

## LETTERS PATENT APPEAL

Before Prem Chand Pandit and Bhopinder Singh Dhillon, JJ.

SURJIT SINGH,—Appellant.

versus.

SHRI SOM DUTT, SALES MANAGER, PUBLIC RELATIONS DEPARTMENT, PUNJAB, CHANDIGARH ETC.,—Respondents.

Letters Patent Appeal No. 211 of 1971.

November 24, 1972.

*Punjab Public Relations Department (Class III Non-Gazetted) Service Rules (1958)—Rules 9(a) (i) and 15—Power of the State Government under rule 15—Whether confined to be exercised in favour of a person already in service—Such power—Whether can be exercised in the case of a new entrant to the service—Rule 15—Whether ultra vires for giving unguided and unbridled powers to the State Government—Punjab Civil Services Rules, Volume I—Rules 1.3, 1.4, 1.6, and 3.12—State Government—Whether can enter into an agreement with a Government employee with regard to the conditions of service—Such agreement—Whether valid even if it runs counter to the provisions of the Rules.*

*Held*, that rule 15 of Punjab Public Relations Department (Class III Non-Gazetted) Service Rules, 1958 provides that where the Government is satisfied that the operation of any of the rules causes *undue hardship in any particular case* it may, by an order dispense with or relax the requirements of that rule to such extent and subject to such conditions as deemed necessary to deal with the case in a *just and equitable manner*. The plain reading of the rule shows that the power under this rule is not confined to be exercised only in favour of a person already in service. If the intention of the rule making authority was to limit the operation of this rule only to the members of the service, the language of the rule would have been different. Instead of using the words "in any particular case" in the rule, the words would have been "in the case of members of the service". Rule 15, therefore, can be brought into play irrespective of the fact whether the case is of a member of the service or of a new entrant, if the following ingredients are satisfied:—1. There must be a particular case; 2. In that case, the operation of any of these rules must result into undue hardship; 3. The Government must be satisfied about the hardship having been caused by the operation of that rule in that case; 4. The power must be exercised in order to deal with the case in a just and equitable manner. The rule is a condition of service and no member of the service can complain if the power under this rule is exercised by the State Government in proper cases.

*Held*, that the rule making authority in its wisdom has given clear guide-lines for exercising the power under this rule. The power can only be invoked if the State Government is satisfied that the operation of any of the rules causes undue hardship in a particular case. A guide-line having been laid down in the rule itself, it cannot be said that unguided or unbridled powers have been given to the State Government. If in a particular case the power is misused by the State Government, that would not make the rule *ultra vires*. In such a case, it is open to the aggrieved party to approach the Court and the Court will be duty bound to strike down the said order. The power having been given to the highest authority in the State, that is, the State Government, it cannot be presumed that it will misuse this power.

*Held*, that rule 1.3 of the Punjab Civil Services Rules, Volume I, clearly reserves the power with the competent authority to enter into an agreement where it is of the opinion that special provisions inconsistent with the rules are required with reference to any particular post or any condition of service. If such an agreement is entered into, the rules to which the agreement runs counter, shall not operate. Rule 1.6 specifically provides that nothing in the rules shall operate to deprive any person of any right or privilege to which he is entitled by or under any law or *by the terms of his agreement*. The provisions of rule 3.12 of the Rules do not come *into operation* if a special provision is made in the confirmation order by way of an agreement. The agreement of conditional confirmation between the Government employee and the competent authority, even if it runs counter to rule 3.12 is valid. There is no bar on the competent authority forming its opinion that a special provision inconsistent with these rules is required to be made with reference to any particular post or any condition of service after a person has been appointed against the said post. The reading of the provisions of rules 1.3, 1.4 and 1.6 of the Rules clearly goes to establish that it is open to the competent authority under rule 1.3 or to the State Government under rule 1.4 to enter into any contract or agreement which may be inconsistent with the provisions of the rules and to that extent the agreement entered into shall prevail and not the rules.

*Letters Patent Appeal under Clause X of the Letters Patent against the judgment and order passed by Hon'ble Mr. Justice R. S. Narula, on 3rd March, 1971 in Civil Writ No. 1363 of 1970.*

B. S. Gupta, Advocate, for the appellant.

J. L. Gupta and Karminder Suri, Advocates, for Respondent No. 1. M. S. Sethi, Advocate for Advocate-General, Punjab for Respondent Nos. 2 and 3.

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JUDGMENT

DHILLON, J.—This judgment will dispose of L.P.A. No. 211 of 1971, filed by Surjit Singh appellant, and L.P.A. No. 246 of 1971, filed by the State of Punjab against one and the same judgment of the learned Single Judge dated 3rd March, 1971.

(2) In order to appreciate the controversy between the parties, brief facts may be given. Surjit Singh appellant in L.P.A. No. 211 of 1971 joined the Public Relations Department of the Punjab Government as a Moharrir on 1st November, 1944 and was confirmed as Assistant on 21st September, 1959. Som Dutt writ-petitioner was confirmed as an Assistant in the same Department much later than Surjit Singh appellant and he was junior to the appellant by a few steps in seniority. On 1st April, 1961, a temporary ex-cadre post of Copy Writer was created in the grade of Rs. 250—10—350 in the Public Relations Department, Punjab. Surjit Singh appellant was appointed against this ex-cadre post of Copy Writer on 18th July, 1961 after he having been selected by the Punjab Public Service Commission. The post of Copy Writer was made permanent with effect from 1st September, 1966,—*vide* notification Annexure 'B' to the writ petition. On 3rd September, 1966, Surjit Singh appellant wrote a letter to the Director, Public Relations, Punjab, that since he was the only incumbent working against the post of Copy Writer and the post having been made permanent, therefore, he was likely to be confirmed. However, he pointed out that he should be confirmed against the post of Copy Writer without prejudice to his claim that might accrue to him by virtue of his being a substantive Assistant in the ministerial cadre. On 10th October, 1966,—*vide* Annexure 'B' to the writ petition, Surjit Singh appellant was confirmed by the Director of Public Relations Department against the post of Copy Writer and the condition imposed by Surjit Singh that this confirmation should not prejudice his claim that might accrue to him by virtue of his being a substantive Assistant, was accepted by the Government. The said order is in the following terms:—

“Against the post made permanent,—*vide* Punjab Government memorandum No. 8122-IPP-66, dated 1st September, 1966. This confirmation will be without prejudice to his interests and he will be entitled to all benefits as available to him by virtue of his position in the cadre of Assistants, so long as channel of promotion for the Copy Writer is not decided.”

(3) On 2nd August, 1967, Surjit Singh wrote another letter to the Director that his confirmation as Copy Writer was standing in his way for further promotion in the ministerial cadre and, therefore, his case is being prejudiced. He wrote that if necessary, he might be deconfirmed from the post of Copy Writer. On 18th December, 1967, the State Government, exercising the powers vested in it under Rule 15 of the Punjab Public Relations Department (Class III Non-Gazetted) Services Rules, 1958, relaxed the provisions of rule 9(a)(i) of the said rules and promoted Surjit Singh appellant to officiate as Superintendent in the scale of Rs. 350—20—450 with effect from 1st October, 1967. It was specifically mentioned in the order that he will have no claim for any promotion or other benefits on the basis of his confirmation as Copy Writer. Surjit Singh appellant was promoted as Superintendent with effect from 1st October, 1967 on the retirement of one Pritam Singh.

(4) On 23rd May, 1968, one Jaswant Singh, who was working as Public Relation Officer, was reverted to his substantive post of Superintendent which necessitated the reversion of Surjit Singh from the post of Superintendent. The case of the appellant is that it was by the mistake of the Department that he was reverted on papers to the post of Copy-Writer on 23rd May, 1968, but since Jaswant Singh proceeded on leave on the same day, that is, on 23rd May, 1968, Surjit Singh was promoted as Superintendent from the same date, that is, from 23rd May, 1968. Surjit Singh appellant continued to officiate as Superintendent in the leave vacancies of Tirath Singh and Jaswant Singh, when ultimately on 1st January, 1969, Tirath Singh, Superintendent, resumed his duties as Superintendent which necessitated the reversion of Surjit Singh. It may be pointed out that before he was reverted from the post of Superintendent, he wrote a letter to the Director, on 27th December, 1968, that in case he was to be reverted from the post of Superintendent, he should be reverted as Head Assistant and not as Copy Writer. It is worth mentioning that till 22nd November, 1968, there was no channel of promotion from the post of Copy Writer. The Class III Rules of the Department referred to above, were amended in 1968 where a channel of promotion for the post of Copy Writer, which carried the grade of Rs. 250—10—350, was provided as follows :—

- (1) Assistant Public Relations Officer, Class III Non-Gazetted.  
Grade Rs. 150—10—200—10—300.

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(2) Public Relations Officer, Class II Gazetted. Grade Rs. 250—25—750.

On 1st January, 1969, when Tirath Singh, who was on leave, joined as Superintendent, Surjit Singh appellant was reverted as Head Assistant which caused the reversion of Som Datt, writ-petitioner, to the post of Sales Manager, which post carried the equivalent pay and status of Assistant. On 16th December, 1969, Jaswant Singh, Superintendent, was promoted as Campaign Officer and on the same date Surjit Singh was appointed as Superintendent in the vacancy caused by the promotion of Jaswant Singh. Som Dutt, writ-petitioner, was not promoted from the post of Sales Manager to the post of Head Assistant because the record of his service was bad. It was in these circumstances that Som Dutt respondent filed a writ petition challenging the appointment of Surjit Singh appellant as Head Assistant and consequently as Superintendent and made a prayer for issuance of a writ of *quo warranto*.

