Training Centre. He is a trained mechanic. He is looking after the Motor Transport Section of the Department. Yet, the peititoner's claim was rejected without recording any reason. It is only in the written statement that it has been pointed out that the Director General of Police had approved the note wherein it was observed that "it is sufficient that we are tolerating handicapped person....." In our view, a handicapped person deserved sympathy. In fact, the legislative policy is to promote the welfare of the handicapped persons. The Parliament has promulgated the 'Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995' with the avowed object of helping the handicapped persons. The element of sympathy should have been all the more greater in view of the fact that the petitioner had suffered the handicap while performing his duty. We are not very happy with the manner in which the petitioner's case has been dealt with.

(9) It may be noticed that various persons have been granted exemption only on account of their family circumstances. A person who had suffered a handicapped in the discharge of his duties had a better claim. The respondents have not acted fairly in rejecting it.

(10) No other point has been raised.

(11) In view of the above, the impugned order is quashed. The respondents are directed to consider the matter afresh. The needful shall be done within two monthe from the date of receipt of a certified copy of this order. Further consequences shall follow.

(12) The writ petition is, accordingly, disposed of. No costs.

R.N.R.

Before G.S. Singhvi & Bakhshish Kaur, JJ

MUNICIPAL CORPORATION, LUDHIANA,—*Petitioner*

versus

SURINDER KUMAR & ANOTHER,—*Respondent*

C.W.P.No. 6071 of 2000

14th July, 2000

Constitution of India, 1950—Art. 226—Punjab Civil Services (Punishment & Appeal) Rules, 1970—Rl. 19(2)—Disciplinary authority imposing extreme penalty of dismissal from service after enquiry—Appellate authority under Rl. 19(2) modifying the order of punishment to one of reversion to the lower rank in the time scale of pay & treating

the period between the date of dismissal and date of appellate order as leave of the kind due—Appellate authority has jurisdiction to reduce the penalty specified in Rl. 5 imposed by the disciplinary authority—Power of appellate authority is co-extensive with that of the disciplinary authority—Challenge as to quantum of punishment imposed by the disciplinary authority on the ground that it was not commensurate with the gravity of charges found proved, repelled—When appellate authority has the power to alter punishment and the discretion exercised in so doing on relevant considerations does not suffer from any patent illegality or arbitrariness, no interference is called for in exercise of certiorari jurisdiction—Certiorari jurisdiction of High Court—Scope of, stated.

Held that a reading of Rule 19(2) of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 shows that before passing an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the punishing authority for fresh consideration, the appellate authority has to consider whether the procedure laid down in the rules has been complied with, and if not, whether such non-compliance has resulted in the failure of justice and whether the findings recorded by the punishing authority are supported by the evidence available on the record. It is also required to consider whether the penalty imposed upon the delinquent is adequate, inadequate or severe. In other words, the appellate authority is not only required to consider the issue relating to compliance of the procedural requirements but also examine the findings recorded by the disciplinary authority on the merits of the charges and the justification of the penalty awarded by such authority. In view of this analysis of Rule 19(2), the argument of counsel for the petitioner that respondent No. 2 did not have the jurisdiction to go into the merits of the punishment imposed by the disciplinary authority cannot but be held as misconceived and deserves to be rejected.

(Para 5)

Further held, that respondent No. 2 had the power to alter the punishment awarded by the disciplinary authority and the discretion by him in the case of respondent No. 1 does not suffer from any patent illegality or arbitrariness which may justify issuance of a writ of certiorari under Article 226 of the Constitution of India.

