

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b)
OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996
AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO 38 of 2007/2008

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF
MALADMINISTRATION AND UNDUE DELAY RELATING TO THE
PAYMENT OF PENSION BENEFITS TO A FORMER MEMBER OF THE
SOUTH AFRICAN POLICE SERVICE**



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EXECUTIVE SUMMARY

The Office of the Public Protector investigated a complaint of maladministration relating to the calculation and payment of pension benefits to a former member of the South African Police Service (the SAPS), Mr KB Lalela (the Complainant), and the delay by the SAPS to submit the pension documents of the Complainant to the Government Employees Pension Fund (the GEPF).

It was found that the SAPS was responsible for the incorrect calculation of departmental debts of the Complainant. Based on what was received from the SAPS, the GEPF deducted the incorrect amount from the pension benefits payable to the Complainant and paid it over to the SAPS to settle the “debt”.

The SAPS was also responsible for the delay in submitting pension documents of the Complainant to the GEPF. The Complainant was prejudiced by the long delay in the matter and is by law entitled to interest on the pension benefits paid to him.

The SAPS agreed to pay interest to the Complainant for the period that it unlawfully withheld his pension benefits as “departmental debt”, but declined to pay interest for the period of undue delay before submitting the pension documents to GEPF, i.e. from 1 May 2000 to 5 March 2003.

The Public Protector recommended that the SAPS pay interest on the pension benefits of the Complainant, for the period 1 May 2000 to 5 March 2003, at the rate that was applicable at the time in terms of the Prescribed Rate of Interest Act, 1975, within a period of 3 months after receipt of this report.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND UNDUE DELAY RELATING TO THE PAYMENT OF PENSION BENEFITS TO A FORMER MEMBER OF THE SOUTH AFRICAN POLICE SERVICE

1. INTRODUCTION

- 1.1 This is a report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994.
- 1.2 It is submitted to the National Commissioner and the Head of Financial Services of the South African Police Service (the SAPS).
- 1.3 The report relates to an investigation into allegations of maladministration and undue delay in connection with the calculation and payment of pension benefits to a former employee of the SAPS, Mr KB Lalela (the Complainant).

2. THE LEGAL MANDATE, POWERS AND FUNCTIONS OF THE PUBLIC PROTECTOR

- 2.1 Section 182(1) of the Constitution provides that:

“The Public Protector has the power, as regulated by national legislation-

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action.”*

- 2.2 In terms of section 6(4)(a) of the Public Protector Act, 1994, the Public Protector is competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged maladministration in connection with the affairs of government, abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function.
- 2.3 The Public Protector may at any time prior to, during or after an investigation make any appropriate recommendation that he/she deems expedient to the public body or authority affected by it.
- 2.4 The allegations of undue delay and maladministration made against the SAPS fall within the powers and jurisdiction of the Public Protector to investigate.

3. THE COMPLAINT

- 3.1 The Complainant approached the Office of the Public Protector (the OPP) on 22 March 2006. He alleged that:
- 3.1.1 He had been employed by the SAPS from 1992 to 25 February 2000, when he was dismissed;
- 3.1.2 He applied for his pension benefits in the same year (2000) without any success;
- 3.1.3 When he enquired about the matter, he was informed by the SAPS that the benefit due to him was allocated towards payment of departmental debts incurred by him to the amount of R30 334.59.

3.2 The Complainant, however, disputed that an amount of R26 539.56 included in the above amount (representing alleged study fees) was owed by him to the SAPS, but was unsuccessful in his attempts to recover any of his pension benefits from the SAPS.

4. THE INVESTIGATION

4.1 The investigation was conducted in terms of sections 6(4) and 7 of the Public Protector Act, 1994 and comprised the following:

4.1.1 Consideration of the documents submitted by the Complainant;

4.1.2 Consultation with the Complainant;

4.1.3 Consultation and correspondence with officials of the SAPS;

4.1.4 Facilitation of negotiations between the SAPS and the Complainant; and

4.1.5 Consideration of the applicable legislation, the Government Employees Pension Law, 1996.

5. THE GOVERNMENT EMPLOYEES PENSION LAW, 1996

5.1 In terms of section 26(1) of the Government Employees Pension Law, 1996 (Proclamation 21 of 1966) (the Act), pension benefits shall be paid to a beneficiary within a period of 60 days, after the date on which the benefit becomes **payable** to the member, i.e. **the last day of service** or the date of death of the member.

