



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 107669/23

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
	
31 JULY 2025	
.....	
SIGNATURE	DATE

In the matter between:

YURIC ENVOR LEANDER

First Applicant

JACOBUS ONKE AND 19 OTHERS

Second to Twenty-First Applicants

and

MINISTER OF DEFENCE AND MILITARY VETERANS

First Respondent

CHIEF OF SOUTH AFRICAN NATIONAL DEFENCE FORCE

Second Respondent

CHIEF OF SOUTH AFRICAN AIR FORCE

Third Respondent

SECRETARY FOR DEFENCE

Fourth Respondent

MINISTER OF FINANCE

Fifth Respondent

JUDGMENT

LABUSCHAGNE J

[1] The applicants are members of the South African National Defence Force who apply for review relief.

[2] The notice of motion provides as follows:

- “1. That those applicants that have not exhausted their internal remedies should be exempted from this duty and/or any failure in this regard is condoned;*
- 2. It is declared that the second respondent’s decision not to reactivate the payment of a Technical Competency-Based Incentive Pay cannot be exceeded (sic) to is unlawful and invalid and/or is reviewed and set aside;*
- 3. It is declared that the termination of the Technical Competency-Based Incentive Pay for the firefighters in the South African Air Force is unlawful and/or is reviewed and set aside;*
- 4. It is declared that the implementation of the Military Dispensation for Engineers and Related Professions in the Department of Defence dated 31 August 2021 is unlawful and invalid and/or is reviewed and set aside;*
- 5. The first to fourth respondents are ordered to ensure that the applicants retrospectively receive the Technical Competence-Based Incentive and all benefits associated with it, and that they continue to*

receive same until a different lawful decision is possibly taken in this regard in future. All rectification (sic) shall occur within 30 days from date of this order;

6. *The first to fourth respondents are to pay the applicants' costs of this application;*

7. *The fifth respondent to pay the costs only in the event of opposition by it."*

[3] The applicants are firefighters in the South African Air Force based at Military Airports. They have received a special financial allowance in terms of the TCIP since 2003. Upon the implementation of the Military Dispensation (MD) with effect from 1 April 2022, in terms of a new salary dispensation determined by the Minister of Defence, the applicants have lost the special allowance. The MD is directed at providing special remuneration packages to professionals who are governed by professional bodies. The applicants are not governed by a professional body but claim that they have specialist training and should be treated as professionals.

[4] The applicants are consequently challenging the implementation of the MD, insofar as it has the effect of depriving them from the financial benefits that they previously received in terms of the TCIP.

THE BACKGROUND FACTS

- [5] On 25 February 2003 the Department of Public Service and Administration (DPSA) signed a letter of approval of an incentive scheme (the TCIP) which was implemented from date. The TCIP contains measures for a pay incentive scheme for identified technical musterings in the SAAF, which includes the applicant firefighters.
- [6] On 19 July 2009 the DPSA disseminated Circular 1 of 2007. The Circular constituted the publication of a multiterm agreement that was concluded in the Public Service Co-ordinating Bargaining Counsel on the improvement of conditions of service for personnel in specific categories.
- [7] The Circular indicates that an Occupation Specific Dispensation (OSD) will be implemented with the aim of attracting and retaining skilled employees. The OSDs would be implemented over the next three years, commencing on 1 July 2007. A grading system would apply to those employees that are not covered by OSDs. Scarce skills allowances payable in terms of the Scarce Skills Allowance Framework, would be incorporated into the salaries as part of the implementation of OSDs. Details of the implementation of OSDs will be communicated to the Departments once amicable agreements have been concluded in the Sectoral Bargaining Councils (clause 19).
- [8] On 1 October 2009 the DPSA issued Circular No. 5 of 2009. This also related to the intended implementation of OSDs.

- [9] An Interim National Defence Force Services Commission (INDFSC) was created, approved by Cabinet and established by a resolution of the Minister on 9 September 2009, and its terms of reference were published.

- [10] On 26 April 2010 the INDFSC made a recommendation.

- [11] The chairperson of the INDFSC was Judge Bosielo, who authored a recommendation dated 26 April 2010 to the Minister of Defence, strongly supporting the implementation of OSDs in the South African National Defence Force as a means to attract, develop and retain skilled and motivated members.

- [12] Pertaining to technical allowances, the recommendation provided that such technical allowances should be converted into an OSD (i.e. aligned with members' career paths and career developments), including ensuring the recognition of experience provisions.

- [13] On 20 September 2010 the Minister of Finance approved the development and implementation of the MD policy.

- [14] In 2010 consultative workshops on OSDs in respect of fire and rescue workers policy development took place.

- [15] On 30 November 2010 the Department of Defence's Implemented Instruction 71/2010 known as 'The technical allowance phasing in of the specific dispensation for engineers' was issued. It relates to professions and occupations in the Department of Defence.