(Para 7)

Further held, that the parameters for exercise of certiorari jurisdiction by the High Court have been clearly delineated by judicial precedents and it must be treated as settled law that writ of certiorari

can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals and where in exercise of jurisdiction conferred on it, the Court or the Tribunal acts illegally or improperly i.e. it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and not appellate one. This necessarily means that the finding of fact reached by the inferior Court or Tribunal, as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. This is the abstract statement of law, but the vexed question is as to what is an error of law apparent on the face of the record and in what circumstances a finding of fact recorded by an inferior Court or Tribunal or a quasi-judicial authority can be corrected. Broadly speaking, an error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of awrit of certiorari. A finding of fact recorded by an inferior Court or Tribunal can be corrected only if it is shown that in recording the said finding the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as an error of law which can be corrected by a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or the quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, the mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

(Para 7)

Punjab Civil Services (Punishment & Appeal) Rules, 1970-Rl.19(2)—Industrial Disputes Act, 1947—S. 11-A—Whether provisons of S. 11-A of the Act can be invoked for nullifying an order passed under R.19(2) of the Rules—Held, no-Restrictions which are implicit in the power of Labour Court u/s 11-A cannot be imposed on the power of appellate authority under Rl. 19(2).

Held that, the observations made in U.P. *State Road Transport Corporation* v. *Subhash Chandra Sharma,* AIR 2000 SC 1163, in the context of Section 11-A of the Act cannot be invoked for nullifying the impugned order passed under Rule 19(2) of the Rules, the plain language of which confers statutory discretion upon the appellate authority to confirm, enhance or set aside the penalty imposed by the disciplinary authority. The language of Section 11-A of the Act is not pari materia with Rule 19(2) of the Rules, and, therefore, the restrictions which have been read as implicit in exercise of powers by the Labour Court/Industrial Tribunal cannot be imposed on the power vested in the appellate authority under Rule 19(2). That apart, the observations made in *Union of India* v. *B.C. Chaturvedi,* AIR 1996 SC 484 show that the power of the appellate authority is co-extensive with that of the discriplinary authoritity and, therefore, it can alter or reduce the punishment awarded by the disciplinary authority.

H.S. Bakhshi, Advocate, *for the petitioner.*

JUDGMENT

G.S. Singhvi, J

(1) Whether in exercise of his power as appellate authority under Rule 19(2) of the Punjab Civil Services (Punishment and Appeals) Rules, 1970 (for short, 'the Rules'), the Commissioner, Patiala Division, Patiala (respondent No. 2) could modify the order of punishment passed by the disciplinary authority i.e. the Commissioner, Municipal Corporation, Ludhiana is the question which arises for determination in this petition filed by Municipal Corporation, Ludhiana for quashing of the order dated 21st April, 1999.

(2) A perusal of the record shows that respondent No. 1 Surinder Kumar was employed as Mali-cum-Beldar in the Horticulture Department of the Municipal Corporation, Ludhiana. By an order dated 29th March, 1994, the Superintendent Personnel suspended him on the allegation of negligence in the performance of duty and misbehaviour with his superiors. After two months, he was served with memo dated 27th May, 1994 issued under the signatures of Commissioner, Municipal Corporation, Ludhiana for initiation of departmental enquiry on the charges of absence from duty on 26th February, 1994 and 25th March, 1994 and threatening and abusing the S.D.O. (Horticulture). The enquiry officer appointed by the disciplinary authority submitted report dated 21st April, 1995 holding respondent No. 1 guilty of the charges. He also recommended that the delignquent may be dealt with severely. After issuing show cause notice dated 22nd May, 1995, the disciplinary authority passed order dated

5th July,.1995 dismissing him from service. The appeal filed by respondent No. 1 was partly allowed by respondent No. 2 who modified the penalty of dismissal by directing that respondent No. 1 shall stand reverted to the lower rank in the time scale of pay and the period between the date of dismissal and the date of the appellate order shall be treated as leave of the kind due.

