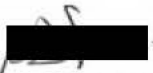


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: A344/23

(1)	REPORTABLE: NO
(2)	OF INTEREST TO THE JUDGES: NO
(3)	REVISED: YES
18.9.2025	
DATE	SIGNATURE

In the appeal between:

LYZETTE ANTOINETTE LABUSCHAGNE

APPELLANT

AND

THE MINISTER: STATE SECURITY
AGENCY

FIRST
RESPONDENT

THE CHAIRPERSON OF THE
GRIEVANCE PANEL NO: PULANE MOLEFE

SECOND
RESPONDENT

THE ACTING DIRECTOR-GENERAL:
STATE SECURITY AGENCY

THIRD
RESPONDENT

JUDGMENT

JOHNSON AJ (MOSHOANA J; REID J CONCURRING)

INTRODUCTION

- 1 . The appellant was granted leave to appeal by the court a quo against the whole of the orders and judgment, including costs, by Mthembu AJ handed down on 17 July 2023.
2. The grounds for appeal are as follows:
 - 2.1 . That the recommendation by the second respondent and the approval thereof by the first respondent that the appellant be transferred laterally from the Directorate of Telecommunications to another Directorate of the State Security Agency be reviewed and set aside;
 - 2.2 That the appellant be retrospectively appointed on a level commensurate to that of a Unit Head (Level P2) from 1 October 2002, alternatively from June 2015;
 - 2.3 That the appellant's remuneration be retroactively recalculated by the first respondent, alternatively the third respondent from 1 October 2002, alternatively from June 2015 commensurate with that of a Unit Head (Level P2) and that the difference between what the appellant is entitled to and what she was actually paid be paid to the appellant within 30 court days of an order to that effect;
 - 2.4 That the respondents make available to the Honourable Court and the appellant the details of their respective remuneration packages, now G2 and P2, to enable the appellant and the honourable Court to calculate the amount retroactively payable to the appellant;
 - 2.5 That the decision of the third respondent confirming the appellant's individual performance measurements system ratings of 3 for the years 2013/2014 and 2014/2015 be reviewed and set aside and adjusted to a rating of 4;

- 2.6 That the appellant's performance bonus be recalculated by the first, alternatively, third respondent, based on a performance rating of 4 for the years 2013/2014 and 2014/2015 and that the difference between the recalculated bonus and the bonus actually paid for the two years be paid to the appellant within 30 court days of the Court ordering so.
3. The matter on appeal raises two main issues:
- 3.1 . Whether the appellant should have been appointed or promoted to the position of the Unit Head instead of Ms Maletswa and whether Mthembu AJ erred in finding that she should not;
- 3.2 Whether the appellant's IPMS rating should have been adjusted from a level 3 out of 5 to a level 4 out of 5 and whether Mthembu AJ erred in finding that there was insufficient evidence before him to decide on the dispute.

SUMMARY OF THE FACTS

4. The appellant was officially appointed by the State Security Agency as an administrative officer in the Telecommunication Division responsible for mobile telephone services.
5. At the time of her appointment, she was reporting to Mr Christo Strydom who was then the Unit Head. Mr Strydom left the SSA in 2002. After he left, it was explained
- to the appellant that the previously occupied post of Mr Strydom no longer existed in the division and was therefor never advertised.
6. After Mr Strydom left, the appellant reported to Mr Steyn, who, in August 2003, made submissions and recommendations for the creation of two Unit Head positions in the division. Mr Steyn's recommendations were not approved (Annexure "LAL3").

