
(2017) 07 UK CK 0060
In the Uttarakhand High Court
Case No : 417 of 2013

Laxman Singh Rautela & others.

APPELLANT

Vs

State of Uttarakhand & others.

RESPONDENT

Date of Decision : 27-07-2017

Acts Referred:

Constitution of India, Article 14 -
Subordinate Revenue Executive (Naib Tehsildars) Rules, 1944, Rule 7, Rule 5 -
Uttar Pradesh Subordinate Revenue Executive Service (Naib Tahsildars) Rules, 1944,
Rule 28(3) -
Uttar Pradesh Reorganization Act, 2000, Section 74

Citation : (2017) 07 UK CK 0060

Hon'ble Judges : K.M. Joseph, V.K. Bist

Bench : Division Bench

Advocate : C.D. Bahuguna, A.K. Verma, Ravi Babulkar, Mangal Singh Chauhan,
Pradeep Joshi

Final Decision : Dismissed

Judgement

1. These appeals being connected, we are disposing of the same by this common judgment.

2. Special Appeal No. 417 of 2013 is filed against the judgment in Writ Petition (S/S) No. 499 of 2013. Special Appeal No. 581 of 2015 is filed against the judgment in Writ Petition (S/S) No. 747 of 2009. Appellants are the Collection Amins.

3. The reliefs sought in the Writ Petition (S/S) No. 499 of 2013 are as follows:

"I. Issue writ order or direction in the nature of certiorari quash the impugned reversion order dated 22.03.13 and subsequent orders dated 03.05.13 passed by respondent No. 2 & 3. II. Issue a writ order or direction in the nature of mandamus directing the respondent not to interfere in the working of the petitioners as Naib Tehsildar till then D.P.C. held by the respondents department. III. Issue a writ, order or direction in nature of mandamus

directing the respondent to hold the D.P.C. on the post of Naib Tehsildar."

4. The reliefs sought in Writ Petition (S/S) No. 747 of 2009 are as follows:

"I. Issue a writ of certiorari and/or a writ in the nature of certiorari or any other appropriate writ/orders/direction, quashing and striking down Rule 5 of the Uttarakhand Subordinate Revenue Executive (Naib Tehsildar) Service Rules, 2009 (Annexure 9) insofar as it excludes Collection Amins from direct promotion to the post of Naib-Tehsildar. II. Issue a writ of mandamus and/or a writ in the nature of mandamus or any other appropriate writ/order/direction, directing the respondents to consider and promote the Collection Amins to the post of Naib Tehsildar without reference to Rule 5 of the Uttarakhand Subordinate Revenue Executive (Naib Tehsildar) Service Rules, 2009 (Annexure 9)."

5. The learned Single Judge considered the aforesaid two writ petitions along with Writ Petition (S/S) No. 335 of 2013 and took the following view :

Writ Petition (S/S) No. 335 of 2013 and Writ Petition (S/S) No. 499 of 2013 were filed by the writ petitioners claiming promotion on officiating capacity as Naib Tehsildar, as is being given to revenue officials junior to them. The stand of the State was noted that in terms of the new Rules of 2009, known as "Uttarakhand Subordinate Revenue Executive (Naib Tehsildar) Service Rules 2009" (from hereinafter referred to as the "2009 Rules"), there is no channel of promotions for the Collection Amins and also noted that they were officiating only and the writ petitions were dismissed.

6. Insofar as the reliefs sought in Writ Petition (S/S) No. 747 of 2009, from which Special Appeal No. 581 of 2015 arise, the arguments appears to have been based on Section 74 of the Uttar Pradesh Reorganization Act, 2000 (from hereinafter referred to as "Reorganization Act"). The said provision, inter alia contemplated that the conditions of service applicable immediately before the appointed day (09.11.2000) in the case of any person allocated to the State of Uttarakhand could not be varied or changed without the prior approval of the Central Government. The case set up was that Collection Amins were entitled to be promoted to the post of Naib Tehsildar, in terms of the U.P. Subordinate Revenue Executive (Naib Tehsildar) Service Rules, 1944 (from hereinafter referred to as the "1944 Rules") The 1944 Rules were pre-constitutional Rules and therefore, it fell foul of the mandate of Section 74 of the Reorganization

