

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE Number: 2023/065385

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
15 August 2025	

[Signature]

In the matter between:-

FRANS MABOTHE MATJILA

Applicant

and

MINISTER OF DEFENCE AND MILITARY

VETERANS

First Respondent

CHIEF OF THE SOUTH AFRICAN NATIONAL

DEFENCE FORCE

Second Respondent

CHIEF OF SOUTH AFRICAN AIR FORCE

Third Respondent

SECRETARY OF DEFENCE

Fourth Respondent

JUDGMENT

H F JACOBS, AJ

[1] The applicant is a non-commissioned officer employed by the South African National Defence Force. He holds the rank of Flight Sergeant. The applicant joined the South African Air Force in 1998 and advanced through the ranks of Airman, Corporal, Sergeant, before being promoted to Flight Sergeant in 2009. His role is that of a technician in the Air Force Mobile Deployment Wing (Ground Electronics Section). The applicant has completed numerous courses while serving in the Air Force and applied to his employer to attend an officers' forming course at the South African Air Force College from 16 January 2017 to 15 June 2017. He successfully attended and was awarded a certificate by the Chief of the South African Air Force confirming his successful completion of the officers' forming course during that period.

[2] Upon completing the officers' forming course, the applicant's substantive rank changed from Flight Sergeant to Candidate Officer, and he was issued a certificate accordingly. A few months later, in November 2017, he was permanently transferred from Air Force Base Waterkloof to Air Force Base Zwartkop to serve as a Technical Officer, where he is currently employed. The applicant then worked at Zwartkop Air Force Base with the rank of Candidate Officer while awaiting a commission as a Lieutenant. However, the applicant's appointment as Lieutenant was never granted, and he lodged a grievance with the respondents on 20 June 2019. The grievance was lodged in accordance with the Individual Grievance Regulations issued under the Defence Act, 2002. The applicant's grievance was escalated, and on 3 December 2019, he was informed that the Grievance Board had decided it was his responsibility to visit Wynberg Police Station to clear his name and submit proof to the Department of Defence that his name had been removed from records showing he had been convicted of an offence. The applicant subsequently provided a clearance

certificate issued by the South African Police Service dated 19 August 2021, indicating that no convictions for any crimes in the Republic had been recorded against his name.

[3] On 20 April 2020, the South African Air Force Grievance Committee deliberated on the applicant's grievance. It concluded that the grievance was not valid because the appointments did not fall under the South African Air Force. Dissatisfied with the outcome of the process before the Grievance Board, the applicant escalated his grievance to a higher level. On 30 June 2021, the Department of Defence issued a letter stating that after due consideration of the Grievance Board's recommendations, the Chief of the South African National Defence Force decided that the Inspector General of the Department of Defence be instructed to conduct an investigation regarding his selection and appointment, and to make a recommendation on measures to be taken against anyone who condoned or connived in wrongdoing. The applicant was to be informed of the outcome of the investigation once finalised.

[4] During January 2023, the applicant was informed that he *".... will not be Appointed as an Officer in the SANDF as the Relaxation on the undermentioned Offences that he was convicted for were not approved due to that he has multiple serious Offences"*; opposite this information, an entry was recorded showing *"SEC 28 (A) NDC Negligent / Reckless Driving" and "SEC 27(B) NDC: Use / Take Public Property"*; and the applicant was instructed *"to revert to their current substantive rank (Flight Sergeant) and should be managed accordingly."*¹

[5] Dissatisfied with the outcome, the applicant now applies for a review and for the decision and/or instruction that he revert to the substantive rank of Flight Sergeant to be set aside, and for an order that he be reinstated as a Candidate Officer with full retrospective effect, including the retention of all salaries and benefits since

¹ See annexure "FMM 9" at CaseLines paragraph 003-15

his removal from the rank of Candidate Officer, as well as the rectification of the respondents' records concerning the applicant accordingly.

[6] The respondents' answering affidavit was lodged late. They request condonation for the delay and seek an extension of time to file it. Their application and explanation for the tardiness are quite limited. They do not provide a full and clear explanation of the delay, and there seem to be many *gaps* during the period of neglect. At the start of the hearing, the condonation application was argued, and I decided that condonation should be granted. My reasons for approving condonation will be explained in this judgment. More about that shortly.