7. On 1 February 2006, Mr Bernard, the Acting Manager, Information Systems, made recommendations for the appointment of the appellant as Unit Head. These recommendations were not approved.
8. During May 2006, three months later, Mr Masango, the General Manager: Human Resources, assisted the appellant in having her post re-evaluated. This attempt was unsuccessful as well.
9. In 2012, the State Security Agency merged two branches of National Intelligence and the appellant requested a promotion to the position of a Unit Head. Mr Bam who was the appellant's manager at the time, refused her request for a promotion. The appellant then escalated her grievance with Mr Bam's refusal to the DirectorGeneral, Mr Dlomo, who investigated her grievance. He later informed the appellant that her request to be promoted to the position of a Unit Head would not be considered because she was not suitably qualified since she did not have an NQF6 qualification which is equivalent to a bachelor's degree. On this advice, the appellant subsequently enrolled for a Bachelor of Arts (majoring in criminology) degree at the University of South Africa.
10. The appellant then submitted a formal grievance against Mr Bam on the basis that she felt victimised by him. This grievance, she contends was never investigated.
11. In relation to her Integrated Performance Measurement System ("IPMS") ratings, for the periods 2013-2014 to 2014-2015, the appellant rated herself at level 4 out of 5. Mr Bam reduced the ratings to a level of 3 out of 5 which the appellant was unsatisfied with. She then lodged an appeal which, she contends, was not determined.
12. In June 2015, Mr Sharif, informed the appellant that Ms Maletswa was appointed as the Unit Head in the division the appellant was employed in and that the appellant was to report to Ms Maletswa. The appellant felt aggrieved by this contending that the functions and duties that she was performing were taken away

from her. When she later realised that she could no longer cope with working under Ms Maletswa, she requested a transfer to another division which was granted.

13. Pursuant to her request for a transfer and the approval thereof, the appellant was transferred to the IT Stock Department, where she was required to work in an open plan office with other colleagues whereas in her previous role she was allocated her own office. The appellant felt further aggrieved by this and viewed it as a demotion.
14. The appellant then submitted a formal grievance after the appointment of Ms Maletswa. However, there was a delay of some 3 years, and after several demands made by the appellant's attorney, a grievance panel was convened to attend to her grievance. A grievance outcome was issued to the appellant on 17 January 2019. According to the appellant, the panel's entire report was not provided to her. It was, however, conveyed to her that the appointment of Ms Maletswa as a Unit Head to the post was unlawful. The reasons advanced for the panel's finding that the appointment of Ms Maletswa was unlawful were that the post was disestablished and no longer existed. She was also informed that a consultation process would follow with her to consider a possible transfer to another directorate.
15. On 18 March 2019, a letter from Mr Jafta, the Acting Director-General informed the appellant that he had considered her appeal with regard to Mr Bam's rating of 3 and that he supported the rating given by Mr Bam for the period 2013-2014 and 2014-2015 of 3 out of 5.

GROUNDS OF REVIEW

16. The appellant contends that the first respondents decision is reviewable in terms of the Promotion of Administrative Act 3 of 2000 ("PAJA"), alternatively in terms of the principles of legality, and /or section 23 of the Constitution Act 108 of 1996.

SUBMISSIONS

17. It was contended by Mr Van Der Westhuizen, on behalf of the appellant, that there was always a need for a Unit Head, but it was never established because of the State Security Agency not following its own formal processes. The appellant fulfilled the functions, even though she was never formally appointed and/or formally promoted. Annual bonuses were paid to the appellant because she did extra work.
18. When Mr Steyn and Mr Barnard recommended that the appellant be appointed as Unit Head, having a degree was not a requirement for such appointment. It only became a requirement in 2012.
19. Mr Dlomo, the Director-General, without disputing that the appellant was performing the duties of a Unit Head, recommended that the appellant obtain a degree. He recommended that a business analysis and job evaluation be done, but it never materialised. During 2016, the appellant obtained her Bachelor of Arts (majoring in criminology) degree (NQF7) from UNISA.
20. During the appellant's 2013/2014 and 2014/2015 evaluations, Mr Bam, the appellant's manager rated her performance as 3 out of 5, without providing any reasons for it and contrary to 4 out of 5 ratings consistently scored by the appellant in two previous years.
21. Although the appellant functioned as a Unit Head, she was never remunerated accordingly at that level.
22. In June 2015, Ms Maletswa was appointed as Unit Head in the division of the appellant. The appellant was instructed to hand over all her responsibilities to Ms Maletswa as well as give up the office she occupied and informed that she would then be required to report to Ms Maletswa. The Unit Head post was not advertised as required and was funded by a budget allocated to another post. In addition, Ms

Maletswa does not have a degree. Ms Maletswa was and still functions as a Unit Head on Level P2.