Act, as by the 2009 Rules, without the prior approval of the Central Government, the conditions of service for promotion in terms of the 1944 Rules was interfered with. The learned Single Judge, however, repelled his arguments by noting that barring the District of Haridwar and the two hill districts of Tehri and Uttarkashi, the "Kumaon Division" as referred to in the 1944 Rules, refers to the remaining territory of Uttarakhand. It was therefore, found that the 1944 Rules itself were not applicable to the appellants. The stand of the State in this regard was found acceptable as the appellants belong to the hill districts of Uttarakhand to whom

the 1944 Rules were not applicable. Accordingly, all the writ petitions were dismissed.

7. The writ petitioners are the appellants in these cases. Originally, the appeal was filed as Special Appeal No. 417 of 2013. The appeal was filed by three persons, who were the writ petitioners in the Writ Petition (S/S) No. 499 of 2009.

8. We heard Mr. C.D. Bahuguna, learned Senior Counsel on behalf of the appellants in Special Appeal No. 417 of 2013 and Mr. Ravi Babulkar, learned counsel with Mr. Mangal Singh Chauhan on behalf of the appellants in Special Appeal No. 581 of 2015 and Mr. Pradeep Joshi, learned Standing Counsel on behalf of the State of Uttarakhand.

9. As already noted, in Writ Petition (S/S) No. 499 of 2013, there is no challenge to the Rule as such. The

complaint was, however, that the reversion of the appellants from the post of the Naib Tehsildar as Collection Amins is illegal and they claim promotion. Mr. C.D. Bahuguna, learned senior counsel would submit that the action is arbitrary in reverting the appellants. He would submit that in the 1944 Rules, originally, there was no provision for promotion for the persons holding the post of Collection Amins. He, however, relies on Notification No. 7/3 (1) F/74-139 dated 24.04.1973, as per which the Collection Amins were also included in the feeder category for promotion as Naib Tehsildar. In the amended Rule 7, a quota for promotion to the post of Collection Amin was provided to the extent of 1/18th of the vacancies i.e. about 6 per cent. The exact provision in the substituted Rule 5 of the 1944 Rules provided for promotion from amongst such Collection Amins, who have passed at least the Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or an examination recognized by the U.P. Government as equivalent thereto. Subsequently, there is an amendment in the year 1989, which is referred to, by which the post of Naib Tehsildar was to be filled up by permanent Collection Amins, who have put in at least 7 years of service in the department. It is the case of the appellants that they fulfilled all the requirements. The Secretary, Board of Revenue, Uttar Pradesh, Lucknow issued directions to the District Magistrates of all Districts of the State of Uttar Pradesh and Commissioners of all the Divisions for making promotion to the post of Naib Tehsildar in terms of the Subordinate Revenue Executive Services (Naib-Tehsildar) (First Amendment) Rules, 1973 from amongst Collection Amins also. In terms of Rule 28 (3) of the Rules, ad-hoc promotions could also be made by the District Magistrate for a period of three months. It is the further case of Mr. C.D. Bahuguna, learned senior counsel that on the basis of the said order, Collection Amins posted under the Tehsil area of several districts of Kumaon and Garhwal divisions were promoted on the ad-hoc basis. Reliance is also placed on further order issued by the Board of Revenue, Uttar Pradesh in the year 1978, for making promotions in the Garhwal and Kumaon divisions to the post of Naib Tehsildar. On a petition by one Mr. Hari Krishna Rekhari, posted in the lower plain of district Nainital as Collection Amin,