(5) The State Government contested the writ petition and raised the pleas as follows :—

(1) That Surjit Singh was confirmed against the post of Copy-Writer on the condition which specifically protected his interest arising out of the permanent post of Assistant which he was holding substantively previous to his being confirmed against the post of Copy-Writer.

(2) In any case, it was pleaded that in view of the provisions of rule 15 of the Punjab Public Relations Department (Class III Non-Gazetted) Services Rules, 1958, the State Government had the power to relax the rigour of rule 9(a)(i) of the said Rules and the said power was exercised by the State Government. Therefore, the provisions of rule 9(a)(i) could not stand in the way of Surjit Singh and, therefore, he was rightly promoted to the post of Superintendent.

(6) Surjit Singh appellant in his written statement pleaded that he specifically pointed out to the Director before he was confirmed against the post of Copy Writer that he should be confirmed against the said post without prejudice to his claim that might accrue to him by

virtue of his being a substantive Assistant in the ministerial cadre. It was pointed out by him to the Director that he was a substantive Assistant ranking sufficiently senior in the seniority list of the Assistants due for promotion as Superintendent/Public Relations Officer. It is contended that this request was accepted by the Department and even subsequently, he continued all the time agitating with the Department that if need be, he might be deconfirmed from the post of Copy Writer. He also pleaded that in view of the relaxation of rule 9(a)(i) made by the State Government, his appointment to the post of Superintendent could not be held to be illegal.

(7) The learned Single Judge relying on a Full Bench decision of this Court reported in *Tuhi Ram Sharma v. Prithvi Singh and another* (1) came to the conclusion that in view of the operation of the provisions of rule 3.12 of the Punjab Civil Services Rules, Volume I, the lien of Surjit Singh appellant on the post of Assistant came to an end on 10th October, 1966 when he was confirmed against the permanent post of a Copy Writer. It was, therefore, held that his lien against the post of Assistant having come to an end and in view of the provisions of rule 9(a)(i) of the Punjab Public Relations Department (Class III Non-Gazetted) Services Rules, 1958, he was not qualified to be promoted as a Superintendent. Therefore, his appointment to the post of Superintendent was illegal.

(8) It was held that the State Government had no power vested in it under rule 15 of the Punjab Public Relations Department (Class III Non-Gazetted) Services Rules, 1958 for relaxing the provisions of rule 9. The learned Single Judge relied on a Single Bench decision of this Court reported in *Lehna Singh, Head Assistant, Public Relations Punjab, and others v. Punjab State* (2). The correctness of the decision of the learned Single Judge in that case was also challenged before Narula J in this case and it was observed by the learned Judge as follows:—

“Faced with the above mentioned judgment of Tuli J. in *Lehna Singh's case*, (2), Mr. Balwant Singh Gupta was left with no alternative except to claim that *Lehna Singh's case* (2) has not been correctly decided and to ask me to

(1) I.L.R. (1971) 1 Pb. & Hr. 353.

(2) 1970 S.L.R. 844.

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refer this case, if necessary, to a Division Bench for re-considering the view taken by Tuli J. particularly because Letters Patent Appeal against that judgment is stated to have already been filed and admitted. Had the respondent not been entitled to prefer an appeal against my judgment as a matter of right, I might have adopted that course because I do feel that some of the observations of Tuli J., in *Lehna Singh's case* (2) may indeed be too widely stated. I am, however, bound by that judgment and following the same I hold that the purported relaxation of rule 9(a)(i), in exercise of the powers conferred on the Government under rule 15 of the 1958—Rules, was not valid and was, therefore, of no effect."

(9) It may be pointed out, here that L.P.A. No. 648 of 1970 Punjab State and another v. Lehna Singh, etc., was filed against the judgment of Tuli J. in *Lehna Singh's case* (2) (supra), but the same was got dismissed as having become infructuous.

(10) As regards the contention that Surjit Singh was deconfirmed from the post of Copy Writer by order dated 18th December, 1967, when the State Government ordered that Surjit Singh would have no right for any promotion or other benefits on the basis of his confirmation as Copy Writer, it was observed by the learned Judge that in view of the operations of the provisions of rule 3.12 of the Punjab Civil Services Rules, the lien of Surjit Singh against the post of Assistant had ceased earlier and the same could not be revived by the order dated 18th December, 1967. The learned Judge after recording the above mentioned findings, accepted the writ petition and quashed the appointment of Surjit Singh to the post of Head Assistant and Superintendent and issued a direction that in consequence of the judgment, the State Government while filling in the post which may fall vacant on account of reversion of the appellant, shall consider the writ-petitioner for such post in accordance with the relevant rules.

(11) We have heard Mr. B. S. Gupta, Advocate, for the appellant, Surjit Singh; Mr. Mohinderjit Singh Sethi, Advocate for the State and Mr. J. L. Gupta, Advocate for respondent No. 1, at

considerable length. The learned counsel for Surjit Singh appellant raised the following points during the course of his arguments:—

- (1) That the case of his client is not covered by the Full Bench judgment of this Court in *Tuhi Ram Sharma's case* (1) (*supra*) inasmuch as in that case no order of suspension of lien had been passed whereas in the present case, the State Government specifically mentioned in the confirmation order that the rights of Surjit Singh against the post of Assistant will not be affected. The learned counsel contends that this in fact amounts to suspending the lien of Surjit Singh against the post of Assistant. Therefore, the learned counsel contends that the provisions of rule 3.12 of the Punjab Civil Services Rules would not come into operation in the present case.
- (2) That in view of the provisions of rule 3.14(a)(2) of the Punjab Civil Services Rules, the Government was duty bound to suspend the lien of Surjit Singh because he was going to be appointed substantively to a permanent post of Copy Writer outside the cadre of permanent post of Assistant which he was holding substantively, and, therefore, even if no specific order was passed by the State Government, since the case of his client is covered under rule 3.14(a)(2) of the Punjab Civil Services Rules, therefore, rule 3.12 *ibid* would not come into operation.
- (3) That in any case, even if it is held that the Full Bench decision in *Tuhi Ram Sharma's case* (1) (*supra*) applies to the facts of the present case, the learned counsel contended that the Full Bench decision is not laying down the correct law and the interpretation of the rules 3.11, 3.12, 3.13 and 3.14 of the Punjab Civil Services Rules as given by the Full Bench is not correct. The learned counsel raised a number of arguments with a view to convince us that the decision of the Full Bench in *Tuhi Ram Sharma's case* (1) (*supra*) was not correctly made, and, therefore, the matter may be referred to a larger Bench.
- (4) That the Single Bench decision in *Lehna Singh's case* (2) (*supra*) is not the correct decision on the interpretation of rule 15 and rule 9(h)(i) of the Punjab Public Relations



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Department (Gazetted) Services Rules, 1958, and, therefore, the State Government had the power to relax the operation of rule 9(a)(i) of the Punjab Relations Department (Class III Non-Gazetted) Services Rules, 1958, and as such the appointment of his client to the post of Superintendent was validly made.

- (5) It was contended that if the operation of the confirmation order dated 10th October, 1966, which protected the rights of Surjit Singh appellant against the post of Assistant was illegal, the whole order should be thrown out and in that case, there will be no confirmation order confirming Surjit Singh appellant against the post of Copy Writer and, therefore, operation of the provisions of rule 3.12 of the Punjab Civil Services Rules, would not come in. It was contended that the part of the order which was favourable to the employee cannot be held to be illegal; whereas the other part of the same order detrimental to the interest of the employee should be held to be illegal. It is contended that Surjit Singh appellant never gave his consent to be confirmed against the post of Copy Writer without his rights having been protected against the post of the Assistant which he was holding substantively which post had the channel of promotion in view of rule 9(a)(i) of the Punjab Public Relations Department (Class III Non-Gazetted) Services Rules, 1958.

(12) Mr. Mohinderjit Singh Sethi, the learned counsel for the State of Punjab, contended that in view of the provisions of rule 1.3, 1.4 and 1.6 of the Punjab Civil Services Rules, the provisions of rule 3.11 and 3.12 of the Punjab Civil Services Rules would not apply to the present case as there was an agreement between the State Government and Surjit Singh appellant that the rights of Surjit Singh appellant against the permanent post of Assistant on which post Surjit Singh appellant was permanently appointed, would not be affected even if he is confirmed against the post of Copy Writer. The learned counsel contends that since it was a term agreed between the employer and the employee, to that extent, in view of the provisions of rules 1.3, 1.4 and 1.6 of the Punjab Civil Services Rules, the provisions of rule 3.12 *ibid* will not operate.

- (13) I propose to deal with ground No. 4 referred to above first.

(14) Punjab Public Relations Departments (Class III Non-Gazette) Services Rules were framed in exercise of the powers conferred on the Governor under proviso to Article 309 of the Constitution of India and other powers enabling him in this behalf on 2nd May, 1958. Rules are divided into four parts. Part I contains Rules 1 and 2; part II contains rules 3 to 5; part III contains rules 6 to 9 and Part IV contains rules 10 to 15.

(15) In rule 2(f) of the said Rules, service is defined as follows:—

“ ‘Service’ means the Punjab Public Relations Department (Class III-Non-Gazetted) service.”