23. The regulations dealing with the establishment and filling of posts were not followed when Ms Maletswa was appointed as a Unit Head. The appellant was not granted an opportunity to be heard before the duties and functions she fulfilled were taken from her and given to Ms Maletswa.
24. The appellant was aggrieved by the appointment of Ms Maletswa because she regarded it as a demotion.
25. On 24 August 2015, the appellant, submitted a second grievance relating to the appointment of Ms Maletswa. This grievance was not dealt with in accordance with the prescribed procedure. Neither the Inspector-General, nor the Minister of State Security at the time assisted the appellant. At the end of November 2017, after the appellant's current attorneys of record were instructed by the appellant, the Director-General, Mr A Frazer, issued an instruction for the grievance to be dealt with. A grievance panel was only convened a year later in October 2018.
26. The report of the grievance panel, at which the appellant appeared was not made available to her. The report was provided to the first respondent. On 17 January 2019 the appellant was informed in a letter dated 15 January 2019, that the appointment of Ms Maletswa was unlawful and that the Unit Head Post was scrapped. She was also informed that a consultation with her was envisaged about transferring her to another directorate. The consultation never materialised. She was also informed that her representations regarding her IPMS bonuses were referred to the Director-General who would decide whether it would be granted.
27. Mr Jafta, the Director-General considered her appeal regarding the IPMS ratings and agreed with the rating of 3 out of 5 given by Mr Bam. There was no consultation prior to this decision and the appellant never met Mr Jafta and neither did she work with him, so Mr Jafta was not in a position

to objectively consider the issue. As a result the appellant's grievances in respect of her demotion and bonuses were never resolved.

28. Mr Van Der Westhuizen submitted that a judicial review under PAJA is applicable in this instance. He argued that since the appellant does not enjoy protection under the Labour Relations Act 66 of 1995 ("LRA") and the Employment Equity Act 55 of 1996 ("EEA"), the appellant enjoys protection under PAJA against unjust administrative action.
29. In support of this contention, he relied on *Minister of Defence and Another v Zulu*¹, where the SCA recognised that because soldiers do not enjoy any protection under the LRA, under appropriate circumstances protection under PAJA would be available to protect them against unjust administrative action.
30. Secondly, and in the alternative, he relied on a judicial review based on the principle of legality or rationality which is reserved for the exercise of public power that is unlawful, irrational or arbitrary.
31. Thirdly, he relied on s23(1) of the Constitution. In support of this contention, he relied on *Murray v Minister of Defence*² where the SCA held that, since members of the defence force SANDF, do not enjoy any protection under the LRA, they can rely on section 23(1) of the Constitution as well as the right to dignity which is closely related to the right to fair labour practices.
32. Regarding the promotion of the appellant, it was contended that in *Murray*, although there is no such right generally, in specific circumstances if not creating a right to promotion may create a legitimate expectation of being promoted or at least being given a fair chance to be heard before the duties and functions are taken away resulting in a demotion.

I (337/2017) [2018] ZASCA, 65 (24 May 2018)

² [2008] 3 ALL SA 66 (SCA) at para [5]

33. Ms Mboweni, on behalf of the respondents submitted that PAJA is not applicable in this instance for the following reasons:

33.1. PAJA provides for judicial review of administrative action if such action satisfies section 1 of PAJA. Section 1 of PAJA which, amongst other things, provides:

“... which adversely affects the rights of any person and which has a direct, external legal effect.. ”

33.2. Ms Mboweni submitted that when Mr Strydom left in 2002, the appellant took over his duties and stepped into his shoes as a Unit Head without being officially appointed to that position.