- [16] Paragraph 3 of the aforesaid instruction refers to a decision taken on 13 October 2010 by the mandating committee to pay technical allowances to those who are currently not receiving same and is based on the TCIP that is currently paid to the SAAF.
- [17] The applicants were paid the TCIP mentioned in that instruction.
- [18] However, in terms of paragraph 4 to Appendix B to the aforesaid instruction, it appears that firefighters were removed from the artisans' list. The applicants contend that this removal took place unilaterally and arbitrarily. The respondents contend that there were continuing consultation processes in this regard, although not with the applicants directly.
- [19] The Department of Defence stopped paying the TCIP allowance in April 2022 when the MD was implemented.
- [20] Several musterings within the Department of Defence requested an extension for the payment of their technical allowances and all those musterings who applied had an extension of the payment of their allowances until 31 March 2023.
- [21] The Department of Defence issued an implementation order for the Military Dispensation for Engineers and related professions in the Department of Defence on 31 August 2021, to be implemented on 1 April 2022.

INTERNAL REMEDIES

[22] The first applicant raised a grievance in terms of the current grievance procedures, but such grievance was unsuccessful. The grievance that was submitted was in terms of the Individual Grievance Regulations promulgated in terms of the Defence Act, 2002 on 1 October 2016. The first applicant was notified on 4 May 2023 by the Grievance Board, together with the Chief SANDF that the reactivation of the TCIP could not be acceded to, that all technical related allowances were abolished by means of the MD and were consolidated into salaries, that firefighters within the South African Air Force were not translated (a term probably referring to the fact that they were not incorporated) because they did not comply with the minimum requirements of being registered and controlled by a profession-specific regulatory body.

[23] Many of the other applicants still have pending grievances.

[24] The applicants apply for an exemption from following the grievance processes based on the experience of the first applicant.

[25] As will appear below, this is a legality issue and a legality issue is, in my assessment, not something which falls within the ambit of the grievance procedures of the bodies making decisions in terms thereof. Legality is an issue which falls exclusively within the preserve of the High Court.

THE STATUTORY BASIS FOR DETERMINATION OF SALARIES AND ENTITLEMENTS

[26] Section 55 of the Defence Act of 2002 regulates the determination of pay, salaries and entitlements. It consists of three subparagraphs, the third of

which was only introduced by means of an amendment with effect from 11 April 2011.

[27] The section reads as follows:

“Pay, salaries and entitlements

- 55 (1) *Members of the Regular Force and Reserve Force must receive such pay, salaries and entitlements including allowances, disbursements and other benefits in respect of their service, training or duty in terms of this Act as may from time to time be agreed upon in the Military Bargaining Council.*
- (2) *If no agreement contemplated in subsection (1) can be reached in the Military Bargaining Council, the Minister may, after consideration of any advisory report by the Military Arbitration Board and with the approval of the Minister of Finance, determine the pay, salaries and entitlements contemplated in that subsection.*
- (3) *In the event that the process as contemplated in subsections (1) and (2) do not materialise, the Minister may, taking into account any recommendation by the Commission, and with the approval of the Minister of Defence, determine pay, salaries and entitlements of the members of the Defence Force.”*

[28] The Commission referred to in section 55(3) was established by section 62A(1). That subsection was introduced by section 6 of Act 22 of 2010 and took effect on 15 April 2011.

[29] That is the same date on which section 55(3) was added and became effective (see section 5 of Act 22 of 2010).

[30] The Defence Force Service Commission Regulations were published in 2014 in Government Notice R1046 in GG38359 of 19 December 2014.

[31] In paragraph 15 of the Implementation Decision, the following is stated:

“Legislative basis

15. *This MD is issued in terms of the regulation made by the Minister of Defence and Military Veterans in terms of section 55 of the Defence Amendment Act 42 of 2010.”*

[32] That appears to be an erroneous reference. The Defence Act is Act 42 of 2002. The Amendment Act introducing section 55(3) and establishing the Commission in terms of section 62A was the Amendment Act, number 22 of 2010.

[33] As stated, the Regulations regulating the Commission were only published in 2014.

IMPLEMENTING THE MD WAS PROCEDURALLY IRRATIONAL

[34] The Minister of Defence has misunderstood the basis of legislative powers to determine salaries and remuneration in terms of sec 55.

[35] The only applicable section of section 55 to these proceedings is section 55(3). There was no agreement as far as the salaries and entitlements were concerned as envisaged by section 55(1). Further, the regulations pertaining to the Military Arbitration Board were struck down by the Constitutional Court. The only source for the Minister's powers to make a determination of pay, salaries and entitlements is section 55(3).

[36] It bears noting that the requirements of that section are twofold. Firstly, the Minister must take into account any recommendation by the Commission and ,secondly, his decision must be with the approval of the Minister of Finance.

[37] It is apparent from the papers that the Minister relied upon the recommendation of the Interim National Defence Force Service Commission, a recommendation which predated the establishment of the Commission referred to by section 55(3). It is not a recommendation by the Commission.

[38] However, section 8(2) of the Defence Amendment Act 22 of 2010 introduced a transitional provision that reads as follows:

“(2) Anything done by the Interim National Defence Force Service Commission prior to the commencement of this Act which could have been done by the Commission in terms of this Act, must be regarded as having been done by the Commission in terms of this Act.”