the Board of Revenue clarified and wrote to the District Magistrate, Nainital that the Collection Amin is eligible for promotion to the post of Naib Tehsildar under Rule 5/7 of the Naib Tehsildar Service Rules. It is contended that on the basis of the orders, which were issued as aforesaid, several Collection Amins were promoted to the post of Naib Tehsildar in the District Nainital of Kumaon Division on ad-hoc basis during the period from the year 1974 to 1992, purportedly under Rule 28. Even after creation of the State of Uttarakhand, several members have been permitted to continue to the post of Naib Tehsildars in the district of Garhwal, purportedly under Rule 28. Many are continuing as Naib Tehsildars on ad-hoc basis and they have not been reverted. It is pointed out that in the 1944 Rules, originally, it was provided that the Rules will not apply to the Kumaon Division. However, on 08.08.1959, after the words "Kumaon Division", "except

as specified otherwise hereinafter" was added. The case of the appellants is that by virtue of this provision, the department was given liberty to issue executive order or departmental circular and to make the Rules applicable to the Kumaon Division and the orders dated 16.08.1977 and 09.01.1978 must be treated as having issued in the exercise of the power to relax. Government of Uttarakhand issued an order dated 12.10.2010, wherein it was inter alia provided that the employees promoted as Naib Tehsildar under local arrangement prior to the date of promulgation of the Rules of 2009, would be dealt with in accordance with the then existing feeding cadre and seniority. Persons appointed as Naib Tehsildar from the cadre of Collection Amins in the Dehradun District have been permitted to continue but the appellants were however, reverted.

10. Learned senior counsel would rely on the judgment of the Hon"ble Apex Court in the case of Chandra Prakash Tiwari and others Vs. Shakuntala Shukla and others reported in (2002) 6 SCC 127. He would submit that one provisional appointee cannot be replaced by another. He relied on the judgment in the case of Menaka Gandhi Vs. Union of India reported in (1978) 1 SCC 248 to contend that even if the appellants were provisionally appointed as Naib Tehsildars, Article 14 of the Constitution of India would come to their rescue, as even the provisionally appointee is entitled to be protected against arbitrary action against the State. Appellants have been replaced by another set of provisionally appointees, which is impermissible in law.

11. In Special Appeal No. 417 of 2013, the stand of the State, on the other hand, is that the appellants were allowed to discharge the functions of Naib Tehsildar under local arrangement for 89 days. The ad-hoc appointment did not give any enforceable right to the appellants. It was specified in the order that it will confer no right on the appellants. An order dated 06.03.2013 was passed, by which nine Revenue Inspectors were promoted to the post of Naib Tehsildar but the appellants were reverted to their original posts of Collection Amin. Under the new 2009 Rules, the feeding cadre for the post of Naib Tehsildar consists of Registrar Kanoongo-10 percent, Revenue Inspector-30 percent and Forest Pahchayat Inspector-10 per cent. In the appeal the contention was taken that there were

posts of Naib Tehsildar vacant before the 2009 Rules came into force. In the supplementary counter affidavit filed on 01.06.2016, it is inter alia stated as follows:

"3. That it is submitted that before promulgation of Uttarakhand Subordinate Revenue Executive Services (Naib Tehsildar) Rules 2009, till the recruitment year 2007-2008, the 6% quota was reserved for Collection Amin under the 1944 Rules. It is submitted that for the recruitment year 2007-2008 there are 4 posts of Naib Tehsildar were vacant, which can be filled from the Collection Amin. Since there were only 4 posts which can be filled by the Collection Amins, therefore, the requisition was sent to the Public Service Commission and the D.P.C. was held on 23-4-2015 thereafter on the basis of recommendation of the Public Service Commission, 4 Collection Amins Namely Gurdeep Singh Kala, Shri Bhole Lal, Preetam Singh and Mata Deen were promoted to the post of Naib Tehsildar. It is submitted that Shri Gurdeep Singh Kala and Shri Bhole Lal have been given promotion vide order dated 07-07-2015, but at the time of receiving of requisition Shri Preetam Singh and Mata Deen had been retired from their services, therefore, they had been given notional promotion on 0-7-2015 and as such all 4 posts from the quota of Collection Amin have been filled and there no post was vacant. Copy of the order dated 01-07- 2015 is being annexed herewith and marked as Annexure SCA-1 to this affidavit.