33.3. The appellant continued performing as a Unit Head for a period of thirteen years yet she failed to provide any proof to substantiate that she performed the duties of a Unit Head or what those functions are.

34. The appellant performed these higher duties for many years and at no stage thought it necessary to complain that she was not remunerated in a manner commensurate with the remuneration of a Unit Head. There are policies and regulations in place within the State Security Agency regarding the appointment process.

35. The appellant admits that she was aware that the position does not exist but continued performing the tasks. The appellant could not have been demoted from a position that did not exist.

36. The appointment of Ms Maletswa in 2015, triggered the grievance lodged by the appellant, since prior to 2015 no complaints were lodged by the appellant.

31 The appointment of Ms Maletswa was deemed null and void by the grievance panel. In response to the appellants contention that Ms Moletswa took over her duties as a

Unit Head she argued that paragraph 4.4 of the grievance panel report should be read together with paragraph 7.2. In paragraph 4.4, the appellant "fulfilled some of the line functional responsibilities" for a period of approximately 13 years. These responsibilities were transferred to the "newly improperly created position" of Unit Head in 2015 when Ms Maletswa was appointed. Paragraph 7.2 reads as follows:

"This action of management led to the fact that tasks already fulfilled by Ms Labaschagne were transferred from her position to that of the Unit Head position without a business analysis investigation to validate the need for such a position as well as the fact that an individual was appointed in this "newly created position of Unit Head".

38. It was argued that the Unit Head position was a newly created position therefore there was no demotion. The grievance panel would not have called it a "newly created" position if the appellant was acting in it or was in the position of a Unit Head. Ms Maletswa was unlawfully appointed to a "newly created" position.

39. In considering the issue of the promotion or appointment of the appellant, it must be mentioned that Mr Van Der Westhuizen provided the court with an affidavit of the appellant to inform the court that the appellant was medically boarded during January 2024. A submission was made to the Director-General of the State

Security Agency for her to be medically boarded. Her request was approved during March 2024. Since 1 April 2024 she receives a monthly salary of R21000.00 which will continue until her retirement. Upon her retirement, she will receive her pension fund benefits.

PAJA:

40. The court a quo considered the question of whether PAJA is applicable to the application for review brought by the appellant. Mthembu AJ found that the central issues in the application for review were the failure to promote the appellant and the

downgrading of her IPMS ratings. With regard to the promotion of an employee in the public sector, he considered *Gcaba v Minister of Safety and Security*¹ and *Mkumatela v Nelson Mandela Metropolitan Municipality*², in which the Constitutional Court and the Supreme Court of Appeal respectively ruled that promotion in the public sector does not constitute administrative action.

41. These decisions were followed in *City of Cape Town v SAMWU obo Sylvester, Mongomeni and Akiemdien*³, a review of a bargaining council award which granted the promotion of the applicant employee where the Labour Court ruled that such matters should not be treated as a judicial review of administrative decisions and that employment decisions that do not affect the public at large are not administrative decisions. In this decision, Rabkin-Naiker J noted that the proper yardstick, is fairness to both parties and that irrationality remains relevant only insofar as it demonstrates unfairness.

42. In my view, the present instance does not fall under PAJA for the following reasons. A judicial review when the exercise of public power is concerned can be brought in terms of a PAJA review or in terms of a legality or rationality review. A PAJA review can only apply to administrative actions which are defined in PAJA. In the appellants instance there is no direct external legal effect. The appellant seeks to review the decisions taken by the respondents which amount to an internal employer/employee dispute and it follows that there is no direct external legal effect. Judicial review when PAJA is applicable requires internal remedies to be exhausted before approaching a court for relief. In this instance the appellant did not exhaust the internal remedies available to her before launching an application for judicial review. A legality review can be sought where the exercise of a public power is unlawful, irrational or arbitrary.