This deeming provision clothes the recommendation by the Interim Commission with legality after the introduction of sec 55(3), and the Minister was accordingly entitled to rely on it.

[39] The alleged approval by the Minister of Finance is in a document dated 20 September 2010, a letter from National Treasury to the Secretary of Defence.

[40] The letter in question constitutes comment on memoranda received from the Minister of Defence and Military Veterans for the Mandate Committee meeting that took place on 13 September 2010. The document emanates from Mr Velile Mbathe, Chief Director – Justice and Protection Services, Director General: National Treasury.

[41] This document does not evidence an approval by the Minister of Finance.

[42] This is a procedural irregularity in the determination of pay, salaries and entitlements by means of the implementation of the Military Dispensation. A statutory precondition for the decision of the Minister of Defence, ie the approval of the Minister of Finance , has not been established.

[43] The application is aimed at a review of the decision to implement the MD.

[44] Counsel for the respondents contended that the relief is aimed at the implementation of the MD by the Chief of the Defence Force (the second respondent) whereas the decision to implement the MD was that of the Minister.

- [45] I am satisfied on the papers that the applicants have sought to challenge the decision taken to sanction the MD and to implement it. All the parties to that process (i.e. the Minister and the Chief of the Defence Force) are before court.
- [46] On the facts it is an unduly technical approach to suggest that the legality or rationality of the implementation of the decision can be divorced from the decision itself. The decision is attacked on the basis that it lacks legality in terms of the subsections in PAJA, alternatively legality.
- [47] I am satisfied that the decision to implement the Military Dispensation constitutes an administrative action within the meaning of PAJA. For the reasons set out above, the decision taken by the Minister was irrational in that the prescribed statutory process and compliance with the preconditions for the determination of pay, salaries and entitlements were not complied with. This renders the decision of the Minister reviewable in terms of section 6(2)(b) of PAJA in that a mandatory and material procedure or condition prescribed by an empowering provision was not complied with.
- [48] It follows that a declaration must follow that the decision of the Minister to determine and implement the pay, salaries and entitlements regime in terms of the Military Dispensation is constitutionally invalid.

REMEDY

- [49] The court has a wide equitable jurisdiction in terms of section 8 of PAJA to determine an order that is just and equitable. In determining a just and equitable remedy the Court has a true discretion based on the facts and

circumstances of the case. The SCA confirmed the approach in *Zeal Health Innovations (Pty)(Ltd) v Minister of Defence and Military Veterans* 2025 JDR 0042 at par 23: “As the Constitutional Court said in *Steenkamp*, ‘[I]n each case the remedy must fit the injury. The remedy must be fair to those affected by it and yet vindicate effectively the right violated. It must be just and equitable in the light of the facts, the implicated constitutional principles, if any, and the controlling law’.”

[50] I am mindful thereof that the Military Dispensation has broad application to professions within the National Defence Force and that the implications of a decision to review and set aside the Military Dispensation can have wide-ranging consequences for professions not represented in these proceedings.

[51] However, to retain the status quo, a decision needs to be made that gives effect to the following principles:

51.1 To endorse the applicants’ right to fair administrative action in terms of section 32 of the Constitution;

51.2 That endorses the rule of law and the application of the Constitution;
and

51.3 That is just and equitable to the parties in the circumstances.

[52] A decision reviewing and setting aside the implementation of the Military Dispensation is warranted on these facts. However, by virtue of the interests of other parties, such a decision should be suspended pending a remittal and

a redetermination of the issue by the Minister, following due process and compliance with the provisions of section 55 of the Defence Act.

[53] This suspension should not adversely affect the applicants. As the withholding of their TCIP allowances was unlawful, the applicants are entitled to remuneration as before implementation of the MD pending finalisation of the remittal process.

ORDER

[54] In the premises I make the following order:

1. An order granting the applicants exemption from exhausting internal remedies is issued.
2. The decision by the first respondent Minister of Defence to determine pay, salaries and entitlements by implementing of the Military Dispensation with effect from 21 April 2022 is declared invalid and is set aside.
3. The aforesaid order in par 2 is suspended pending finalisation of a remittal of the aforesaid decision to the first respondent Minister of Defence and compliance with the statutory provisions governing a redetermination of pay, salaries and benefits in accordance with the prescripts of section 55 of the Defence Act.
4. Notwithstanding the aforesaid suspension, the applicants are entitled remuneration in terms of the TCIP, as they were before

implementation of the MD, pending finalisation of the remittal referred to above.

5. The first respondent is liable to pay the costs of the applicants, such costs to be on Scale B.

[Redacted signature]

LABUSCHAGNE J

JUDGE OF THE HIGH COURT

APPEARANCES:

APPLICANTS ATTORNEYS: GRIESEL VAN ZANTEN INCORPORATED

APPLICANTS COUNSEL: ADV HAMMAN

RESPONDENTS ATTORNEYS: STATE ATTORNEY PRETORIA

RESPONDENTS COUNSEL: ADV SENYATSI