4. That it is submitted that since now no post is vacant in which the Collection Amin can be regularly promoted under the Rules and it is further submitted that no person junior to the petitioner has been promoted to the post of Naib Tehsildar. It is further submitted that no person Junior to the petitioner given regular promotion to the post of Naib Tehsildar. So far as Shri Jai Chand and Virendra Raj are concerned, both are junior to the petitioner in State level seniority and they have not been promoted on regular basis by the Board of Revenue, who is the competent authority, whereas Shri Jai Chand and Virendra Raj have been given officiating charge on the post of Naib Tehsildar by the District Magistrate, Dehradun vide order no. 280/vk0ys0&dSEi@jk0l0/2014 dated 26-11-2014 on temporary basis of a period of 42 days on the basis of local arrangement. It is further submitted that these 2 persons have lien with their original post of Collection Amin and their promotion is purely temporary in nature according to need on the basis of local arrangement. It is further submitted that on Dalip Singh, Collection Amin who is also junior to the present petitioner has been given charge of Naib Tehsildar in District Pauri Garhwal and this charge has been given to Shri Dalip Singh in compliance of the order dated 1-7-2015 passed in Special Appeal no. 2024 of 2015 and he has been given charge of Naib Tehsildar on temporary basis in compliance of the direction above vide order dated 4-8-2015 and against the vacant post of Naib Tehsildar in district Pauri Garhwal for government interest. His original post is Collection Amin. Copy of the order dated 26-11-2014 is being annexed herewith and marked as Annexure SCA-2 to this affidavit.

12. Learned senior counsel for the appellants would submit that out of the two persons were promoted to the post of Naib Tehsildar by order dated 01.07.2015, one of them i.e. Shri Bhole Lal, who is one of the appellants, was also reverted in the year 2013 but he has been promoted again by the order dated 01.07.2015 and this demolishes the case of the State.

13. The case of the State is that Shri Bhole Lal, who belongs to the quota of Scheduled Caste was promoted as per seniority and no person junior to the appellants was promoted.

14. In Special Appeal No. 581 of 2015, Mr. Ravi Babulkar, learned counsel for the appellants would submit that in the 1944 Rules, originally it is true that Collection Amins were not included. It was not applicable to Kumaon Division but in the year 1959, by virtue of the words added after the words Kumaon Division, power was given to the department to issue

orders and by virtue of the orders issued, the Government has made the 1944 Rules applicable to the Kumaon Division also. The words "except as specified otherwise hereinafter" were not intended to confine the same to something contrary to be provided in the Rules itself. The absence of any provision to the contrary dealing with the Kumaon Division is cited as material to show that the words incorporated by the 1959 amendment would mean that it was intended that orders issued by the Government providing for applying the Rules to the Kumaon Division would suffice. In 1973, in the Rules, by way of an amendment, Collection Amins became entitled. Therefore, the position was that as on the appointed day, namely, 09.11.2000 under the Reorganization Act, Section 74 thereof, the Collection Amins were enjoying, as part of their conditions of service, the right to be considered for promotion, under the 1944 Rules, even in the Kumaon Division. It is submitted that the Rules of 2009 excluding the Collection Amins from the feeding cadre for promotion to the post of Naib Tehsildar violates the legitimate expectations of the Collection Amins. It is submitted that there is discrimination between equals. The cadre of Collection Amins is the same throughout the State. If the argument of the State is accepted, the Collection Amins in the Kumaon Division would stand excluded whereas Collection Amins in the Garhwal would get promotion as Naib Tehsildar. There is one single cadre and discrimination within the cadre is impermissible. There is violation of Article 14 of the Constitution of India. It is submitted that it was indeed part of the conditions of

service within the meaning of Section 74 what is mere chances of promotion. Had it been mere chances of promotion, Mr. Ravi Babulkar, learned counsel would submit that it may have a different matter. There are no promotional avenues left for the persons like the appellants. The promotional scale for the post of Naib Tehsildar is also taken away. Subsequent orders also have the force of law. He also relied on the judgment in the case of V. Jagannadha Rao and others Vs. State of A.P. and others reported in (2001) 10 SCC 401 and contended that there cannot be stagnation of employees.