- 5.2 Section 26(2) of the Act provides that if a member is not paid within the period referred to in subsection (1), interest shall be paid by the Government Employees Pension Fund (the GEPF) to the beneficiary at the rate prescribed. The interest is calculated from the day following the date on which the benefit becomes payable.
- 5.3 It further provides that members will be entitled to interest on any unpaid benefits, if such benefits were still unpaid 60 days after the member has **exited** the GEPF, **irrespective** of whether the delay in payment of benefits was caused by the GEPF or the employer department.
- 5.4 This provision was the result of an amendment in 2004 and therefore only applicable to employees that exited the GEPF, **on or after 11 November 2004**.
- 5.5 The Complainant was dismissed on 25 February 2000. He therefore exited the GEPF in terms of the previous section 26 of the Act (the "old rule"). This provision limited the liability of the GEPF to pay interest, as it was calculated only from 60 days after the date on which the GEPF received the duly completed pension documents from the employer department. This could be months or even years after resignation or death of the member. The member or beneficiaries then had to approach the **employer department** (in this case the SAPS) to claim interest, based on the improper and negligent delay of the submission of the said pension documents to the GEPF.

6. CORRESPONDENCE WITH THE SAPS AND THE COMPLAINANT

- 6.1 On 30 September 1999, the Area Commissioner of the Molopo Area requested the SAPS Finance Section to stop the payment of the Complainant's salary, as he allegedly deserted the SAPS on 16 July 1999.
- 6.2 The Complainant was dismissed by the SAPS on 25 February 2000, on the basis of the findings of a disciplinary enquiry.
- 6.3 It was common cause that it was the duty of a public service employer department to prepare and submit pension documents to the GEPPF, within a reasonable time after the termination of service of an employee.
- 6.4 According to the SAPS, internal policy/practice required of the Complainant to submit a signed application form (SAPS 221) before the processing of his pension documents for submission to the GEPPF could have commenced.
- 6.5 During the investigation it was alleged that the station at which the Complainant was based (the Mmabatho Flying Squad), could not trace him to sign the SAPS 221.
- 6.6 This was disputed by the Complainant. He alleged that he contacted the SAPS continually to inquire into the payment of his pension benefits. He was also requested to submit additional information on his salary notches, which he obtained in Mmabatho and submitted to the SAPS in Pretoria.

- 6.7 This practice of the SAPS to only commence with the processing of the Complainant's pension documents on receipt of the SAPS 221, delayed the preparation and submission of the pension documents with more than two years, as the Complainant only signed the SAPS 221 on 1 July 2002.
- 6.8 From the investigation it appeared, however, that the SAPS 221 referred to was **not** applicable to dismissals, as it was the form used for an **"APPLICATION FOR TRANSFER/DISCHARGE BY PURCHASE /NOTICE "**.
- 6.9 The SAPS 221 also required the applicant to state a reason for his application to be transferred or to be discharged by purchase. The Complainant here clearly stated that he was dismissed in terms of "Reg. 18(12)", being absent without leave.
- 6.10 The Complainant was only requested by the SAPS to sign the bank form (for the payments of benefits into his bank account), on 14 November 2002 and to submit a copy of his identity document on 8 January 2003. It was not clear why these documents were not requested from the Complainant at the time when he was summonsed to sign the SAPS 221.
- 6.11 The SAPS submitted the pension documents to the GEPI on 5 March 2003, i.e. three years after the dismissal of the Complainant.
- 6.12 The pension benefits of the Complainant were paid out on 21 May 2003, and were in total absorbed by the alleged departmental debt.
- 6.13 When the Complainant was informed about this, he requested detailed information from the SAPS, who alleged that he had incurred a debt for