(3) Learned counsel for the petitioner argued that respondent no. 2 did not have the jurisidcition to interfere with the well reasoned order of punishment passed by the Commissioner, Municipal Corporation, Ludhiana and, therefore, the impugned order should be declared as nullity. He then argued that the view taken by respondent no. 2 on the quantum of punishment awarded by the Commissioner, Municipal Corporation, Ludhiana should be declared as erroneous and perverse because the said respondent totally overlooked the fact that respondent no. 1 had been found guilty of gross indiscipline and insubordination. In support of his arguments, Shri Bakhshi relied on the decision of the Supreme Court in *U.P. State Road Transport Corporation* v. *Subhash Chandra Sharma*(1).

(4) In our opinion, the arguments of the learned counsel are devoid of substance and the writ petition deserves to be dismissed. Rule 19 of the Punjab Civil Services (Punishment and Appeal Rules), 1970 (for short, 'the Rules') which delineates the power of the appeallate authority to deal with and decide an appeal filed against the order of punishment reads as under :

> *"19. Consider of appeal* (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 4 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.
>
> (2) In the case of an appeal against an order imposing any of the penalties specified in rule 5 or enhancing any penalty impose under the said rule, the appellate authority shall consider—
>
> (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice;
>
> (b) whether the findings of the punishing authority are warranted by the evidence on the record; and

(1) AIR 2000 SC 1163

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders—

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

XX XX XX

(5) A reading of the rule quoted above shows that before passing an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the punishing authority for fresh consideration, the appellate authority has to consider whether the procedure laid down in the rules has been complied with, and if not, whether such non-compliance has resulted in the failure of justice and whether the findings recorded by the punishing authority are supported by the avidence available on the record. It is also required to consider whether the penalty imposed upon the delinquent is adequate, inadequate or severe. In other words, the appellate authority is not only required to consider the issue relating to compliance of the procedural requirements but also examine the findings recorded by the disciplinary authority on the merits of the charges and the justification of the penalty awarded by such authority. In view of this analysis of Rule 19(2), the argument of Shri Bakshi that respondent No. 2 did not have the jurisdiction to go into the merits of the punishment imposed by the disciplinary authority cannot but be held as misconceived and deserves to be rejected.

(6) The other argument of the learned counsel that the punishment awarded by the disciplinary authority was commensurate with the gravity of the charges found proved against respondent No. 1 and, therefore, respondent No. 2 could not have subsitituted it with a lesser penalty sounds attractive but lacks merit and deserves to be rejected. A perusal of the record shows that respondent No. 1 was dismissed on the allegation of having threatened and abused his superior. However, while imposing the extreme penalty of dismissal from service, the Commissioner, Municipal Corporation, Ludhiana completely overlooked the length of service rendered by respondent No. 1 and his past service record. As against this, respondent No. 2 adverted to this aspect of the matter and observed that in the past respondent No. 1 had not been found guilty of such delinquency and

further that the extreme penalty of dismissal would not affect respondent No. 1 only but his entire family and on that premise he proceeded to modify the punishment by directing that respondent No. 1 shall stand reverted by one stage in the lower time scale and the period from 5th July, 1995 to 21st April, 1999 shall be treated as leave of the kind due. This means that for a period of almost four years, respondent No. 1 will not get anything in the form of pay and allowances.

(7) In our opinion, respondent No. 2 had the power to alter the punishment awarded by the disciplinary authority and the discretion exercised by him in the case of respondent No. 1 does not suffer from any patent illegality or arbitrariness which may justify issuance of a writ of certiorari under Article 226 of the Constitution of India. The parameters for exercise of certiorari jurisdiction by the High Court have been clearly delineated by judicial precedents and it must be treated as settled law that writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals and where in exercise of jurisdiction confesred on it, the Court or the Tribunal acts illegally or improperly i.e. it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and not appellate one. This necessarily means that the finding of fact reached by the inferior Court or Tribubal, as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. This is the abstract statement of law, but the vexed question is as to what is an error of law apparent on the face of the record and in what circumstances a finding of fact recorded by an inferior Court or Tribunal or a quasi-judicial authority can be corrected. Broadly speaking, an error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal can be corrected only if it is shown that in recording the said finding the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as an error of law which can be corrected

by a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or the quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, the mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