[7] The respondents oppose the application and challenge the applicant's right to the relief sought. They submit that the impugned ruling and decision should be upheld, as they were justified in the circumstances of the case within the framework of section 54(2)(f) and (g) of the Defence Act, which reads as follows:

"54 Commissioned officers in Defence Force

- (1) (a) Subject to subsection (2), the President may confer a permanent commission on any member of the Defence Force.*
- (b) A member upon whom a commission has been conferred, must be issued with a Deed of Commission bearing the President's signature or a replica thereof.*
- (2) In order to qualify for a permanent commissioned appointment in the Defence Force, a person must-*
 - (a) swear or declare allegiance to the Republic;*
 - (b) be a citizen;*
 - (c) relinquish any other citizenship he or she may have;*
 - (d) have served successfully on probation as an officer with a temporary commission for at least one year;*

- (e) *successfully complete specific prescribed training;*
 - (f) *never have been convicted and imprisoned without the option of a fine for a criminal offence, except one for which he or she has been granted amnesty in terms of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995);*
 - (g) *be a fit and proper person to serve and must have a trustworthy and exemplary character; and*
 - (h) *comply with the prescribed security grading requirements.*
- (3) (a) *Only the President may cancel a permanent commission, but such a commission may not be cancelled without the holder thereof being notified in writing of any complaint or charge made against him or her and of any action proposed to be taken in respect thereof, nor without him or her being called upon to show cause in relation thereto.*
- (b) *Where the holder of a permanent commission cannot be traced after a diligent search that is appropriate in the circumstances, the commission may be cancelled without such notification.*
- (4) *The Minister may confer a temporary commission in the Defence Force on any person who is a member or who is eligible to become a member of the Defence Force, if such person complies with the requirements for such appointment and if there is an appropriate post in which such person can serve.*
- (5) *All persons given a temporary commission hold their commissions for such period as the Minister determines."*
- (6) (a) *An officer may by notice in writing request to be relieved of his or her commission, and any such request takes effect three months after the date upon which it is approved or on such earlier date as may be approved by the Minister.*
- (b) *A former officer is not, in consequence of the withdrawal of his or her commission, exempt from-*

- (i) *any service or training for which he or she may be liable in terms of this Act unless exempted by the Exemption Board; and*
 - (ii) *the repayment of any money stipulated in a contract pertaining to any education or training he or she may have undergone or may be in the process of undergoing at State expense.*
- (7) *The commission of any officer terminates and must be regarded as having been cancelled-*
- (a) *on the date on which a sentence of cashiering imposed on him or her is confirmed;*
 - (b) *if any sentence of imprisonment without the option of a fine is imposed on him or her by a competent civilian court, and in the event of an appeal, upon the confirmation of such sentence.*
- (8) (a) *The appointment in the Defence Force of any person whose commission has been cancelled in terms of subsection (7) must be regarded as having been terminated simultaneously with such cancellation.*
- (b) *The appointment in the Defence Force of any person whose commission has been cancelled in terms of subsection (3), terminates on such cancellation if such appointment was made by virtue of the commission conferred, and may be terminated subject to any terms and conditions governing such appointment, but nothing contained in this section may be construed as relieving or exempting such person from liability to render service in terms of this Act.*
- (9) *Officers who have retired from the Defence Force and while still in service held permanent commissions, may retain the use of their rank after they have so retired and are no longer in service, but must append the appellation 'Rtd' whenever it is used.*
- (10) *Commissioned officers from other countries who are attached to the Defence Force by means of temporary appointment in terms of this Act are entitled to all privileges bestowed on commissioned officers in the Defence Force by virtue of their rank."*