- study fees, amounting to R26 539.56. This was disputed by the Complainant, but without any success.
- 6.14 During the investigation the SAPS was requested to provide proof of the said debt incurred by the Complainant.
- 6.15 The SAPS was unable to do this, and then conceded that the said amount did not represent a departmental debt, but a civil debt incurred by the Complainant. A garnishee order compelled the SAPS to deduct monthly installments from his salary.
- 6.16 The OPP negotiated with the SAPS to reimburse this amount to the Complainant, as it was not authorized by law to deduct the amount from the pension benefits of the Complainant.
- 6.17 Section 21(1) of the Act provides in this regard that: "*no benefit ... payable under this Act shall be ... liable to be attached or subjected to any form of execution under a judgment or order of a court of law*", except in respect of maintenance orders in terms of the Maintenance Act, 1998 or section 7(8) of the Divorce Act, 1979.
- 6.18 After a reconciliation of the amounts due by the Complainant to the SAPS, it was agreed between the parties that an amount of R16 717.94 was due to the Complainant, which was paid to him on 16 January 2007. A further amount of R9 292.38 was also paid to him, representing interest for the period 21 May 2003 (date of payment of the Complainant's benefits to the SAPS by the GEPF) to 21 December 2006 (date of calculation of interest due).

6.19 However, no interest was paid for the period after dismissal (25 February 2000), to the date of submission of pension documents to the GEPF (5 March 2003) as the SAPS denied that it delayed the submission of pension documents to the GEPF.

7. OBSERVATIONS

7.1 The SAPS was responsible to submit duly completed pension documents to the GEPF within a **reasonable time** after the dismissal of the Complainant. The GEPF calculated pension benefits according to the information received from the employer department.

7.2 According to the GEPF there was an agreement with employer departments, providing that all documents relating to pension benefits should be submitted prior to the date on which employees services were terminated.

7.3 In the experience of the OPP with previous investigations, some departments were reluctant to submit pension documents to the GEPF before the employee's last date of service, because it was possible for an employee to withdraw his/her resignation.

7.4 In such departments, internal prescripts provided that the pension documents should be submitted to the GEPF within a "reasonable time" (6 to 8 weeks) after the date on which a person's services were terminated.

7.5 In the present matter, the pension documents should therefore have been submitted to the GEPF by no later than 30 April 2000.

- 7.6 If the Complainant were to proceed with legal action against the SAPS, he would in all probability succeed with a claim for interest, based on the fact that the SAPS did not dispute that the relevant documents were not forwarded to the GEPF within a reasonable time after his dismissal.
- 7.7 The SAPS cannot rely on “rules of practice” and the non-availability of completed and signed documents (the SAPS 221) as a defense for the delay, as in terms of the Constitution the State has a duty to provide a public administration governed by a high standard of professional ethics, and must provide services impartially, equitably, fairly and without bias (even after the dismissal of an employee).
- 7.8 The SAPS failed to discharge their duty of service delivery in respect of the Complainant, causing him to be improperly prejudiced.

8. KEY FINDINGS

- 8.1 The SAPS was responsible for the undue delay in submitting duly completed documents relating to the Complainant’s pension benefits to the GEPF.
- 8.2 The Complainant was prejudiced by the long delay in this matter and was entitled to interest on the benefit of R16 717.94 (paid to him on 16 January 2007 by the SAPS), for the period 1 May 2000 to 5 March 2003.

9. RECOMMENDATIONS

9.1 In terms of the provisions of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, 1994, it is recommended that:

9.1.1 The SAPS pay interest on the amount representing the pension benefits paid to the Complainant on 16 January 2007, calculated from a date eight weeks from the date of dismissal, up to the date on which the final pension documents were submitted to the GEPF, at the same rate as the rate prescribed (as at that time) by the Minister of Justice and Constitutional Development in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

9.1.2 The said interest is paid to the Complainant within a period of three months from the date of this report.

ADV M L MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

Date:

Assisted by: Ms M J Fourie, Senior Investigator