15. When these appeals were being heard the expression "Kumaon Division" in the 1944 Rules appeared to us to present a vexed issue. We have passed the order dated 04.04.2016, which reads as follows:

"These Appeals, two in number, are lodged against the judgment of the learned Single Judge, by which the learned Single Judge has found that the appellants are not entitled to invoke the provisions of the 1944 Rules framed under the Government of India Act, 1935 for the reason that under Rule 1, the Rules have been expressly made inapplicable to the Kumaon region. The complaint of the learned Senior Counsel for the appellants was that actually the Government Orders have been passed and persons have been promoted as Naib Tehsildar from Amins from across the Region, whether it is Garhwal or Kumaon. In this context, the question would arise as to what is the meaning attributed to the words "Kumaon Division". A perusal of the Uttar Pradesh Land Revenue Act, 1901 would show that in the first Schedule to the said Act, Kumaon division is shown to consist of Garhwal

district among other districts as areas coming under the scope of Section 2 of the Act. In the Scheduled District Act of 1874, included in the north western province are the provinces of Garhwal and Kumaon. In the Kumaon And Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 there is reference to Garhwal and Kumaon Divisions. In the Himalayan Gazetteer, Volume-III, Part - I, Garhwal is described as a 2 district of Kumaon Division. There is a case for the appellants also that the Kumaon and Garhwal Divisions were born out of the instrument issued in the year 1968 and in 1944, there was no division as Kumaon. In other words, according to them, Kumaon in 1944 took in both the regions, which are today known as Garhwal and Kumaon, and there is a case that promotion cannot be denied on the place of posting of the officers concerned. In order to resolve the controversy, it is necessary that an affidavit is brought on record by the Principal Secretary, Revenue.

2. Today, in fact, Sri Anil Kumar Joshi, learned Additional Chief Standing Counsel would submit that it is true that persons have been promoted from the cadre of Amins to the cadre of Naib Tehsildars from Kumaon region. In this regard, he pointed out that in 1989, amendments were brought to the 1944 Rules. He would also point out that they were appointed against the vacancies, which arose prior to promulgation of 2009 Rules, i.e. he points out that they were appointed against the vacancies of the year 2007-08.

3. Therefore, we direct that an affidavit will be brought on record by the Principal Secretary, Revenue indicating what exactly was meant by the expression "Kumaon Division" in the 1944 Rules. Secondly, it will be indicated as to whether the persons who have been promoted from the Kumaon Region were senior to the appellants. Thirdly, it will be indicated as to whether there remained vacancies of Naib Tehsildars after giving promotion to the persons from the Kumaon region, which is not disputed by the learned Additional Chief Standing Counsel, which arose before the 2009 rules were made. Such an affidavit shall

be filed on or before 29th April, 2016.

4. List this matter on 29th April, 2016.

5. Let a certified copy of this order be issued today itself."

16. Pursuant to the same, a supplementary affidavit was filed, wherein inter alia it is stated as follows:

"3. That it is submitted that Section 2 of U.P. Land Revenue Act talks about the extension of the provisions of U.P. Land Revenue Act except the area specified in first schedule. The first schedule of U.P. Land Revenue Act defines the Kumaun Division and as per the schedule the Kumaun Division is consisting of the District of Nainital, Almora and Garhwal (exclusive of the settled tracts of Tarai Sub Division of District Nainital).

4. That it is submitted that the Kumaun Division as referred in U.P. Subordinate Revenue Executive Services (Naib Tehsildar) Rules 1944 comprises of Districts- Almora, Nainital and hilly area of district Pauri Garhwal. As per the schedule attached in U.P. Land Revenue Act 1901 Kumaun Mandal includes the Nainital, Almora and Garhwal Districts. It is further submitted that the U.P. Zamindari and Land Reforms Act 1950 was came into force w.e.f. 26-1-1951 and as per the definition given District Tehri Garhwal was not included in that time in the Kumaun Division, Rule 3 (a) of Kumaun and Uttarakhand Land Reforms Act 1960 defines the Kumaun Division and as per the definition of the Kumaun Division the Kumaun Division consists of 3 districts namely Nainital, Pithoragarh and Almora whereas the Garhwal Division includes 4 districts i.e. Garhwal, Tehrigarhwal, Uttarkahsi and Chamoli.