Rule 3 of the said Rules is as follows:—

“3. *Number and character of posts.*—The Service shall comprise the posts shown in Appendix ‘A’ to these rules; Provided that nothing in this rule shall affect the inherent right of Government to make additions to or reductions in the number of such posts, either permanently or temporarily.”

(16) Appendix ‘A’ to these rules contains the categories and numbers of posts in the Department, but the post of Copy Writer is not included in Appendix ‘A’.

(17) Rule 4 deals with the nationality of the candidates and rule 5 deals with the age of the candidates and is as follows:—

“5. (1) *Age of candidates.*—Except in the case of a person already in Government service, no one shall be appointed to the Service if he is below 18 or more than 25 years of age (30 years in the case of Scheduled Castes, Scheduled Tribes and other Backward Classes) on the date of appointment; Provided that the appointing authority may, in special circumstances, to be recorded in writing, appoint a person exceeding 25 years of age.

(2) The appointing authority shall verify the date of birth of every person appointed to the Service and shall note in his service book the mode of verification adopted in each

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case. Only the following documents shall be accepted for purposes of verification:—

- (i) certified extracts from birth registers provided the name of the child is specifically mentioned therein;
  - (ii) certified copies of entries made in School and College registers;
  - (iii) certified copies of extracts from Gazette notifications containing the results of examinations, if the age or date of birth is given therein; and
  - (iv) the first University Certificate or a certified copy of the notification publishing the result of the first University Examination or certificate of Board of Examination.
- (3) In the case of a Government servant, the date of birth in his service book shall be treated as final.”

According to rule 6, the appointing authority is the Director of Public Relations Department. Rule 7 deals with conditions of appointment, which is as follows:—

“7. *Conditions for Appointment.*

- (1) Except a person already in Government service, no person shall be appointed to the Service unless he produces:—
  - (a) a certificate of good character from the principal academic officer of his University, College or School last attended, if any, and similar certificates from two responsible persons who are not related to him and who are well acquainted with him in private life and are not connected with his university, college or School or Training Institution, if any.
  - (b) The Medical Certificate required by rule 3.1 of the Punjab Civil Services Rules, Volume I, Part I.
- (2) No person who has more than one wife living or is married to a person who already has a wife living, shall be eligible

for appointment to any post in the Service unless the Government after being satisfied that there are special grounds for doing so exempt such person from the operation of this provision."

(18) Rule 8 provides necessary qualifications for different posts covered by these rules and as regards the post of Superintendent, the following minimum educational qualifications have been provided:—

"Graduate of a recognised University, with at least 5 years administrative experience in a Government office in a State or Union."

(19) Rule 9 provides that the recruitment to the Services shall be made in the following manner:—

"9. Recruitment to the Services shall be made—

(a) In the case of Superintendent—

- (i) by selection from among Head Assistants, Article Writers, Assistants or Sales Manager, provided they have five years' experience on their respective posts; or
- (ii) by transfer or deputation of a person already in the service of the Government of a State or of the Union; or
- (iii) by direct appointment.

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Part IV of the rules deals with the conditions of the service.

(20) Rule 10(i) makes the provision regarding the period of probation of members of service. Rule 11 deals with seniority, whereas rule 12 deals with leave, pension and other cognate matters. Rule 13 deals with pay of the members of the service and Rule 14 deals with authority empowered to impose penalties. Rule 15 under which the powers of relaxation to rules are given, is as under:—

"15. *Powers to relax rules.*—Where the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case it may by order dispense

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with or relax the requirements of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner."

(21) I have reproduced all the important rules with a view to examine the true purport of rule 15. In my opinion the interpretation of rule 15, as given by Tuli, J., in *Lehna Singh's case* (2) (*supra*), is not warranted from the plain reading of rule 15 and keeping in view the scheme of the rules. In the case before Tuli, J., the provisions of rule 9(h)(i) of the Public Relations Department (Gazetted) Service Rules, 1958, and provisions of rule 15 of the said rules came for interpretation. I may point out that rule 9(h)(i) of the Punjab Public Relations Department (Gazetted) Service Rules, 1958, provides the mode of appointment to the post of Public Relations Officers, District Public Relations Officer, Editors and Radio and Press Liaison Officers and rule 15 of the said rules is paramateria the same as rule 15 in the present case. While considering the case of Amar Kant respondent in that case, Tuli, J., came to the conclusion that Amar Kant was not entitled to be appointed to the post of Public Relations Officer as he was not qualified in view of the provisions of rule 9(h)(i) of the Gazetted Rules referred to above. The plea that he was appointed in relation of rule 9(h)(i) was negated. After reproducing Rule 15, the learned Judge held as follows:—

"As I read this rule, it can be applied only to the members of the service who are governed by these rules and in whose case the operation of any rule causes undue hardship but this power of relaxation cannot be exercised in favour of a new entrant to the service as it cannot be said that any rule causes undue hardship to him. Secondly, no order has been produced before me to prove that the Government passed any order to the effect that it was satisfied that the operation of rule 9(h)(i) caused undue hardship to Amar Kant and, it was, therefore, necessary to relax the requirements of that rule and to what extent and subject to what conditions. The appointment and promotion of Amar Kant to the post of Public Relations Officer, to begin with, was not in accordance with the rule and could not be regularised by relaxing one of the rules relating to the recruitment."

(22) I am in respectful disagreement with the view taken by Tuli, J. The plain reading of rule 15 would show that the power under this rule is not only confined to be exercised in favour of a person already in service as the rule provides that where the Government is satisfied that the operation of any of these rules causes *undue hardship in any particular case*, it may by an order dispense with or relax the requirements of that rule to such extent and subject to such conditions as deemed necessary to deal with the case in a *just and equitable manner*. If the intention of the rule making authority was to limit the operation of this rule only to the members of the service, the language of the rule would have been different. Instead of using the words "in any particular case" in the rule the words would have been "in the case of members of the service", but the language of the rule is not such. Rule 9 provides for a number of posts in the Service to be filled in by direct recruitment. If the interpretation as given by Tuli, J., is accepted to be correct, it would mean that in case of direct recruitment, even though the Government may be satisfied that the case was of undue hardship and in order to deal with the same in just and equitable manner, relaxation or dispensing with of a particular rule debaring a new entrant from entering into service was needed the Government would be powerless. For instance, sub-rule (2) of rule 5 provides that the appointing authority shall verify the date of birth of the person appointed to the service and shall note in the service book the mode of verification adopted in each case. The only documents, which have to be accepted for the purpose of verification, mentioned in this rule are as follows:—

- (i) Certified extracts from birth registers provided the name of the child is specifically mentioned therein;
- (ii) certified copies of entries made in School and College registers;
- (iii) certified copies of extracts from Gazette notifications containing the results of examinations, if the age or date of birth is given therein; and
- (iv) the first University Certificate or a certified copy of the notification publishing the result of the first University Examination or certificate of Board of Examination.

(23) If these four types of documents are not available, in my view the Government can by an order dispense with or relax the

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requirement of that rule provided the other ingredients of rule 15 are satisfied. Since the rules also deal with the direct recruits, therefore, the operation of any rule concerning the direct recruits can result into undue hardship. Therefore, it is not correct to hold that no rule can be said to cause hardship in the case of new entrant in the Service.

(24) If in a given case, none of these documents is available, nor can it be made available and the State Government is satisfied that it is a case of undue hardship and in order to decide the same in a just and equitable manner the operation of sub-rule (2) of Rule 5 be dispensed with or relaxed, in that case, if the interpretation as given by Tuli, J., is correct, this cannot be done. If this restricted interpretation is given the very purpose of rule 15 will be frustrated. From the plain language of rule 15, it is clear that this rule can be put into operation if the operation of any of the rules causes undue hardship in any particular case. For instance, operation of any rule can also cause hardship to a direct recruit, who is yet to enter into the service, and if the Government is satisfied to that effect, it has certainly power to relax the operation of such rule which stands in the way of the direct recruit to enter the Service, in order to deal with the case in a just and equitable manner. Therefore, if the following ingredients are satisfied, rule 15 can be brought into play irrespective of the fact whether the case is of a member of the Service or of a new entrant:—

- (1) There must be a particular case.
- (2) In that case, the operation of any of these rules must result into undue hardship.
- (3) The Government must be satisfied about the hardship having been caused by the operation of that rule in that case.
- (4) The power must be exercised in order to deal with the case in a just and equitable manner.

