



REPORT NO: 07 OF 2020/21

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CLOSING REPORT

CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION BY THE DIRECTORATE: PRIORITY CRIME INVESTIGATION OF THE SOUTH AFRICAN POLICE SERVICE RELATING TO THE APPOINTMENT OF STAFF

1 INTRODUCTION

- 1.1 This report is issued 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.
- 1.2 The report relates to an investigation into allegations of improper conduct and maladministration by the Directorate: Priority Crime Investigation (DPCI) of the South African Police Service (SAPS) in the appointment of staff.
- 1.3 The complaint was lodged on 28 January 2019 by Detective Warrant Officer (D/WO) M Tiyeka, D/WO N Vumazonke, D/WO N Mcetywa and Detective Sergeant (D/SGT) M Sonjani of the DPCI (Complainants).
- 1.4 The report is submitted to the Head of the DPCI, Lieutenant S G Lebeya.

1.5 Copies of the report are also provided to the Complainants to inform them of the outcome of my investigation.

2. THE COMPLAINTS

2.1 The Complainants in the main, alleged that:

2.1.1 The DPCI conducted an improper recruitment and selection process in filling the respective vacancies referred to below, which resulted in them not being appointed and therefore being prejudiced.

2.1.2 On 9 March 2015, the then Acting National Head of the DPCI, Major-General B Ntlemeza, advertised various posts at the rank of Lieutenant within the DPCI internally, under reference number DPCI/ACI/EC/2, in all the provinces.

2.1.3 These included seven (7) posts at the DPCI in the Eastern Cape Province. D/WO M Tiyeka, D/WO N Vumazonke and D/WO N Mcetywa (three of the Complainants) applied for the vacant posts and were interviewed. All three of the Complainants were unsuccessful and the posts were filled with other candidates.

2.1.4 On 28 August 2016, the then Deputy National Head of the DPCI, Lieutenant General Y Matakata advertised various posts at the rank of Warrant Officer within the DPCI internally in all the provinces, under reference number DPCI/EC/286/2016. Amongst these posts were two (2) vacancies at the DPCI in the Eastern Cape Province. One of the Complainants, D/SGT M Sonjani applied and was interviewed. He was unsuccessful and the posts were filled with other candidates.

- 2.1.5 On 23 December 2016, the then Deputy National Head of the DPCI advertised various posts at the rank of Captain within the DPCI internally in all the provinces, under reference number DPCI/EC/447/2016. Amongst these posts were two (2) vacancies at the DPCI in the Eastern Cape Province. D/WO M Tiyeka, D/WO N Vumazonke and D/WO N Mcetywa (three of the Complainants) applied for the vacant posts and were interviewed. All three of the Complainants were unsuccessful and the posts were filled with other candidates.
- 2.1.6 The Complainants all applied to the DPCI: Human Resource Management Division for access to the relevant records of the Selection Panels appointed in respect of the positions that they respectively applied for, in terms of section 18(1) of the Promotion of Access to Information Act, 2000, during August and September 2017.
- 2.1.7 They were provided with access to the documents requested in December 2017.
- 2.1.8 The Complainants all lodged internal grievances with the Eastern Cape Provincial Office of the DPCI after they deduced from the documents obtained that several irregularities appear to have occurred during the recruitment and selection processes followed to fill the positions that they applied for.
- 2.1.9 In essence, they contended that the selection and appointment processes followed by the DPCI in respect of filling the vacancies of Warrant Officer, Lieutenant and Captain referred to above, did not comply with the laws and prescripts regulating recruitment and selection of staff of the DPCI and resulted in them being prejudiced.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional institution, established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 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”.

3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.

3.4 The Public Protector is further mandated by the Public Protector Act 23 of 1994, to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation, advising the Complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.

3.5 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the

Constitutional Court per Moegoeng CJ held that the remedial action taken by the Public Protector has a binding effect¹. The Constitutional Court further held that: *“When the remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences”*².

3.6 The DPCI as a unit under the SAPS is an organ of state and its conduct amounts to conduct in state affairs, as a result the matter falls within the ambit of the Public Protector’s mandate.

4. **The Investigation**

4.1 **The Investigation Process**

4.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act. The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.1.2 The investigation process included correspondence with the Complainants and the DPCI, meetings with the Complainants, consideration of all the relevant documents and the analysis and application of all relevant laws and prescripts.