5. That it is submitted that for the first time in the year 1960 for the newly constituted Districts Pithoragarh, Chamoli and in Uttarkashi the post of Naib Tehsildar was created and as per the Government order dated 8-3-1960, 5 posts of Naib Tehsildar by adopting the provisions of U.P. Revenue Executive Services (Naib Tehsildar) Rules, 1944 and in Kumaun Division the post of Naib Tehsildar was filled from time to time under the then prevailing rules of U.P. Revenue Executive Services (Naib Tehsildar) Rules, 1944."

17. This affidavit does not appear to be very helpful but we would think this issue can be answered with reference to the notification dated 20.12.1968. The translated version of which reads as follows:

Govt. of Uttar Pradesh

Revenue (C) Department,

No. 18, 3-2-68/1-C, Lucknow- Dated 20,

December, 1968

Memorandum

Exercising the power U/s 11 of U.P. Land Revenue Act 1901 (U.P. Act No. 3, 1901), circulated in Kumaun Division by a notification of the department of Revenue (C) no. 3109/D, dated, Lucknow 18 October, 1947, and in Tehri Garhwal by a notification of the Legislative Department No. 32 (2)/2/17 Merger, dated 30 November 1949, and canceling the Govt. notification no. 910/1, C, dated 25 November 1960, the Governor of the State of U.P. hereby rescinds the Uttarakhand division from the date of publication of notification in the Gazette and from that date amend the territorial limit of Kumaun division in a way that within it, the districts mentioned in column 2 of the schedule, given below, would be included; and from that date, create a new Garhwal division, in which the districts mentioned in column no. 1, would be included, whose head office would be Pauri Garhwal. Any thing of this notification, would carry no effect in any legal proceeding which is already proceeded or is pending in the court, which had jurisdiction to deal with that area upto now.

Schedule

Column 1 Column 2

Names of districts newly created Garhwal Division Names of districts of re-organized Kumaun division.

- | | |
|------------------|----------------|
| 1. Garhwal | 1. Nainital |
| 2. Tehri Garhwal | 2. Almora |
| 3. Uttarkashi | 3. Pithoragarh |
| 4. Chamoli | |

By the order,

Sd/-

(Athar Hussain)

Secretary

18. Thus, it would appear to us that till the year 1968 the territorial limit of the Kumaon Division all districts of hill region of the erstwhile State of U.P. were included. A new division was created, namely, Garhwal Division; it was to consist of Districts of Garhwal, Tehri Garhwal, Uttarkashi and Chamoli. This was done by canceling the earlier notification dated 25.11.1960. This would mean that in terms of the 1944 Rules, Kumaon Division continued to exist under the Rules and only Nainital, Almora and Pithoragarh districts were comprised within it. There has been no amendment to the Rule 1 of the 1944 Rules, as per which, the Rules were not applicable to the Kumaon Division. What is the area comprised in the Kumaon Division can no longer be the subject matter of controversy nor can it remain ambiguous. In other words, there was indeed a Division as Kumaon Division and apparently it consisted of the entire hill areas of the former undivided State of Uttar Pradesh but an abridged version of Kumaon Division

emerged following the notification, which came in the year 1968, as noticed by us and this version has shrunk the division by confining the same to districts of Nainital, Almora and Pithoragarh. Later on, Bageshwar, Champawat and Udham Singh Nagar were also created out of these districts and are part of Kumaon Division. There is no dispute that the appellants belong to the said districts. If that be so, they fall within the Kumaon Division. Rule 1 of the 1944 Rules excluded the operation of the Rules to Nainital, Almora and Pithoragarh. Therefore, this conclusion of the learned Single Judge that appellants cannot lay store by the 1944 Rules appears to be correct.