¹ [2009] 12 BLLR 1145 (CC) at para 64

² [2010] 2 BLLR 115 (SCA)

³ [2013] 3 BLLR 267 (LC)

43. I further agree with the submissions made by Ms Mboweni and confirm the findings of Mthembu AJ, that the decisions of the respondents do not fall within the provisions of PAJA and are not applicable in the circumstances of this case.

44. The appellant is not protected under the LRA and the EEA in her contract of employment vis-a-viz the respondents and section 2 of the LRA expressly excludes employees of the State Security Agency. In circumstances where an employee does not enjoy protection under the LRA and the EEA, such employees are guaranteed protection by s 23(1) of the Constitution. by the LRA. In *Murray v Minister of Defence*⁴, the SCA held:

"the constitutional guarantee of fair labour practices continues to cover a non-LRA employee who resigns because of intolerable conduct is by an employer, and to offer protection through the constitutionally developed common-law. "

45. The appellant is therefore guaranteed protection under section 23 (1) of the Constitution of the Republic of South Africa 1996 which provides:

"Everyone has a right to fair labour practices".

46. Section 23 of the Constitution enshrines the right to fair labour practices, serving as the supreme law from which labour legislation derives its authority. This constitutional protection underpins the interpretation of this area of the law. The case of *Council for Scientific and Industrial Research (CSIR) v Fijen*⁷ contributed to the understanding of fair labour practices in an evolving constitutional democracy and highlighted the judiciary's willingness to scrutinize employer conduct for fairness and consistency.

47. The Constitution does not explicitly define Unfair Labour Practices. It only provides a broad normative framework to guide the development and interpretation of labour

⁴ [2008] 3 ALL SA 66 (SCA) at para [5]; See also *Pretorius & Another v Transnet Pension Fund and Others* 2018 ZACC 10.

law legislation. The LRA's provisions on Unfair Labour Practices must be read in harmony with the constitutional values of equity, dignity and freedom.

48. In *National Education Health & Allied Workers Union (NEHAWU) v University of Cape Town*⁷ the court underscored the significance of fair labour practices as an extension of constitutional protections. This decision, as do multiple others of the

⁷ 1996 (2) SA 1 (SCA) .

⁸ 2003 (3) SA 1 (CC) .

Constitutional Court, reiterates that labour rights cannot be curtailed without legitimate reason and due process.

PROMOTION AND DEMOTION:

49. In considering the issue of the promotion or appointment of the appellant, it must be reiterated that Mr Van der Westhuizen provided the court with an affidavit of the appellant to inform the court that the appellant was medically boarded during January 2024. A submission was made to the Director-General of the State Security Agency for her to be medically boarded. Her request was approved during March 2024. Since 1 April 2024 she receives a monthly salary of R21000.00 which will continue until her retirement. Upon her retirement, she will receive her pension fund benefits.

50. The appointment or promotion of the appellant was one of the main issues her case was based upon. It was contended that there was "always a need" for a Unit Head in the division the appellant was employed in as an administrative officer and because of this need, the appellant performed the duties of a Unit Head.

51. The legislative framework which serve to inform and regulate the respondents is as follows:

51 .1 . The Intelligence Services Act 65 of 2002

51 .2. The Intelligence Services Regulations 2013

51 .3. The Ministerial Delegation of Powers and Direction on Payment (MPD)

51 .4. Treasury Regulations

51.5. The Public Finance Management Act 1 of 1999

52. The appellant's case is that despite not being officially appointed and having no authority to perform the duties and functions of a Unit Head, she performed them anyway, for a period of 13 years.

53. When Mr Strydom left his post as a Unit Head, the appellant was informed that his post was disestablished and a Unit Head was no longer required in the division and therefore not advertised. This fact contradicts the submission that there was 'always a need' for a Unit Head. If there was such need, the position would not have been disestablished when Mr Strydom left. The fact that the appellant would assume the duties of Mr Strydom for a period of 13 years without being authorised to, and, without being remunerated for performing the duties of a Unit Head, defies all logic. Aside from the regulations and directions she could have invoked she also had the option of approaching the Human Resources Department.