No doubt in rule 5(i), a power has been given to the appointing authority under special circumstances, for the reasons to be recorded in writing, to relax the rules regarding upper age limit, but that may not warrant an inference that the rule making power never wanted to give an overriding power to the State

Government under rule 15. The power in proviso to rule 5(i) is given to the appointing authority who is the Director and not to the State Government. This power has been given to an authority subordinate to the State Government. Therefore, the jurisdiction under rule 5(i) is to be exercised by a separate and subordinate authority in different circumstances. In a given case, where the requirements of rule 15 are satisfied, the State Government may relax or suspend the operation of rule 5 along with the proviso to it. Similarly, the power given to the State Government to exempt an eligible person for being recruited in the Government service even though he has got more than one living and married wife under rule 7(2) is different jurisdiction and the said jurisdiction can only be exercised if the Government is satisfied that there are special grounds for doing so. If the power under this rule is to be exercised, no other ingredient than those in rule 15, is to be satisfied. The jurisdiction given under rule 15 is clearly a separate jurisdiction, which can only be exercised if in any particular case, the Government is satisfied that the operation of any particular rule causes undue hardship and it is necessary to relax the rule which causes undue hardship in order to deal with the case in a just and equitable manner. It is to be kept in mind that it is not in each and every case, where the State Government so likes that it can exercise the power under rule 15 so as to negative the provisions of rules themselves, but it is only in exceptional cases of undue hardship and with a view to deal with the case in a just and equitable manner that such power is exercised. The argument that if the operation of a rule can be relaxed by the State Government in case of persons who are not members of the Service, it will result in making ineligible persons to be eligible, appears to be attractive at first instance, but when this is examined in its proper perspective, it is to be found that this argument has no force. It is not in each and every case that such a power can be exercised. If it is shown in a given case that the power under rule 15 has been exercised with a view to make an ineligible person as eligible and the ingredients of rule 15 are not satisfied, that order will be quashed by this Court. Even if for argument's sake it be admitted, for a while, that the power under rule 15 can only be exercised in the case of person who are members of the service, even then the same criticism will stand because a member of the service who is ineligible for promotion according to rule 9 will be made eligible for promotion by relaxing the rigour of rule 9. The power under rule 15 is inherently meant to remove a particular rule, the operation of



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which causes undue hardship, from the statute book for the time being and if the rule is not *ultra vires*, this type of argument is of no avail to the counsel for the writ petitioner. The rules framed under the proviso to Article 309 of the Constitution of India have to be framed keeping in view the exigencies of the service and rule which provides for cases of undue hardship be dealt with in a just and equitable manner, has to be given its full meaning. Therefore, taking into consideration the plain language of rule 15, it is difficult for me to subscribe to the view that the operation of this rule is confined only to the members of the service.

(25) Moreover, rule 15 is a condition of service and as good a condition as any other condition of service and no member of the service can complain if the power under this rule is exercised by the State Government in proper cases. All the conditions of service including rule 9(a) (i) are subject to rule 15 and, therefore, it is idle to contend that while exercising the power under rule 15 the State Government will be making an ineligible person as eligible. Every member of the service is governed by these rules and rule 15 is as good a rule as any other rule which provides conditions of service. No member of the Service can be heard to make out a grievance for the exercise of power by the State Government if the ingredients of rule 15 are satisfied.

(26) Mr. Jawahar Lal Gupta, the learned counsel for respondent No. 1, then contended that rule 15 is *ultra vires* as it gives unbridled and unguided powers to the State Government to relax the operation of any rule. This contention again, in my opinion, is without any merit. The rule making authority in its wisdom has given clear guide-lines for exercising the power under this rule. The power under this rule can only be invoked if the State Government is satisfied that the operation of any of the rules causes undue hardship in a particular case. A guide-line having been laid down in the rule itself, it is difficult to hold that unguided or unbridled powers have been given to the State Government. It is a different matter that in a particular case the said power is misused by the State Government, but that argument would not entitle the Court to hold that rule 15 is *ultra vires*. If in a particular case, power given to the State Government is misused, it is open to the aggrieved party to approach the Court and the Court will be duty bound to strike down the said order. Moreover, this power has been given

to the highest authority in the State, that is, the State Government and it cannot be presumed that the State Government will misuse this power.

(27) Their Lordships of the Supreme Court in *The Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi and another* (3) held as follows:—

“The principle is well established that the legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down the Courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation. What form the guidance should take is again a matter which cannot be stated in general terms. It will depend upon the circumstance of each statute under consideration. In some cases guidance in broad general terms may be enough.”

(28) The said observations can usefully be made applicable to the present case in order to see whether sufficient guide-lines have been provided in the rules for the guidance of the Government to exercise power under rule 15. In the nature of things, nothing more than what has been laid down in the rules could be laid down by the rule making authority for the guidance of the State Government. The rule provides for dealing the case of an undue hardship in a just and equitable manner in order to do justice to a particular person. In the nature of things, the rule essentially applies to a person who is made to suffer undue hardship because of the operation of any of the rules. In such a situation, no other guide-line could be given as the cases which may fall for application of rule 15 are

(3) A.I.R. 1968 S.C. 1232.

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bound to be of unforeseen circumstances which may occur in a number of ways.

(29) Similar matter came up for consideration before Tuli, J., in *Hardyal Singh, Assistant Excise and Taxation Officer, Ludhiana v. State of Punjab and others* (4), where the vires of rule 19 of the Punjab Excise and Taxation Department (State Service Class III-A) Rules, 1956 came up for consideration. This rule as originally framed in 1956 was as follows:—

“19. *Dispensation and relaxation in hard cases.*—Where the Governor is satisfied that the operation of any of these rules will cause undue hardship in any particular case, he may by order dispense with or relax, to such extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner.”

(30) The said rule was then amended on February 12, 1965 and the following rule was substituted:—

“Where the Government is of the opinion that it is necessary or expedient so to do, it may by order for reason to be recorded in writing, relax any of the provisions of these rules with respect of any class or category of persons.”

(31) The vires of this amended rule were challenged on the similar grounds and Tuli, J., came to the conclusion that the power of relaxation given under rule 19 to the Government was not violative of Article 14 of the Constitution of India.

(32) In this view of the matter, there is no merit in the contention of Mr. Jawahar Lal Gupta, the learned counsel for respondent No. 1, that this rule is *ultra vires*.

(33) The next contention of Mr. Jawahar Lal Gupta, the learned counsel for respondent No. 1, that even if the Government had the power of relaxing the rule in case of Surjit Singh, appellant, the respondent No. 1 had the right to be considered for promotion to the

post of Superintendent, is again without any merit. The Writ-petitioner was admittedly quite a few steps below the appellant, Surjit Singh, in seniority of confirmed Assistants even at the time when Surjit Singh was confirmed as Copy Writer. The provisions of rule 9(a)(i) show that it is not the Assistants alone who are eligible for promotion but a number of other categories of persons are also eligible for promotion to the posts of Superintendents. The file indicates that the Government had applied its mind to the provisions of rule 9(a)(i) and out of the qualified category of persons, the Government, after applying its mind, came to the conclusion that keeping in view the seniority-cum-merit, there was a real contest between Sher Singh, Article Writer and Surjit Singh, appellant, for promotion to the post of Superintendent. After considering the merits of the claim of both these incumbents, the Government came to the conclusion that in view of his experience and number of other reasons mentioned in the file, Surjit Singh was the proper person to be promoted. Som Dutt, the writ-petitioner, was, at that stage, far away in order of seniority to be considered for the promotion. The promotion to the post of Superintendent was to be made by selection keeping in view the merit-cum-seniority and only the claims of the persons who were sufficiently high in seniority in different categories of qualified persons were to be considered and out of them a Superintendent was to be appointed. It is an admitted fact that in the order of seniority Surjit Singh was the senior-most Assistant, Lenha Singh came after him and then was the writ petitioner, Som Dutt. Therefore, this contention of the learned counsel is again without any merit and is to be repelled.

(34) Mr. J. L. Gupta then contended that the lien of Surjit Singh on the post of Assistant had come to an end because of the operation of rule 3.12 of the Punjab Civil Services Rules, Volume I, (Part I). It is, therefore, contended that the power under rule 15 could not be exercised in his case because operation of a rule cannot be said to have caused any undue hardship. This contention again is without any merit. The power under rule 15 can only be exercised where the operation of any of the rules causes undue hardship. If the contention that the hardship caused by a rule cannot be said to be an undue hardship, is accepted, it would mean that in no case the rule can be relaxed. The facts of the present case have already been stated in detail and it is crystal clear that Surjit Singh appellant, who was quite high in the seniority of Assistants, was subsequently

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appointed against a temporary post of Copy Writer. He accepted the temporary appointment of Copy Writer after he had been selected by the Public Service Commission. When the post of Copy Writer became permanent, he apprehended that he may be confirmed against this post and thereby his rights and privileges which he enjoyed as a permanent Assistant, would be adversely affected and, therefore, he wrote to the Director that he may not suffer on account of confirmation against the post of Copy Writer. The Department accepted his plea and specifically provided that his rights and privileges as against the post of Assistant will not be affected with his confirmation against the post of Copy Writer. If the provisions of rule 3.12 came into play and his lien against the post of Assistant came to end, on his being confirmed against the permanent post of Copy Writer, it was not due to his fault, as has been narrated above. He continued protesting to the Department before he was confirmed and as well after the confirmation order was passed, a number of times, and if the Department did not correctly pass orders and realised the legal position, the appellant is not to be made to suffer. It was under these circumstances, that the State Government at that stage realised that there was an employee who had a permanent lien on the post of Assistant and was sufficiently high in the seniority and was a member of the service and was thrown out of the service by an action of the Government, and, therefore, it was a case of undue hardship where the provision of rule 9(a)(i) had to be relaxed. It cannot be disputed that if Surjit Singh had not been confirmed on the post of Copy Writer and the operation of rule 3.12 would not have come in his way, he was sufficiently senior to the writ-petitioner and was entitled to be promoted as Superintendent on the basis of merit-cum-seniority.

(35) The matter may be viewed from another view point. A person, who is appointed, subsequently against a permanent post, has got a right to continue to the said post till the date of retirement, until and unless he is thrown out by taking disciplinary proceedings against him. In that case he has got a protection of Article 311 of the Constitution of India. But here is a case where Surjit Singh has the right to continue to the post of Assistant till his retirement and was entitled to promotions as envisaged in rule 9(a)(i), but much against his wishes, his lien came to an end by an order of the Director confirming him against the post of Copy Writer. It is in such cases, that

the rule making authority made the provision of rule 15 to be exercised. To restrict the application of rule 15 only to the members of the service, would be violating the plain language of rule 15 and it would amount to reading all other rules except rule 15 as condition of service, this is not warranted by the rule making authority. Since I have come to the conclusion that the writ-petitioner was not sufficiently high in seniority to be considered for promotion to the post of Superintendent, therefore, the contention that he had a right to be considered at the time of promotion is without any merit.