19. Another submission of learned counsel for the appellant is that persons junior to the appellants are being permitted to continue as Naib Tehsildars on ad- hoc basis and therefore, the appellants, being senior to them are entitled to ad-hoc promotion on the post of Naib Tehsildar. This prayer of the appellants cannot be accepted in view of new rules framed in the year 2009 in which there is no provision for promotion for Collection Amin to the post of Naib Tehsildar.

20. Further, we find that the official respondents in their supplementary counter affidavit stated that before promulgation of 2009 Rules, till recruitment year 2007- 2008, 6% quota was reserved for Collection Amin under

the 1944 Rules. For that year 4 posts of Naib Tehsildars were vacant. Those posts were filled from Collection Amin and no post remains vacant. Therefore, no direction can be issued to consider the case of the petitioners for regular or ad-hoc promotion.

21. The further contention raised is that by virtue of amendment in the year 1959, "except as hereinafter provide" was added. Following this amendment, Government was forthcoming with orders, which give rise to the rights under the 1944 Rules for being considered for promotion for even those persons falling within the Kumaon Division.

22. The amendment, in our view, cannot support such a contention. What was intended apparently by the amendment was only that the 1944 Rules would not apply to the Kumaon Division but it was subject to the right of power to the rule maker to provide for the Kumaon Division in the Rules itself, specifically and expressly. We reject the argument that the Rules gave the power to the Executive to issue Executive orders and to relax the mandate of the Rules. The words "hereinafter" cannot, in our view, bear the meaning that is canvassed before us, namely, it was intended to predicate the time element. In other words, the argument that the words "hereinafter" means that unless it contemplated something to be provided to the contrary later in point of time. It is possible that by the amendment to the Rules, which is later in point of time, the prohibition against the Rules being applied to the Kumaon Division could be modified or changed, but in

our view, the intent of the rule maker was only that it could be achieved by providing a contrary intention in the Rules itself.

23. As far as the contention of the appellants that the 2009 Rules are unconstitutional because they impaired or destroyed or struck off the legitimate expectation of the Appellants Collection Amins, we have no hesitation in rejecting the same. Statutory Rules cannot be called in question on the basis that it deprived a person of his legitimate expectation, as held by the Hon"ble Apex Court in (2012) 11 SCC 1, Monnet Ispat and Energy Limited vs. Union of India and others . Paragraphs 187 and 188 of the said judgment are being reproduced below:

"187. A note of caution sounded in Bannari Amman Sugars Ltd. is worth noticing. The Court observed that legitimate expectation was different from anticipation; granting relief on mere disappointment of expectation would be too nebulous a ground for setting aside a public exercise by law and it would be necessary that a ground recognized under Article 14 of the Constitution was made out by a litigant.

188. It is not necessary to multiply the decisions of this Court. Suffice it to observe that the following principles in relation to the doctrine of legitimate expectation are now well established:

188.1. The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.

188.2. The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.

188.3. Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.

188.4. The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such expectation should be justifiable, legitimate and protectable.

188.5. The protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit."

Further, paragraphs 11 and 12 of the judgment of Hon"ble Supreme Court in the matter of Namit Sharma vs. Union of India, (2013) 1 SCC 745 are being referred hereinafter:

"11. An enacted law may be constitutional or unconstitutional. Traditionally, this

Court had provided very limited grounds on which an enacted law could be declared unconstitutional. They were legislative competence, violation of Part III of the Constitution and reasonableness of the law. The first two were definite in their scope and application while the cases falling in the third category remained in a state of uncertainty. With the passage of time, the law developed and the grounds for unconstitutionality also widened. D.D. Basu in the "Shorter Constitution of India" (Fourteenth Edition, 2009) has detailed, with reference to various judgments of this Court, the grounds on which the law could be invalidated or could not be invalidated. Reference to them can be made as follows:

"Grounds of unconstitutionality . - A law may be unconstitutional on a number of grounds:

(i) Contravention of any fundamental right, specified in Part III of the Constitution.

(Ref. Under Art. 143, (Ref. Under Article 143: Special Reference No. 1 of 1964 in re)

(ii) Legislating on a subject which is not assigned to the relevant legislature by the distribution of powers made by the 7th Sch., read with the connected Articles. (Ref. Special Reference No. 1 of 1964, in re.)