(8) In *Shaikh Mahammad Umarsaheb* v. *Kadalaskar Hasham Karimsab and others*(2), their Lordships of the Supreme Court, while dealing with the power of the High Court under Article 226 to reappreciate the evidence produced before the trial Judge, held as under :

> "Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. when the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

(9) In *Jitendra Singh Rathore* v. *Shri Badiyanath Ayurved Bhawan Ltd. and another* (3), a two Judges Bench of the Supreme Court dealt with the scope of certiorari jurisdiction of the High Court qua the award passed by the Tribunal under the Act and held as under :—

> "The High Court is undisputably entitled to scrutinise the orders of the subordinate tribunals within the well accepted limitations and, therefore, it could in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. The High Court is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal as in the case of an appeal where it lies to it"

(10) In *R.S. Saini* v. *State of Punjab and others*(4), the Supreme Court upheld the order passed by this Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing are as under :

> "The Court while exercising writ jurisdiction will not reverse a finding of the enquiring authority on the ground that the

(2) AIR 1970 SC 61
(3) AIR 1984 SC 976
(4) JT 1999 (6) SC 507

evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the funciton of the Court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

(11) If the impugned order is examined in the light of the above noted principles, we do not find any difficulty in holding that by modifying the punishment imposed by the disciplinary authority, the appellate authority, i.e., respondent No. 2 did not commit any jurisdictional error or other illegality from which it can be inferred that the impugned order suffers from an error of law. The decision of the Supreme Court relied upon by Shri Bakhshi relates to the interpretation of the scope of power vested in the Labour Court/Industrial Tribunal under Section 11-A of the Industrial Disputes Act, 1947 (for short, 'the Act'). That section reads as under :

"11-A. Powers of Labour Court, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen-where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the material on record and shall not take any fresh evidence in relation to the matter."

(12) In paragraph 8 of the judgment, their Lordships of the Supreme Court noted that the Labour Court has the discretion to substitute the punishment or dismissal or discharge awarded by the

employer by way of reinstatement and then proceeded to observe as under:

> "The Labour Court, while upholding the third charge against the respondent nevertheless interfered with the order of the appellant removing the respondent from the service. The charge against the respondent was that he, in drunken state, along with a conductor went to the Assistant Cashier in the cash room of the appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice."

(13) In paragraph 6 of that decision, reference has also been made to the three other decisions of the Supreme Court including a judgment of three judges Bench in *Union of India* v. *B.C. Chaturvedi* (5), in which two of the three Judges reviewed the judicial precedents on the subject and then held as under :

> *"A review of the above legal position would establish that the disciplinary authority and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view of the magnitude or gravity of the misconduct.* The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the

(5) AIR 1996 SC 484

disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

(14) In our opinion, the observations made in U.P. State Road Transport Corporation's case (supra) in the context of Section 11-A of the Act cannot be invoked for nullifying the impugned order passed under Rule 19(2) of the Rules, the plain language of which confers statutory discretion upon the appellate authority to confirm, enhance or set aside the penalty imposed by the disciplinary authority. The language of Section 11-A of the Act is not pari materia with Rule 19(2) of the Rules and, therefore, the restrictions which have been read as implicit in exervise of power by the Labour Court/Industrial Tribunal cannot be imposed on the power vested in the appellate authority under Rule 19(2). That apart, the observations made in B.C. Chaturvedi's case (supra) show that the power of the appellate authority is co-extensive with that of the disciplinary authority and, therefore, it can alter or reduce the punishment awarded by the disciplinary authority. This, in our opinion, is sufficient to negate the argument of the learned counsel that as an appellate authority, respondent No. 2 could not have reduced the punishment imposed by the disciplinary authority.

(15) For the reasons mentioned above, the writ petition is dismissed.

R.N.R.

25096 HC—Govt. Press, U.T., Chd.