[8] The respondents rely on section 54(2)(f) and (g) to justify the decision and recommendation under review. It turns on two defences, which they claim the applicant committed. The first is for bumping into a pole, for which he was fined R 1, 500. 00. The second is for parking a vehicle on the side of the road to buy food, for which he was reprimanded. The outcome communicated to the applicant on 12 January 2023 was that he would not be appointed as an officer in the Defence Force, as he had multiple serious offences recorded against his name. These "multiple serious offences" are the two mentioned above. During November 2022, the Chief of the South African National Defence Force issued Instruction 4 titled " Appointment of Members with military and civilian convictions as officers in the South African National Defence Force, " which aimed to provide guidelines for managing members with multiple and serious military and/or civilian offences. The rationality of the instruction is not challenged in these proceedings, and at first glance, without making any finding in that regard, it appears to be perfectly rational for the officer in command of the Defence Force to publish such an instruction. I agree with the respondents' counsel that the purpose of the instructions is to guide the management of members with multiple and serious military and/or civilian offences when decisions are made regarding the commissioning of members as officers. I disagree that the offences mentioned are, without further enquiry, to be regarded as "serious. " It might seem that, in certain circumstances, an offence or offences of the kind mentioned against the applicant could be interpreted as serious within the context of the instruction, but, in the present case, that has not been established. The applicant was never given the opportunity to address or express his view regarding the respondents' application of the guidelines to his application for permanent appointment as an officer. I am also not convinced that, based on the evidence before the respondents in these proceedings,

those offences are indeed serious and that the applicant's conviction or admission of guilt would serve as a disqualifying factor or factors under section 54(2) of the Defence Act.

[9] Under the circumstances, the applicant could not have been disqualified, as the respondents held him to be, for his conviction of the stated two offences.

[10] It is possible that his convictions are relevant and influence the consideration of whether the applicant is a fit and proper person as outlined in section 54(2)(g) of the Defence Act. The applicant was not permitted to present evidence or submissions to the respondents in this regard before they ruled and decided that his application cannot be further entertained or recommended to the President in accordance with section 54(1) of the Defence Act.

[11] A careful reading of the correspondence suggests that the respondents interpreted the Chief of the Defence Force's instruction of November 2022 as a blanket rule that, if broadly applied, would disqualify someone in the applicant's position. In my view, such conduct constitutes an arbitrary decision and instruction, and the decision and its outcomes were made in breach of the law. The specific circumstances under which the alleged offences were committed were entirely overlooked. The decision was not that of the Chief of the National Defence Force, but that of the President, making it beyond *his* legal authority. The two convictions, in my opinion, do not qualify as disqualifying offences under section 54(f). The respondents have never determined, argued, or ultimately claimed that the applicant's convictions make him unfit or unsuitable to be commissioned as an officer.

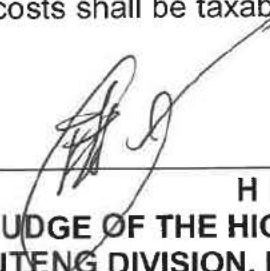
[12] In my view the decision and instructions of the respondents must be reviewed and set aside in terms of sub-section 6(2)(a)(i), (c), (d), (e)(vi) of the Promotion of Administrative Justice Act of 2000 and fall to be remitted for

reconsideration by the respondents as contemplated by section 8(1)(c)(i) of the same act. I will now turn to the aspect of condonation.

[13] Counsel for the parties referred me to the authorities, correctly so, and concluded with a submission that it is, on occasions of the kind afoot here, necessary to determine what is in the interest of justice before a decision is made on the condonation of the late filing of papers by administrators in the position of the respondents. It is necessary to have the record and the views of the respondents available to a court of law in considering an application for the relief sought by the applicant in these proceedings. For that reason, I condone the late filing, although the explanation for the lateness was scant.

[14] I make the following order:

1. The second respondent's decision and instruction that the applicant is to revert to the substantive rank of Flight Sergeant is reviewed and set aside;
2. The applicant is reinstated as a Candidate Officer with full retrospective effect, with retention of all salaries and benefits since the date of his removal from the rank of Candidate Officer;
3. The rectification of the respondents' record about the applicant shall be effected within 15 (fifteen) days from the date of this order;
4. The respondents shall pay the applicants' costs of this application, including the costs of the application for condonation, which costs shall be taxable on scale C.



H F JACOBS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for the hand-down is on the 15th of August 2025 at 10h00.

Heard on: 11 August 2025

Judgment: 15 August 2025

APPERANCES

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