(36) Now I propose to deal with the contention of Mr. Sethi, the learned counsel for the State. His contention is that in view of the provisions of rules 1.3, 1.4, and 1.6 of the Punjab Civil Services Rules, Volume I, the conditional order of confirmation of Surjit Singh appellant against the post of Copy Writer cannot be said to be illegal merely because in the said order the rights and interests of Surjit Singh, which accrued to him as an confirmed Assistant, were protected. The learned counsel contends that there is a power reserved in the above mentioned rules wherein a competent authority or the State Government, as the case may be, can enter into an agreement with an employee of the Government with regard to the conditions of service and if such an agreement has been entered into, the provisions in the Punjab Civil Services Rules, which may run counter to such an agreement, will not prevail. He, therefore, contends that keeping in view the provisions of these rules, and keeping in view the facts of this case, it cannot be held that the provisions of rule 3.12 came into operation in the present case. In order to appreciate this contention, the provisions of rules 1.3, 1.4 and 1.6 of the Punjab Civil Services Rules, Volume I, may be referred to, which are in the following terms:—

“1.3. When in the opinion of the competent authority, special provisions inconsistent with these rules are required, with reference to any particular post or any conditions of service, that authority may, notwithstanding anything otherwise contained in these rules, and subject to the provisions of clause (2) of Article 310 of the Constitution of India (see Appendix I), provide agreement with the person appointed to such post for any matters in respect of which in the opinion of that authority special provisions are required to be made: Provided that in every agreement so made it shall be provided that in respect of any matter

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for which no provision has been made in the agreement, provisions of these rules shall apply.

"1.4. These rules shall not apply to—

- (i) any Government servant between whom and the Government, a specific contract or agreement subsists in respect of any matter dealt with herein to the extent up to which specific provision is made in the contract or agreement (see rule 1.3 above):
- (ii) any person for whose appointment and conditions of service special provision is made by or under any law for the time being in force; and
- (iii) any Government servant or class of Government servants to whom the competent authority may, by general or special order, direct that they shall not apply in whole or in part. One of such classes of Government servants is that employed only occasionally or which is subject to discharge at one month's notice or less. A list of such Government servants is given in Appendix 2.

1.6. Nothing in these rules shall operate to deprive any person of any right or privilege to which he is entitled by or under any law or by the terms of his agreement."

(37) The contention of the learned counsel is that before Surjit Singh appellant was confirmed against the post of Copy Writer, he wrote a letter dated 3rd September, 1966, *vide* Annexure 'D' to the written statement of the Director, who was the competent authority according to the rules, that he was substantive Assistant and ranked sufficiently high in the seniority list of the Assistants due for promotion as Superintendent/Public Relations Officer. Therefore, he requested the Director that he may be confirmed against the post of Copy Writer without prejudice to his claim that might accrue to him by virtue of his being a substantive Assistant in the ministerial cadre. This condition imposed by Surjit Singh appellant was accepted by the Director when the Director issued the following order confirming him (Surjit Singh) against the post of Copy Writer and protecting his rights and interests accruing

to him by virtue of his being a substantive Assistant in the ministerial cadre.

"S. No.	Name	Appointment and grade	Remarks.
1.	Surjit Singh	Copy Writer 250—10—300	Against the post made permanent, <i>vide</i> Punjab Government Memorandum No. 8122-IPP-66, dated 1st September, 1966. This confirmation will be without prejudice to his interests and he will be entitled to all benefits as available to him by virtue of his position in the cadre of Assistants so long as channel of promotion for the Copy Writer is not decided."

It is, therefore, contended that the proposal made by Surjit Singh for conditional confirmation having been accepted by the competent authority itself, an agreement between the competent authority and Surjit Singh came into existence that Surjit Singh's rights and privileges accruing to him because of his being a substantive Assistant in the ministerial cadre will be protected even though he was being confirmed against the post of Copy Writer. In my opinion, there is merit in this contention. Rule 1.3, referred to above, clearly reserves the power with the competent authority to enter into an agreement where it is of the opinion that special provisions inconsistent with these rules are required with reference to any particular post or any condition of service, and if such an agreement is entered into, the rules to which the said agreement runs counter, shall not operate. Rule 1.6 specifically provides that nothing in these rules shall operate to deprive any person of any right or privilege to which he is entitled by or under any law or *by the terms of his agreement*. In this view of the matter, I am of the opinion that the provisions of rule 3.12 of the Punjab Civil Services Rules, Volume I, will not come into operation in view of this special provision having been made in the confirmation order by way of an agreement. It is again to be seen that when Surjit Singh wrote to the competent authority on 3rd September, 1966, that he should be confirmed only if his rights and privileges against the post of Assistant are protected,



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it was open to the competent authority to have rejected this condition and to have informed Surjit Singh, that in case he wanted to be confirmed against the post of Copy Writer, he shall not be entitled to get his rights and privileges, accruing to him by virtue of his being a permanent Assistant, protected. It was then for Surjit Singh to have decided as to whether he should get himself confirmed against the post of Copy Writer or not, but this was not done and on the other hand, the condition as proposed by Surjit Singh, for his confirmation against the post of Copy Writer was accepted by the competent authority. It is no more in dispute that an employee, who is confirmed against a permanent post, is entitled to continue to retain the said post till his superannuation until and unless he is removed by way of punishment in which case protection of Article 311 of the Constitution of India is available to him. It was so held by the Supreme Court in *Parshotam Lal Dhingra v. Union of India* (5). Therefore, it is clear that Surjit Singh had a right to continue to retain the post of Assistant till his retirement until and unless he was removed by way of punishment. If his lien was to come to an end because of his confirmation as a Copy Writer, he had a right to be consulted in that matter and if he had opted himself, without any condition, to be confirmed against the post of Copy Writer, he could not be heard to make any grievance subsequently, but if he proposed the conditional confirmation and the condition proposed by him was accepted by the competent authority, to that extent, an agreement between him and the competent authority came into existence regarding his conditions of service, which agreement is clearly protected by rules 1.3 and 1.6 of the Punjab Civil Services Rules, referred to above. Therefore, the contention that the conditional confirmation order runs counter to rule 3.12, cannot prevail because the competent authority had the power under rule 1.3 to enter into an agreement with the employee regarding the conditions of his service which agreement may even run counter to the rules and in that case in view of the provisions of rule 1.6, the provisions of rule 3.12 will not operate. As regards rule 1.3, the only contention of Mr. J. L. Gupta, the learned counsel for the writ-petitioner, is that when a particular post is created, it is then alone that the competent authority can impose the condition of service which may be contrary to the rules but once a post has been created and a person had been appointed against that post, though temporarily, there is

(5) A.I.R. 1958 S.C. 36.

no power with the competent authority to change his conditions of service. The learned counsel laid great stress on the words "any particular post" in this rule and contended that the agreement, against the provisions or the rules, under this rule, cannot be entered into after a government servant has been appointed to the post. This argument of the learned counsel is at the face of it fallacious. If this approach is adopted, the very language of rule 1.3 will be violated. The said rule clearly provides that the agreement may relate to the conditions of service or may relate to any particular post but the same has to be entered into between the employee appointed against that post and the prescribed authority. There is no bar on the competent authority forming its opinion that a special provision inconsistent with these rules is required to be made with reference to any particular post or any condition of service after a person has been appointed against the said post. A situation may arise where an employee, who is working against a particular post temporarily, may refuse to continue in that post if the conditions of his service are not changed as desired by him and in that case there is no restriction imposed under rule 1.3 that the competent authority has no power to change any condition of his service.

(38) It is conceded that in view of the provisions of rule 1.2, the post of Copy Writer being the post under the Administrative control of the Punjab Government and whose pay is debitable to the Consolidated Fund of the State of Punjab and it being a Provincial Class III Service is covered by the above mentioned rules. From the reading of rule 1.3, it is manifestly clear that when in the opinion of the competent authority, special provisions inconsistent with the *Civil Services rules are required with reference to any particular post or any conditions of service*, that authority may, notwithstanding otherwise contained in these rules, and subject to the provisions of clause (2) of Article 310 of the Constitution of India, provide agreement with the person appointed to such post for any matters in respect of which in the opinion of that authority special provisions are required to be made. The inherent power which vests in the appointing authority is maintained by providing this rule so that keeping in view the exigencies of service regarding a particular post or regarding any condition of service of that post the competent authority can enter into an agreement which may be even inconsistent with the rules provided hereinafter.

