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**(2009) 04 AHC CK 0804**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 738 of 2008 (S/B)**

Vipin Kumar Mishra

APPELLANT

Vs

State of U.P. and others

RESPONDENT

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**Date of Decision :** 09-04-2009

**Acts Referred:**

**Citation :** (2009) 121 FLR 956

**Hon'ble Judges :** U.K. Dhaon, J; Satish Chandra, J

**Bench :** Division Bench

**Advocate :** Mohammad Haider and Gaurav Mehrotra, for the Appellant; Rakesh Bajpayee, for the Respondent

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## Judgement

U.K. Dhaon and Dr. Satish Chandra, JJ.—Heard Sri Gaurav Mehrotra, learned Counsel for the Petitioner and Sri Rakesh Bajpayee, learned Additional Chief Standing Counsel for the Respondents.

2. The Petitioner has alleged that he appeared in the Combined State Services Examination in 1987 and was selected with merit position at Serial No. 49. The Petitioner has further alleged that on 5.4.1990 he joined on the post of District Commandant (Home Guards), Mainpuri and as the appointment of one Sri Sanjay Shanker Pandey, who was in merit at Serial No. 47 of Combined State Services Examination, 1987, did not join the U.P. Police Service, vacancy occurred and the Petitioner made a representation to the State Government for allocation of U.P. Police Service. The Petitioner thereafter filed a writ petition which was registered as Writ Petition No. 12818 of 1996 which was disposed of by this Court by the judgment and order dated 12.11.1998. Thereafter, a review petition was preferred by the Petitioner in which the following order was passed on 12.11.1998:-

As the vacancy exists and the State Government has no objection for reshuffling of the Petitioner to the post of Deputy Superintendent of Police, the Commission may pass appropriate orders in that regard expeditiously say within six weeks

from the date of production of a copy of this order dated 12.11.1998.

3. By the order dated 11.11.1999 the Petitioner was re-allocated and he was appointed as Deputy Superintendent of Police on probation on which post he joined on 3.7.2000.

4. Learned Counsel for the Petitioner submits that the Petitioner is eligible for promotion to the post of Additional Superintendent of Police Grade-II as he has completed eight years of service in the recruitment year 2008-09 from the date he was re-allocated and was appointed as Deputy Superintendent of Police on probation. He further submits that relaxation was granted to Sri Vinay Kumar Yadav under U.P. Police Service Rules, 1942 and as such the opposite parties ought to have granted relaxation to the Petitioner.

5. The learned Additional Chief Standing Counsel appearing on behalf of the opposite parties submits that on 1.7.2008 of the recruitment year 2008-09 the Petitioner was not eligible to be considered for promotion to the post of Additional Superintendent of Police Grade-II as at the relevant time he was not having eight years of regular service as Deputy Superintendent of Police.

6. We have considered the submissions made by the learned Counsel for the parties and gone through the record.

By the interim order dated 6.6.2008, the opposite parties were directed to consider the case of the Petitioner in the next Departmental Promotion Committee for promotion to the post of Additional Superintendent of Police, Grade-II. It is not disputed that the candidature of the Petitioner was not considered by the opposite parties for promotion in the Departmental Promotion Committee which met on 10.7.2008 on the ground that the Petitioner has not completed eight years of service as Deputy Superintendent of Police. Rule 31 of the U.P. Police Service Rules, 1942 which provides for relaxation from the condition of service in case of undue hardship reads as under:

Relaxation from the condition of services.-Where the Government is satisfied that the operation of any rule regulating the conditions of service of persons appointed to the Service causes undue hardship in any particular case, it may, notwithstanding anything contained in these rules applicable to the case, by order dispense 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:

Provided that the Commission shall be consulted before the rule is relaxed."

7. By the order dated 12.11.1998 passed by this Court in review petition preferred by the Petitioner the State Public Service Commission was directed to pass appropriate orders within six weeks". The Petitioner was also allocated the U.P. Police Service on the basis of Combined State Services Examination, 1987 by the order dated 11.11.1999 and he joined as Deputy Superintendent of Police on 3.7.2000. The Petitioner has alleged that the benefit of relaxation was given

to one Sri Vinay Kumar Yadav. The Petitioner was not considered by the opposite parties for promotion to the post of Additional Superintendent of Police Grade-II only on the ground that he has not completed eight years" regular service as Deputy Superintendent of Police on 1.7.2008 of the recruitment year i.e. 2008-09.

8. We are of the view that it is a fit case where the State Government ought to have exercised the power given under Rule 31 of U.P. Police Service Rules, 1942 by relaxing two days service when the DPC met on 10.7.2008 especially when there was delay on the part of the State Government for implementing the judgment and order dated 12.11.1998 passed in Review Petition No. 12818 of 1996.

9. We, therefore, direct the Respondents to consider the case of the Petitioner for promotion to the post of Additional Superintendent of Police, Grade-II against the vacancy of the recruitment year 2008-09 within two months" from the date a certified copy of this order is produced.

With the above observation the writ petition is finally disposed of.