54. When the appellant lodged her formal grievances there was a lengthy delay in attending to the grievances. These delays were acknowledged and conceded to by the respondents. A panel was eventually convened to address the appellants grievance in respect of her appointment/promotion and recommendations were made which included that a business analysis and job evaluation be conducted as well as consultation with the appellant for a possible transfer to another department. Ms Maletswa's appointment was also held to be unlawful. The procedures that were followed by the respondents in dealing with the grievances were neither unlawful nor were they unfair. At that stage the appellant had already appointed and instructed her attorneys in the matter. Her appeal regarding the her

IPMS ratings was also dealt with and she was informed of the outcome by the Director-General, Mr Jafta on 19 January 2019.

55. The appellant contends that she was demoted after the appointment of Ms Maletswa in 2015. The appellant contends that she was instructed that Ms Maletswa would be taking over her duties, she had to give up her office and share and open plan office with other colleagues and the staff she had reporting to her were no longer reporting to her. When the appellant was transferred it was upon her own request and the transfer was approved. The appellant requested a transfer after she could no longer fathom working under Ms Maletswa. Her request was approved and she was transferred. The transfer in these circumstances could not conceivably have been a demotion. It was a decision taken and approved by the respondents at the request of the appellant herself. The appellant's remuneration did not change and neither did her benefits. There was no evidence before the court a quo or before this court to substantiate that she had staff who reported to her. Furthermore, a demotion in the present instance in circumstances where the position of a Unit Head did not exist and was never authorised is not possible.

56. There were two attempts made to create a Unit Head position, both were not approved. In paragraph 5.7 of the Founding Affidavit (0001:2) reference is made to annexure "LAL3", which was the application made by Mr Steyn, her manager, for the approval of two Unit Head positions in her division. She states that the duties and responsibilities referred to under "Unit Cellular Phone Services", were the duties and responsibilities she executed which included the duties and responsibilities of Mr Strydom. In para 7.4 and 7.5 of the Answering Affidavit of Mr Jafta, The Director-General, in answer to this contention of the appellant stated as follows:

"7.4. In February 2006 the manager 0530 requested the appointment of Unit Heads in Directorate OS30 which included the Unit Heads for OS34. The submission, however does not make any reference to any approved

submission for the establishment of these units and related Unit Heads positions. Furthermore, this submission was directed to the General Manager OSIO who does not have authorising powers.

7.5. In May 2006, again the Divisional Head OS34 directed a submission to the General Manager OSIO and HRIO to request the re-evaluation of these two divisional head positions (which does not exist nor were approved). The submission included a request for the appointment of the applicant as Unit Head.

7.6. On 31 May 2007 the Director-General of the National Intelligence Agency approved a submission with reference NIA/HR10(HR12)/4/1/2 for the reevaluation of the NIA benchmark jobs. This approval included these two Unit Head positions which was evaluated at the time and found to be G3 level.

7.7 It must be noted that although these two positions were evaluated, the establishment of these two positions in Division OS34 at the time of their evaluation was never approved.

7. Z No record exists of any business analysis or job evaluation as per the above mentioned approval. "

57. In light of the above, it is my considered view that annexure "LAL3", was an application for the creation of the positions of two Unit Heads. It does not in any way serve as proof that the appellant was performing the duties and functions of a Unit Head and neither does it evince so. It merely postulates the duties and functions of a Unit Head should the application be approved. In other words, it may be so that the appellant was recommended for the position of a Unit Head, but on "LAL3", no mention is made that the duties and functions under that heading were the duties and functions being performed by the appellant.