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(39) Rule 1.4 specifically provides that any Government servant between whom and the Government, a specific contract or agreement subsists in respect of any matter dealt with herein to the extent up to which specific provision is made in the contract or agreement, these rules shall not apply. Clause (ii) of this rule provides that the said rules will not apply to any person for whose appointment and conditions of service special provision is made by or under any law for the time being in force. Clause (iii) of this rule gives power to the competent authority to exempt by general or special order any Government servant or class of Government servants from operation of any portion of these rules. Thus it is obvious that whereas in rule 1.3, the authority to enter into an agreement regarding the conditions of service of a particular post, is given to the competent authority; in rule 1.4(i), this power is given to the State Government. Rule 1.6 further provides that nothing in these rules shall operate to deprive any person of any right or privilege to which he is entitled by or under any law or by the terms of his agreement. The reading of these three provisions clearly goes to establish that in any case it is open to the competent authority under rule 1.3 or to the State Government under rule 1.4 to enter into any contract or agreement which may be inconsistent with the provisions of the rules and to that extent the agreement entered into shall prevail and not the rules. Rule 1.6 clearly provides that in such an exigency the person with whom the agreement has been entered, will not be deprived of any right or privilege to which he will be entitled under the terms of his agreement. If these three provisions are kept in view it is clear that the condition imposed while confirming Surjit Singh appellant against the post of Copy Writer was clearly within jurisdiction because in an earlier letter dated 3rd September, 1966, Annexure 'D' to the written statement of the State, Surjit Singh had made it clear that since there was no channel of promotion provided to the post of Copy Writer and that since he was ranking quite senior in the seniority list of the Assistants due for promotion to the posts of Superintendent and Public Relations Officer, therefore, he should be confirmed against the post of Copy Writer only if his rights and privileges, which might accrue to him by virtue of his being a substantive Assistant in the ministerial cadre, are protected. This proposal made by Surjit Singh appellant was accepted by the Director who was the prescribed authority.

(40) The order of confirmation was passed by the prescribed authority, that is, the Director, Public Relations, Punjab, who clearly

had the authority under rule 1.3 to enter into any agreement with Surjit Singh, keeping in view the special circumstances of the case and thereby to provide a term in the conditions of service, so as to protect his rights and interests which might accrue to him by virtue of his position in the cadre of Assistants while confirming him against the post of Copy Writer. Therefore, it is obvious that if the case is covered under the above referred to rules, the provisions of rule 3.12 would not come into play and since I have come to the conclusion that the condition in the confirmation order was a term of agreement regarding the conditions of service of Surjit Singh appellant for the confirmation against the post of Copy Writer, which condition specifically protected his rights, rule 3.12 will not come into operation and, therefore, the Full Bench decision in *Tuhi Ram Sharma's case* (1) (supra) will not be applicable to the present case. It is difficult to hold that the condition imposed in the confirmation order was illegal and has to be ignored. In this view of the matter, the contention of Mr. B. S. Gupta, that the order as a whole should either be struck down or be upheld, need not be examined any further as in my opinion the order of conditional confirmation is perfectly legal and is within the purview of the above mentioned rule. Therefore, this disposes of contention No. 5 raised by the learned counsel for Surjit Singh appellant, because I have come to the conclusion that the confirmation order as a whole is valid and, therefore, rule 3.12 never came into operation in the present case.

(41) As regards contentions Nos. 1 and 2 raised by Mr. Gupta, the learned counsel for Surjit Singh appellant, suffice it to say, that since I have come to the conclusion that the provisions of rule 3.12 did not come into operation in the present case, therefore, *Tuhi Ram Sharma's case* (1) (supra) will not operate to the detriment of Surjit Singh, appellant. If I had come to the conclusion that rule 3.12 did come into operation, in that case, I had no hesitation in holding that the grounds No. 1 and 2, as mentioned by Mr. Gupta, would be without any merit. The interpretation given to rules 3.11, 3.12, 3.13, 3.14 and 3.15 of the Punjab Civil Services Rules, in the Full Bench decision in that case will aptly apply and there will be no escape from the conclusion that in case rule 3.12 came into operation, the lien of Surjit Singh appellant against the post of Assistant came to an end, but since I have come to the conclusion that in view of the provisions of rules 1.3, 1.4 and 1.6 of the Punjab Civil Services Rules, rule 3.12 did not come into operation in the present case, therefore,

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these contentions need not be examined any further. Even if it be held for argument's sake, that rule 3.12 did come into operation, even then the appeals are liable to be accepted because I have held that the State Government had the power to relax the operation of rule 9 under rule 15 of the Punjab Public Relations Department (Class III Non-Gazetted) Rules, 1958, and the said power having been rightly exercised in the case of Surjit Singh appellant, even if the lien of Surjit Singh against the post of an Assistant came to an end by operation of rule 3.12, he was validly appointed to the post of Superintendent by relaxing the rigour of rule 9.

(42) As regards the third contention of the learned counsel for Surjit Singh appellant, that the law laid down in *Tuhi Ram Sharma's case* (1) (*supra*), has not been correctly laid down, therefore, the matter be referred to a larger Bench, since I have come to the conclusion that rule 3.12 never came into operation in this case, therefore, this case is not covered by the Full Bench decision referred to above, therefore, this point need not be examined any further.

(43) No other point has been pressed by the learned counsel for the parties.

(44) For the reasons recorded above, both these appeals are accepted and the order of the learned Single Judge is set aside. Consequently, the writ petition stands dismissed. Keeping in view the peculiar circumstances of the case, there will be no order as to costs.

P. C. PANDIT, J.—

(45) I have gone through the judgment prepared by my learned brother Dhillon, J. I agree with the order proposed by him. My reasons for coming to this decision are these.

(46) Surjit Singh joined the Public Relations Department of the Government of Punjab as a Moharrir in November, 1944. By subsequent promotions, he was confirmed as an Assistant in this Department on 21st September, 1959. The scale of pay of an Assistant at that time was Rs. 116—250. In 1961, a temporary ex-cadre post of a Copy-Writer was created in the scale of Rs. 250—10—350, which

was the grade of a Head Assistant in this very Department. Surjit Singh got this post on the recommendation of the Public Service Commission on 17th July, 1961. There was, however, no scope for further promotion in that line at that time. In 1966, when Surjit Singh came to know that the post of the Copy-writer was going to be made permanent, he, on 3rd September, 1966, wrote a letter to the Director of the Public Relations Department to the effect that he was the only incumbent of that post and, therefore, he was likely to be confirmed there. But since the channel of promotion from that post had not so far been considered and notified, a request was made to the Director that he be confirmed in the post of a Copy-writer without prejudice to his claims that had accrued to him by virtue of his being a substantive Assistant in the ministerial cadre. He further stated that he was a substantive Assistant and ranked sufficiently high in the seniority list of the Assistants and thus due for promotion as Superintendent/Public Relations Officer. On 10th October, 1966, Surjit Singh was informed by the Director that the post of Copy-writer had been made permanent and he was being confirmed in the said post with effect from 1st September, 1966. This confirmation would be without prejudice to his interests and he would be entitled to all benefits as available to him by virtue of his position in the cadre of Assistants so long as the channel of promotion for the Copy-writer was not decided. On 2nd August, 1967, Surjit Singh wrote another letter to the Director saying that he had been given to understand that his confirmation as a Copy-writer was standing in the way of his promotion as Superintendent despite the fact that he had been confirmed as a Copy-writer without prejudice to his interests and rights on account of his position in the cadre of Assistant so long as the channel of promotion for the Copy-writer was not decided. He was the senior-most Assistant and by virtue of the assurance given to him in the confirmation order he deserved to be promoted as a Superintendent. This assurance had been specified to safeguard his promotion from the post of an Assistant and, consequently, no relaxation of the rules was necessary for promoting him as a Superintendent. However, if it was considered imperative, he might be de-confirmed as a Copy-writer and in that event, he would be treated as a confirmed Assistant from the same date on which he was confirmed as such prior to his confirmation as a Copy-writer.

(47) It might be stated that by virtue of rule 9 (a) (i) of the Punjab Public Relations Department (Class III Non-Gazetted)

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Service Rules, 1958, hereinafter called the 1958 Rules, the recruitment to the post of a Superintendent in the Public Relations Department had to be made by selection from amongst the Head Assistants, Article Writers, Assistants or Sales Manager with five years experience, but not from amongst the Copy-writers. In view of this rule, Surjit Singh could not have been made a Superintendent from the post of a Copy-writer. But if he was considered to be an Assistant, then he was entitled to be so promoted. Under rule 15 of these rules, however, power had been given to the Government that where it was satisfied that the operation of any of the rules caused undue hardship in any particular case, it might by order dispense with or relax the requirement of that rule to such extent and subject to such conditions as it might consider necessary for dealing with the case in a just and equitable manner.

(48) On 18th December, 1967, Surjit Singh was promoted to officiate as Superintendent in the scale Rs. 350—20—450 with effect from 1st October, 1967, on the retirement of one Pritam Singh by relaxing the provisions of rule 9 (a) (i) under rule 15 of the 1958 Rules. While promoting him as such, it was mentioned in the office order of that date that he would have no claim for any promotion or other benefits on the basis of his confirmation as a Copy-writer. On 23rd May, 1968, one Jaswant Singh was reverted from the post of the Public Relations Officer to his substantive post of Superintendent in this Department. On his coming back, Surjit Singh was reverted to the post of a Copy-writer and this, according to the latter, was due to the mistake made by the Department, because in such a contingency he should have been made a Head Assistant. But this order did not affect him very much, since on that very date, Jaswant Singh went on leave and Surjit Singh was again promoted as a Superintendent. Thereafter, Surjit Singh continued to act as a Superintendent in the leave vacancies of Tirath Singh and Jaswant Singh that occurred later on. When Surjit Singh came to know that Tirath Singh was to join as a Superintendent with effect from 1st January, 1969, on return from leave, he, on 20th November, 1968, wrote another letter to the Director saying that he might be treated as confirmed on the post of Head Assistant by virtue of his confirmation amongst the cadre of Assistants/Head Assistants, where he still held a lien. He further prayed that he might be deconfirmed as a Copy-writer, as already requested by him earlier on 2nd August, 1967, when his case for promotion as

Superintendent was processed: He again re-iterated in the said letter that when he was confirmed as a Copy-writer on 10th October, 1966, his confirmation was without prejudice to his interests and he was entitled to all benefits that were available to him by virtue of his position in the cadre of Assistants.

