage also in all disciplinary enquiry cases. It is only required that orders passed at the appeal and review stages have to indicate application of mind by the concerned Appellate & Review /Revisional Authority concerned. Personal/oral hearing may be give by the Appellate Authority if the delinquent official makes a demand for it, and upon considering the facts and circumstances of the case, the Appellate Authority agrees to grant him a personal/oral hearing. In this case, without a formal demand having been made by the applicant herein, the Appellate Authority has given him a personal hearing. Therefore, the applicant cannot derive any benefit from the



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principle "expressio unius est exclusio alterius" as cited by the Hon'ble Supreme Court in the above case.

15. The learned counsel for the applicant also cited the case of **Moni Shankar vs. Union of India & Another**, (2008) 1 SCC (L&S) 819, to state that when the enquiry proceedings is followed in such a manner that the examination of the charged employee is conducted only by generally asking him leading questions, and only questioning him on the circumstances appearing against him, such asking of leading questions by the enquiry officer was improper, as it turned enquiry officer into prosecutor, which is illegal and improper. We are not convinced that the ratio laid down in this judgment gets attracted to the facts of the present case.

16. On the other hand, during his detailed arguments, the learned counsel for the respondents relied mainly on the following six Apex Court judgments:-

1. State of Meghalaya & ors. Vs. Mecken Singh N. Marak, : 2008 (7) SCC 580.

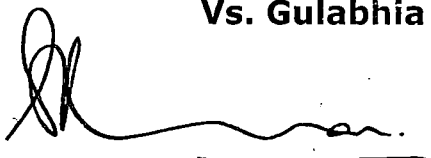
2. U.P. State Road Transport Corporation vs. Basudeo Chaudhary & Anr., : 1997 (11) SCC 370.

3. U.P. State Sugar Corporation Ltd. & ors. Vs. Kamal Swaroop Tondon, : 2008 (2) SCC 41.

4. Commissioner and Secretary to the Govt. & ors. Vs. C. Shanmugam, : 1998 (2) SCC 394.

5. Managing Director, ECIL, Hyderabad vs. B. Karunakar, : J.T. 1993 (6) SC 1: (1993 4 SCC 727: AIR 1994 SC 1074.

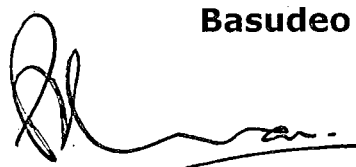
6. Administrator, Union Territory of Dadra & Nagar Haveli Vs. Gulabhia M. Lad, : 2010 (5) SCC 775.



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17. It is seen that in the case of **State of Meghalaya & ors. Vs. Mecken Singh N. Marak** (Supra), the Hon'ble Supreme Court has held that in the case of penalty/punishment awards in the departmental enquiries, the scope of judicial review is very limited, and unless punishment is shockingly disproportionate, it should not be subject to judicial interference, and the employee's mental set up and the nature of his duties are also relevant while considering/awarding the proportionality of punishment. Learned counsel for the respondents submitted that the Revisional Authority has rightly come to the conclusion that only secondary responsibility for the incident, which could have led to a major train incident, could have been attributed to the applicant as a part of the Engine Cabin crew, and, considering the responsibility of the applicant to be secondary and not primary, his punishment had been reduced from that of compulsory retirement to a lower major penalty of withholding of increment for three years with cumulative effect. They submitted that, therefore, the punishment ultimately imposed upon the applicant could not be held to be disproportionate, requiring any judicial review or interference. We agree with the submission of learned counsel for the respondents in this regard, because, in our opinion, considering the gravity of the incident which had occurred, endangering public safety, the punishment ultimately imposed upon the applicant is disproportionately low, rather than being disproportionately high, which may have shocked one's conscience.

18. In the case of **U.P. State Road Transport Corporation vs. Basudeo Chaudhary & Anr.** (Supra), the Hon'ble Supreme Court

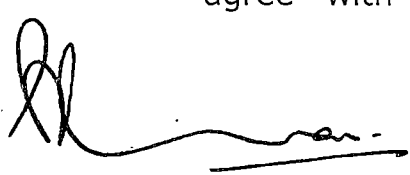


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had held (in the context of Labour Laws) that it has to be seen as to whether the penalty of punishment was proportionate to the seriousness of the misconduct on the basis of the facts of the case, and submitted that even though the applicant was not primarily responsible for the serious incident endangering public safety, but it was his bounden duty as a person having at least secondary responsibility to have alerted the Driver about the serious mistake which he was committing by over looking the correct position of the signal, and by letting the train enter the block section between two Stations without proper authorization. It was, therefore, submitted that the reduced punishment finally imposed on the applicant by the Revisional Authority was justified and not disproportionate. We tend to agree with the submissions of learned counsel for the respondents in this regard, subject to our observations as above regarding the punishment being rather low.

19. In the case of **U.P. State Sugar Corporation Ltd. & ors.**

Vs. Kamal Swaroop Tondon, (Supra), the Hon'ble Supreme Court held that Departmental or Domestic Enquiry could have continued even on the basis of a charge sheet issued on the last date of service of the delinquent government employee, and the proceedings could be continued thereafter, even after his superannuation, and could not be ~~turned~~ ^{turned} to be illegal. The learned counsel for the respondents, therefore, submitted that in the instant case, there was no illegality or infirmity in having held the departmental enquiry against the Driver, who was at the verge of his retirement, and as against the applicant jointly, and we tend to agree with the submission of the learned counsel for the

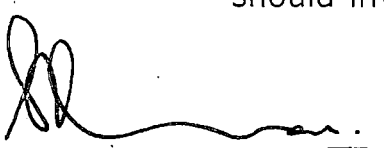
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respondents in this regard about the legality of the joint enquiry held.