58. According to the appellant, Mr Dlomo advised her in 2012 to obtain a degree if she had aspirations of being appointed as a Unit Head. At that stage the appellant would have had 13 years of experience performing the duties and functions of a Unit Head. If that were so, a degree would not have been required. This further negates her contention that she was demoted.
59. Mthembu AJ considered that an employee has no right or entitlement to be promoted. A promotion is given to an employee at the discretion of an employer. The recommendations of the grievance panel in para 9 of the report were not implemented and the appellants remedies were not exhausted prior to the appellant approaching the court for relief.
60. The court a quo was required to consider the recommendations of the grievance panel of the transfer of the appellant. The court was not asked to consider the fact that the appellant was aggrieved and felt that she was demoted when she was transferred after the appointment of Ms Moletswa. The court a quo accepted the recommendations of the grievance panel.

61. Accordingly, I find appellant was not unlawfully demoted and that she failed to prove that she performed the duties and functions of a Unit Head for 13 years.

Ratings:

62. The main contention regarding her complaint that her IPMS ratings being lowered by Mr Bam for the years 2013-2014 and 2014-2015, is that she was victimized by him and that for two years prior to these years, she consistently scored a rating of 4 out of 5 as opposed to 3 out of 5. In 2012 the appellant had a dispute with Mr Bam and raised a grievance with him. In 2012-2013 and 2013-2014 her ratings dropped. She reported her grievance to Mr Esselyn but the details of her dispute with Mr Bam were not mentioned. It was conceded by Mr Van Der Westhuizen that according to the grievance panel report at para 5.6.1, the grievance was not sent to Human Resources. The appellant is questioning the rationality of the rating of 3 given by Mr Bam. Regarding the outcome of the appeal Mr Van Der Westhuizen in his heads of argument at paragraphs 4 and 5, stated that after the grievance panel report and recommendations, the appellant received the decision of the Director-General, Mr Jafta, confirming the rating of 3 given by Mr Bam.

63. Mthembu AJ, at par 32, deals with the issue relating to the IPMS ratings. There was insufficient evidence placed before him on how the ratings of employees work to decide the issue. The arguments advanced in this court could not take the issue of the ratings any further to change the findings of Mthembu AJ.

RELIEF SOUGHT

64. The first ground of appeal appellant be retrospectively promoted to a level P2 as a Unit Head: The appellant has been medically boarded since March 2024. The first prayer has since become academic and can have no practical effect.

In terms of section 16(2)(a)(i) of the Superior Courts Act, 10 of 2013, on this ground alone, this appeal, as substantiated by this ground must fail.

65. Similarly, the second ground of appeal is academic as the appellant was not employed on a P2 level and is no longer able to be employed in any capacity as she is medically boarded.

66. Grounds 3, 4 and 6 cannot succeed since the appellant has not proved that she performed the duties and functions of a Unit Head from 2002 to 2015.

67. Ground 5: Insufficient evidence was placed before this court as in the court a quo for this court to interfere with the decision of level 3 rating and the confirmation thereof after the appeal was considered by the Director-General.

CONCLUSION

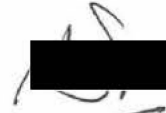
68. I find that the decisions and findings of the Court a quo were well reasoned and that there was no misdirection on the facts or the law. In fact, I fail to understand the basis upon which leave to appeal to this Court was granted. In my considered view, leave ought to have been refused. There are, further, no compelling circumstances which exist in this appeal and no reason to interfere with the findings of the court a quo by this court.

COSTS :

69. The general rule is costs should follow the result, being in favour of the successful litigant. There is no reason to deviate from the general rule in the circumstances of this appeal.

70. In the result, I propose the following order:

1. The appeal is dismissed with costs.




SD JOHNSON

ACTING JUDGE OF THE HIGH
COURT

I agree




G N MOSHOANA

JUDGE OF THE HIGH COURT

I agree




FMM REID

JUDGE OF THE HIGH COURT

APPEARANCES:

For the Appellant:
Instructed by

For the Respondents
Instructed by:

Date of Hearing:
Date of Judgment

Adv. GL Van Der Westhuizen
Du Randt Du Toit Pelser
Attorneys
Adv. LJ Mboweni
State Attorney, Pretoria
Wednesday, 27 August 2025
Thursday, 18 September 2025