(49) It might be mentioned that on 22nd November, 1968, the 1958 rules were amended and the amended rules were published whereby the channel of promotion from the post of a Copy-writer was provided. A copy-writer could become an Assistant Public Relations Officer, a Class III Non-Gazetted post, and then a Public Relations Officer, a Class II Gazetted post. The scales of pay of a Copy-writer, Assistant Public Relations Officer and Public Relations Officer were revised in 1969 with retrospective effect from 1st February, 1968. On 27th December, 1968, Surjit Singh wrote another letter to the Director, in which it was stated that he was promoted as a Superintendent with effect from 1st October, 1967, but on 23rd May, 1968, when Jaswant Singh had to revert from the post of Public Relations Officer to his original post of Superintendent, he was reverted as a Copy-writer, from which post he was promoted as a Superintendent. On the same day, however, he was again promoted as a Superintendent against a leave vacancy and there he had been continuing as such. Tirath Singh, another Superintendent, was likely to join on 1st January, 1969, and, therefore, on his reversion, he should be posted as a Head Assistant on that date, because his lien was already retained in the cadre of Assistants. On 1st January, 1969, when Tirath Singh joined duty as a Superintendent, Surjit Singh, whose lien, according to the office order of that date, had not been suspended from the post of Assistant, was promoted to officiate as Head Assistant, reverting Som Datt to the post of a Sales Manager.

(50) It may be stated that Som Datt had been confirmed as an Assistant in this very Department some time after Surjit Singh, because the former was junior to the latter, as there was one Lehna Singh, who was in between the two in order of seniority. On 16th December, 1969, Jaswant Singh, Superintendent, was promoted as a Campaign Officer, which was equivalent to the post of a Public Relations Officer, and, on that very date, in his place, Surjit Singh, Head Assistant, was promoted as a Superintendent in the grade of Rs. 400—25—500/30—650. This order affected Som Datt, who would not have been reverted, if Surjit Singh had not been allowed to come back as Head Assistant in his original cadre. He, therefore, filed a writ petition in May, 1970, challenging the appointment of Surjit



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Singh as a Head Assistant and then as a Superintendent on the ground that on the latter's confirmation as a Copy-writer on 10th October, 1966, Surjit Singh could not be promoted to the post of Head Assistant and then Superintendent, which was in the ministerial cadre. He could be promoted only in the cadre of the Copy-writers. Under the 1958 rules, a Copy-writer was not eligible for appointment to the post of either a Head Assistant or a Superintendent. The post of a Copy-writer was an ex-cadre post and a Copy-writer could seek promotion to the post of Assistant Public Relations Officer and then Public Relations Officer by virtue of the amended rules of 1968. The case of Som Datt was that by virtue of rule 3.12 of the Punjab Civil Services Rules, Volume I, Part I, (i.e., 'Unless in any case it be otherwise provided in these rules, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post'), a person ceased to hold any lien held by him when he acquired a fresh lien against a permanent post and as such when Surjit Singh was confirmed in a substantive capacity as a Copy-writer, he ceased to hold any lien on the post of an Assistant and, consequently, he was not entitled to promotion as Head Assistant and then as Superintendent. The appointment of Surjit Singh as Head Assistant and later as Superintendent was, therefore, illegal and void. According to Som Datt, he had been making several representations against the promotion of Surjit Singh as a Head Assistant and then a Superintendent, but no relief had been given to him and in fact he did not even receive any reply.

(51) This writ petition was contested both by the State and Surjit Singh. Their case was that the confirmation of Surjit Singh on the post of a Copy-writer was conditional and at the time of confirmation, it had been specifically mentioned that his interests arising from the post of Assistant, which was his substantive appointment, would be protected. In any case, he had been promoted as Head Assistant and then as Superintendent by relaxing rule 9 (a) (i) by virtue of the power given to the Government under rule 15 of the 1958 Rules.

(52) This writ petition came up for hearing before a learned Single Judge of this Court, who accepted the same and held that when Surjit Singh had been confirmed on the post of a Copy-writer

on 10th October, 1966, he ceased to hold any lien on the post of an Assistant and, consequently, following a Full Bench decision of this Court in *Tuhi Ram Sharma v. Prithvi Singh and another* (1) he could not be promoted in his original ministerial cadre of Assistant, Head Assistant and Superintendent. In that authority, it was laid down that the moment a permanent Government servant was appointed to another permanent post in a substantive capacity, otherwise than by way of a temporary measure, his lien acquired on the earlier permanent post must be deemed to have automatically ceased. The learned Judge was also of the view that the relaxation of rule 9(a)(i) was, in the instant case, not valid in law. For this finding, reliance was placed on a Single Bench decision of this Court in *Lehna Singh and others v. Punjab State* (2), where it was held that the relevant rule, by which the power to relax the requirement of a particular rule was given could be applied only to the members of the service, who were governed by the said Rules and in whose case the operation of any rule caused undue hardship, but this power of relaxation could not, be exercised in favour of a new entrant to the service, as it could not be said that any rule caused hardship to him. While accepting the writ petition, the learned Judge declared the appointment of Surjit Singh to the post of Head Assistant and Superintendent as illegal and in contravention of rule 9(a) (i) of the 1958 Rules. A direction was also issued to the authorities concerned that while filling the post from which Surjit Singh would have to be reverted or any other post, which might fall vacant on account of the reversion of Surjit Singh, the State should consider Som Dutt also for such post in accordance with the relevant rules and if he was otherwise also qualified for the same, taking into consideration his seniority and merit.

(53) Against the decision of the learned Single Judge, two Letters Patent Appeals have been filed in this Court — one (L.P.A. No. 211 of 1971) by Surjit Singh and the other (L.P.A. No. 246 of 1971) by the State of Punjab. This order will dispose of both of them

(54) From the above, it is clear that Surjit Singh was the senior-most Assistant in the Public Relations Department of the Government of Punjab, when in 1961, he was appointed to a temporary ex-cadre post of a Copy-writer with the scale of pay of a Head Assistant through selection by the Public Service Commission. At that

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time, Surjit Singh was a confirmed Assistant and since he was going to get the pay of a Head Assistant as a Copy-writer, he agreed to go there, though the latter post was a temporary one. When the post of Copy-writer was going to be made permanent in 1966, Surjit Singh knew that, he, being the only incumbent of that post from its very inception, would be confirmed there. He further knew that at that time there was no channel of promotion from the post of a Copy-writer and, therefore, in order to safeguard his interests as a permanent Assistant, he, on 3rd September, 1966, wrote a letter requesting the Director of the Public Relations Department to confirm him in the post of Copy-writer, *but without prejudice* to his claims that had accrued to him by virtue of his being sufficiently high up in the seniority list of the confirmed Assistants and due for promotion as Superintendent/Public Relations Officer in the ministerial cadre. This request was granted, because, while confirming him on 10th October, 1966, it was specifically mentioned in the office order of that date that the said confirmation would be *without prejudice to his interests and he would be entitled to all benefits as available to him by virtue of his position in the cadre of Assistants so long as the channel of promotion for the Copy-writer was not decided*. This order makes it quite clear that his confirmation will not stand in his way in getting promotions in his original cadre on the basis of his seniority, but this condition/concession will be applicable/available to him so long as the channel of promotion from the post of a Copy-writer was not decided by the Government. It is the common case of the parties that the said channel of promotion was provided by the Government by the amendment in the 1958 Rules by a Gazetted Notification dated 22nd November, 1968. Before this date, however, a post of Superintendent fell vacant on 1st October, 1967, on the retirement of one Pritam Singh. But even before this date, Surjit Singh, wrote another letter on 2nd August, 1967, to the Director bringing to his notice that the former's confirmation as a Copy-writer was standing in the way of his promotion as a Superintendent, in spite of the fact that while confirming him the abovementioned proviso had been added in the office order. The said proviso was inserted mainly to safeguard his further promotion in his original cadre and in view of that relaxation of rules even was not necessary. Surjit Singh went further and submitted that if in spite of the proviso, it was considered necessary, he might be de-confirmed as a Copy-writer. He again re-iterated

in the said letter that he was the senior-most Assistant in the Department. On 18th December, 1967, by an office order, Surjit Singh was actually promoted to officiate as a Superintendent in the scale of Rs. 350—20—450 with effect from 1st October, 1967. This was done in relaxation of the provisions of rule 9 (a) (i) of the 1958 Rules by virtue of the powers given to the Government under rule 15 of the said Rules. In that order, it was, however, plainly stated that *he would have no claim for any promotion or other benefits on the basis of his confirmation as a Copy-writer*. This office order shows that from that date, it was made clear that Surjit Singh would have no claims or other benefits on the strength of his being a confirmed Copy-writer. It is pertinent to mention that up to that date, the channel of promotion from the post of a Copy-writer had not been decided by the Government and, therefore, according to the office order dated 10th October, 1966, by which he was confirmed as a Copy-writer, he could be promoted as a Superintendent on the basis of his seniority as an Assistant in his original cadre. It is also significant that by promoting Surjit Singh as a Superintendent on 18th December, 1967, his rights on the basis of his confirmation as a Copy-writer were specifically put an end to. On 23rd May, 1968, one Jaswant Singh was reverted from the post of Public Relations Officer to his substantive post of Superintendent and on his coming back, Surjit Singh was appointed a Copy-writer. This was obviously a mistake on the part of the Department, because, as I have already said, after the office order dated 18th December, 1967, he had no claim to the post of a Copy-writer. But Surjit Singh, it appears, did not *immediately protest*, because, *on the same day*, as Jaswant Singh went on leave, Surjit Singh was again appointed a Superintendent. From the practical point of view, therefore, Surjit Singh did not suffer in any manner. But it is noteworthy that he did complain about his being reverted as a Copy-writer, from which post he was elevated as a Superintendent, in his letter dated 27th December, 1968, which he wrote to the Director. Before that date, however, he wrote another letter on 20th November, 1968, to the Director, in which he requested the latter that he be treated as confirmed on the post of a Head Assistant by virtue of his seniority in the cadre of Assistants/Head Assistants, where *he still held a lien*. He again made a prayer that he be de-confirmed as a Copy-writer, as already requested earlier in his letter dated 2nd August, 1967, when his case for promotion as Superintendent was processed. On 27th December, 1968, in his letter to the Director, after having complained about his being made a Copy-writer on the reversion of