20. In the case of **Commissioner and Secretary to the Govt. & ors. Vs. C. Shanmugam**, (Supra), the Hon'ble Supreme Court had held that in the course of judicial review by the Administrative Tribunal, re-appreciation of evidence was impermissible, and whenever it was not a case of no evidence, any interference by the Tribunal with the order of punishment of the delinquent employee on the ground of absence of independent evidence was held to be improper. It was submitted by the learned counsel for the respondents that in the instant case, it was not a case of no evidence against the applicant, as during the joint disciplinary enquiry, as rightly brought out by the Enquiry Officer in his report, it was correctly held that the Driver and the applicant had together allowed the train to enter the block section between two Stations without proper signal authorization in this regard, which could have ~~led~~ led to a major train accident, and since other evidence to establish this fact was also available, the applicant cannot be allowed to state that it was a case of no evidence against him. We tend to agree with the submission of the learned counsel for the respondents in this regard also.

21. In the case of **Managing Director, ECIL, Hyderabad vs. B. Karunakar**, (Supra), a Constitution Bench of the Hon'ble Supreme Court had held that the question as to whether the employee would be entitled to back wages and other benefits from the date of dismissal to the date of his reinstatement, if ultimately ordered, should invariably be left to be decided by the authority concerned,



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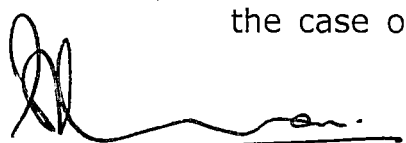
according to law, after the culmination of the proceedings, and depending on the final outcome. It was further held by the Hon'ble Supreme Court that if the employee is directed to be reinstated, the authority should be at liberty to decide according to law as to how it will treat the period from the date of dismissal till the date of reinstatement, and to what benefits, if any, and the extent of the benefits, which he would be entitled to. The learned counsel for the respondents, therefore, submitted that in this particular case the Revisional Authority had the requisite power and authority to decide as to how to treat the period from the date the applicant was compulsory retired, till the date he was ordered to be reinstated back and join his duties, with a reduced punishment of a reduction of his salary by three years' increments with cumulative effect, and it was further ordered that the period from the date of his compulsory retirement till the date of his rejoining with reduced punishment would be treated as dies non. The learned counsel for the respondents submitted that the Revisional Authority had rightly treated the period of absence, when the applicant had not performed the duties, as dies non, since no salary could have been paid as back wages to him in view of the law as laid down by the Hon'ble Supreme Court in the above case. He submitted that the Revisional Authority was infact lenient for not having ordered the period to be dies non with a break-in-service, and by allowing the period to be treated only as dies non without break-in-service, which allowed the applicant to rejoin his duties as the same stage of seniority at which he had been when he was compulsorily retired. In view of the clear-cut observations of the Hon'ble Supreme Court in the case cited, we are in agreement with the



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submission of the learned counsel for the respondents that the Revisional Authority had the power/authority and jurisdiction to treat the period of interregnum in any manner which he wanted, and note that the period has only been treated as dies non without break in service. Since the applicant was not actually on duty during that period, his contention that treating the period of his absence from duty as dies non was wrong cannot be upheld, and his contention that it would lead to an avoidable loss of his retiral benefits, as the total number of years of his duty/service would get reduced, cannot also be upheld in the circumstances of the case. In fact, the Revisional Authority has shown mercy upon the applicant by not treating his non-working period as dies non with break-in-service. No interference from this Tribunal is, however, called for.

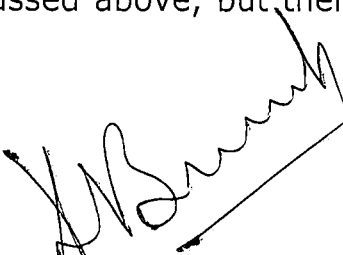
22. In the case of **Administrator, Union Territory of Dadra & Nagar Haveli Vs. Gulabhia M. Lad**, (Supra), the Hon'ble Supreme Court has held that in the case of a joint departmental enquiry, differential treatment of imposition of penalty/punishment is permissible, and the quantum of punishment, which actually depends upon many factors, can be different in the case of individual delinquent officials, even if joint disciplinary enquiry had been held against several persons. The Hon'ble Supreme Court had also explained that the joint enquiry may be held to avoid multiplicity of proceedings, and repetition in adducing evidence, and, therefore, the departmental authorities are within their rights to decide to hold joint enquiry. The learned counsel for the respondents submitted that in the instant case, the Driver had been imposed with the penalty of compulsory retirement, and in the case of applicant, even though initially the same penalty had



been imposed, it has later been reduced to a lesser penalty, resulting in different treatment in imposition of penalty upon the two. He submitted that since the reasoning and logic for such differential treatment was explained by the Revisional Authority in his order dated 10.06.2008 (Annexure-A/4), in his having treated the applicant's responsibility only as a secondary responsibility, and not primary responsibility, the respondent authorities were fully within their rights to hold the joint departmental enquiry and to award differential punishment to the Driver, who had the primary responsibility, and to the applicant whose responsibilities were held to be secondary. We are in agreement with this contention of the learned counsel for the respondents also.

23. In the result, it is clear that there is no merit in O.A., and that the respondents have actually been more lenient than necessary towards the applicant, in reducing his penalty by accepting his plea that the movement of train without proper signal was not his primary responsibility. There being no merit in the O.A., it is dismissed for the reasons as discussed above, but there shall be no order as to costs.


(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER


(Dr. K.B. SURESH)
JUDICIAL MEMBER