(iii) Contravention of any of the mandatory provisions of the Constitution which impose limitations upon the powers of a Legislature, e.g. Article 301. (Ref. Aitabari Tea Co. Ltd. V. State of Assam)

(iv) In the case of a State law, it will be invalid in so far as it seeks to operate beyond the boundaries of the State. (State of Bombay v. R.M.D. Chamarbaugwala .)

(v) That the Legislature concerned has abdicated its essential legislative function as assigned to it by the Constitution or has made an excessive delegation of that power to some other body. (Hamdard Dawakhana v. Union of India .).

12. On the other hand, a law cannot be invalidated on the following grounds:

(a) That in making the law (including an Ordinance), the law- making body did not apply its mind (even though it may be a valid ground for challenging an executive act), (Ref. Nagaraj K. V. State of A.P.) or was prompted by some improper motive. (Ref. Rehman Shagoo v. State of J & K).

(b) That the law contravenes some constitutional limitation which did not exist at the time of enactment of the law in question. (Ref. STO v. Ajit Mills Ltd.)

(c) That the law contravened any of the Directive contained in Part IV of the Constitution. (Ref. Deep Chand v. State of U.P .)."

24. The further contention taken is that the Rule is bad because it excludes the appellants from the promotional avenues.

25. As to the power of the employer to provide for the feeder category from which alone the promotions are to be effected, we would think that while it is true that the authorities must bear in mind the concerns and aspirations of all the employees, it may not be a ground to strike down a Rule, if the rule maker felt that a certain section of employees, even if they may have been enjoying the benefit of the right to be considered for promotion under the earlier Rules, that they need not any longer be considered. As to who should mend the promotional post, is the matter essentially left to the wisdom of the employer, when the employer is a state, undoubtedly, it has a duty to act fairly. But the mere fact that the persons, who were earlier enjoying the benefits, have been excluded in the new Rules from the zone of consideration may not be by itself a ground to strike down the Rule. The Hon'ble Supreme Court in the matter of A.P. Cooperative Oil Seeds Growers Federation Limited vs. D. Achyuta Rao reported in (2007) 13 SCC 320 has held that mere fact that some hardship or injustice is caused to someone, is no ground to strike down the rule altogether if otherwise the rule appears to be just, fair and reasonable and not unconstitutional.

26. We have already founded, as far as the appellants are concerned that they cannot get the support from the 1944 Rules, in view of its inapplicability in the Kumaon Division. Bereft of support for right to be considered for promotion under statutory Rules, we would think that the contention based on Section 74 of the Reorganization Act would have no legs to stand on. The obstacle in the part of the State that it has to get the consent of the Central Government would not, in our view, apply when they had no statutory right to be considered for promotion under the 1944 Rules.

27. There is a contention that there is discrimination practiced. The contention runs that there is only one single cadre of Collection Amins throughout the State and the Collection Amins in the Garhwal Region would get promotion. Under the 2009 Rules, there is no right given to any Collection Amin within the State of Uttarakhand to claim promotion as Naib Tehsildar. It may be true that after the notification issued in the year 1968, a new Division was created, and Kumaon was confined to Nainital, Almora and Pithoragarh and, therefore, the rest of the State, thereafter, came within the Division of Garhwal and, therefore, the 1944 Rules would apply to the Garhwal region and, therefore, Collection Amins in that area may claim a right under the 1944 Rules to be promoted as Naib Tehsildar, in the light of the provision of Section 74 of the State Reorganisation Act, 2000. We do not think that it is necessary for us to go into the said aspect. Under the 2009 Rules, there is no right given to any Collection

Amin within the State of Uttarakhand to claim promotion as Naib Tehsildar. We do not think that we should probe this matter further and we leave this question open. There is a further complaint for the appellants that they are even being denied the promotional scale of Naib Tehsildar. If that is so, we leave it open to the appellants to represent their grievance before the competent authority and it is for the competent authority to consider the matter and take a decision in

accordance with law in the matter.

28. Subject to the observations as above, the appeals will stand dismissed. There will be no order as to costs.