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Jaswant Singh from the post of a Public Relations Officer to his substantive post of a Superintendent, he stated that he was serving as a Superintendent in the leave vacancy of Tirath Singh, who was likely to join on 1st January, 1969. A request was, therefore, made in the letter that he be posted as Head Assistant on the latter's reversion in January, 1969, because his lien was retained in the cadre of Assistants. On 1st January, 1969, Tirath Singh, Superintendent, joined his duty and Surjit Singh was asked to officiate as Head Assistant with effect from that date and by means of that very order, Som Dutt was reverted to the post of a Sales Manager. Later, on 16th December, 1969, when Jaswant Singh, Superintendent, was promoted as a Campaign Officer, on the same day, by means of the impugned order, Surjit Singh, Head Assistant, was promoted to the post of a Superintendent, and that order led to the filing of the writ petition by Som Datt.

(55) From the facts enumerated above, it is apparent that when Surjit Singh was confirmed as a Copy-writer on 10th October, 1966, his lien in his original cadre of Assistants was retained by means of the condition mentioned in the order of that very date. That lien, however, was kept so long as the channel of promotion from the post of a Copy-writer was not decided by the Government. Before that date, however, Surjit Singh could get promotion in his original cadre on the basis of his seniority. Fortunately for him, that opportunity did arise in December, 1967, before the channel of promotion from post of Copy-writer was provided by the Government on 22nd November, 1968, by the amendment in the 1958 Rules. He was, accordingly, promoted as a Superintendent. While promoting him as such, it was made clear by the Department that thenceforward Surjit Singh would have no claim for any promotion or other benefits on the basis of his confirmation as a Copy-writer. It is true that on 23rd May, 1968, when Jaswant Singh was reverted from the post of a Public Relations Officer to his substantive post of a Superintendent, Surjit Singh was appointed a Copy-writer, but that, in my view, was a mistake committed by the Department. But as on that very day Jaswant Singh went on leave and Surjit Singh was again promoted as Superintendent he did not think of protesting against his appointment as a Copy-writer on that occasion. He, however, as I have already mention above, in his subsequent letter dated 27th December, 1968, did make a complaint about this matter to the Director. It is noteworthy that in both his letters to the Director, dated 20th November, 1968 and 27th December, 1968,

Surjit Singh had specifically mentioned that his lien as an Assistant had been retained. In the office order dated 1st January, 1969, under which Surjit Singh was made a Head Assistant on the joining of duty by Tirath Singh, Superintendent, the former had been described as a "Copy-writer whose lien had not been suspended from the post of Assistant." From the description of Surjit Singh in the said order, it appears that the Joint Director (Administration), who had signed that order on behalf of the Director, meant that Surjit Singh's lien had been kept/retained in the cadre of Assistants. In this order, Surjit Singh was, however, described as a Copy-writer, because, as I have already mentioned above, he was, by the mistake of the Department, appointed a Copy-writer on the reversion of Jaswant Singh from the post of Public Relations Officer to his substantive post of a Superintendent.

(56) Up to the time the channel of promotion from the post of a Copy-writer was provided by the Government by amending the 1958 Rules, i.e., up to 22nd November, 1968, the lien of Surjit Singh in his original cadre of Assistants was retained by the Department by virtue of the order dated 10th October, 1966. In other words, the same was, as if, suspended during that period under rule 3.14 (a) (2) of the Punjab Civil Services Rules, Volume I, Part I (ie., "A competent authority shall suspend the lien of a Government servant on a permanent post which he holds substantively, if he is appointed in a substantive capacity..... (2) to a permanent post outside the cadre on which he is borne, or") and whenever a chance of promotion arose in his original cadre, he could come back to it and seek his promotion on the basis of his seniority as an Assistant. This means that his lien in the original cadre was kept in abeyance so long as the channel for promotion from the post of Copy-writer was not decided. He was lucky in getting his promotion as a Superintendent on 18th December, 1967, before the said channel was fixed by the Government and he could, therefore, avail of his suspended lien. When he was promoted as a Superintendent, it was then made clear in the office order that he would not thenceforth claim any promotion or rights on the basis of his confirmation as a Copy-writer, where he seems to have been appointed under rule 3.11 (b) of the said Punjab Civil Services Rules (viz. "A Government servant cannot be appointed substantively except as a temporary measure, to two or more permanent posts at the same time"). His lien as a Copy-writer was, thus, finished on 18th December, 1967, even before the channel of promotion from the post of a Copy-writer

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was provided by the Government in November, 1968. I have already said that when Surjit Singh was made a Copy-writer on 23rd May, 1968, on Jaswant Singh's reversion from the post of a Public Relations Officer to his substantive post of a Superintendent, it was a mistake on the part of the Department and Surjit Singh for reasons already stated, did not immediately protest against that appointment. Som Datt was, admittedly, junior to Surjit Singh in the cadre of Assistants and, therefore, he could not have any grievance against the promotion of the latter as a Superintendent in place of Jaswant Singh.

(57) This apart, I am also of the view that if due to the mistake of the Department, technically correct orders had not been passed, which should have been made in consonance with the relevant provisions in the Punjab Civil Services Rules, Surjit Singh cannot be made to suffer on that account. He had been from the very beginning crying hoarse that his claims on the basis of his seniority in the cadre of Assistants be not affected by his being confirmed as a Copy-writer. He went to the length of even saying that if that was going to be the result of his being confirmed as a Copy-writer, he be de-confirmed as such. All this is clear from the various letters that he had been writing to the Director from time to time. He could not have done anything more to safeguard his interests. He cannot be punished for some technical defect, if there was any, in the various orders passed by the Department on different occasions, especially when it is clear what the intention of the Department and the desire of Surjit Singh was, when the original order of his confirmation as a Copy-writer was made on 10th October, 1966. The language employed therein, in my opinion, leaves no room for doubt that Surjit Singh could claim his promotion on the basis of his seniority in the cadre of Assistants, but only before some channel of promotion from the post of Copy-writer was provided by the Government. His subsequent correspondence with the Director and also the various office orders passed on several occasions confirm the view that I have taken of the order dated 10th October, 1966. The Department also knew what this order meant and it was actually acting up to it, as would be clear from the various orders passed by the Department, including the impugned order.

(58) I may mention that the Full Bench decision in *Tuhi Ram Sharma's case* (1) relied on by the learned Single Judge has no

application to the facts of the present case. Again, according to my approach to the case, the question of the relaxation of the provisions of rule 9 (a) (i) by virtue of the power given to the Government under rule 15 of the 1958 Rules will not arise and, therefore, it is, needless to discuss the case of *Lehna Singh and others* (2).

(59) In view of what I have said above, I would accept these appeals, set aside the judgment of the learned Single Judge and dismiss the writ petition filed by Som Datt. In the circumstances of this case, however, I will leave the parties to bear their own costs.

K.S.K.

FULL BENCH

Before R. S. Narula, C.J., S. S. Sandhawalia and D. S. Tewatia, JJ.

BRIJ MOHAN LAL.,—Appellant.

versus

BAKSHI RAM ETC.,—Respondents.

S.A.O. No. 17 of 1969

October 18, 1974.

*Provincial Insolvency Act (V of 1920)—Section 28(2)—Code of Civil Procedure (Act V of 1908)—Section 60(1) (ccc)—Main residential house of a debtor-insolvent—Independent and well demarcated portion thereof used by the debtor for purposes of business—Whether not attachable under section 60(1) (ccc) of the Code and consequently exempt from vesting under section 28(2) of the Act—Such house subject to charge with one of the creditors—Whether vests in the Insolvency Court.*

*Held*, that even when an independent and well-demarcated portion of a main residential house of a debtor-insolvent is used and occupied by him for business purposes, it is exempt from attachment and sale in terms of provisions of section 60(1) (ccc) of Code of Civil Procedure, 1908 and consequently exempt from vesting under section 28(2) of Provincial Insolvency Act.

*Held*, that the application of general definition of the word property stands excluded in regard to the property dealt with in subsection (5) of section 28 of the Act, with the result that the property envisaged in this provision refers to the tangible property