¹ [2016]ZACC 11; 2016(3) SA 580(CC) and 2016 (5) BCLR 618 (cc) at para [76].

² *Supra* at para[73]

4.2 Approach to the Investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or other improper conduct?

4.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong or to right the wrong occasioned by the said maladministration or improper conduct?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence was evaluated and a determination made on what happened based on a balance of probabilities. In this particular case, the factual enquiry principally focused on whether there was compliance with the relevant prescripts regulating recruitment and selection of staff by the DPCI relating to the appointment of staff referred to in the complaints.

4.3 Based on the analysis of the complaint, the following issues were identified to inform and focus on the investigation:

4.3.1 Whether the recruitment and selection process followed by the DPCI for the posts of Lieutenant under reference number DPCI/ACI/EC/2 complied with the SAPS National Instruction 6 of 2005.

4.3.2 Whether the recruitment and selection process followed by the DPCI for the posts of Captain under reference number DPCI/EC/447/2016, complied with the SAPS National Instruction 6 of 2005.

4.3.3 Whether the recruitment and selection process followed by the DPCI for posts of Warrant Officer under reference number DPCI/EC/286/2016 complied with the SAPS National Instruction 6 of 2005.

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether the recruitment and selection and process followed by the DPCI for the posts of Lieutenant under reference number DPCI/ACI/EC/2 complied with the SAPS National Instruction 6 of 2005.

Common cause or undisputed facts

5.1.1 Seven (7) posts of Lieutenant were advertised by the DPCI on 9 March 2015, as per reference number DPCI/ACI/EC/2.

5.1.2 D/WO M Tiyeka, D/WO N Vumazonke and D/WO N Mcetywa (three of the Complainants) applied for the vacant posts of Lieutenant and were interviewed on 5 June 2015, in East London.

5.1.3 The former National Head of the DPCI, General Ntlemeza approved the following Selection Panel for the shortlisting and interviewing of candidates for the posts, on 26 May 2015:

- 5.1.3.1 Chairperson: Brigadier KD Galawe
- 5.1.3.2 Panel member: Colonel Lewele
- 5.1.3.3 Panel member: Colonel Lebakeng
- 5.1.3.4 Panel member: Lt-Colonel Klaas
- 5.1.3.5 Secretary: Lt Colonel PB Mokgadi

Issues in Dispute

- 5.1.4 According to the *Recordings of the Interview* document, signed by Brigadier K D Galawe in his capacity as Chairperson of the Selection Panel on 05 June 2015, none of the Complainants were recommended for appointment.
- 5.1.5 The documents submitted by D/W/O Tiyeka during the investigation indicate that Brigadier K Moodley (Brigadier Moodley) signed the *Panel Recommendations* document for the Post DPCI/ACI/EC/02 on 1 June 2015 as Chairperson and panel member.
- 5.1.6 As indicated above, General Ntlemeza had appointed Brigadier Galawe (and not Brigadier Moodley) as the Chairperson of the Selection Panel.
- 5.1.7 The *Panel Recommendations* document, which was purportedly signed by Brigadier Moodley indicates that D/WO M Tiyeka scored 93% during the interviews and was recommend as the second preferred candidate.
- 5.1.8 General Lebeya indicated in his response during the investigation on 22 September 2019, that it was established from an internal investigation that the *Panel Recommendations* document provided to D/W/O Tiyeka during the resolution of his internal grievance, was fake. According to General Lebeya, it

was established that the documents were provided to D/W/O Tiyeka by the DPCI Head Office Registry, via an email.

5.1.9 General Lebeya further asserted that the documents relied upon by W/O Tiyeka do not reflect the decision that was made by the approved Selection Panel which was chaired by Brigadier K D Galawe. General Lebeya pointed out that it appears that written information was inserted after the documents were signed. An enquiry was registered under DPCI ENQUIRY 1/4/2019, a case of fraud was registered as per Silverton CAS 243/04/2020 and is being investigated by the Independent Police Investigative Directorate (IPID).

5.1.10 General Lebeya further indicated that according to the Minutes of the meeting of the Selection Panel chaired by Brigadier Galawe, the Panel recommended the following candidates that attained the highest marks::

- 5.1.10.1 Sgt JH Fourie=100%
- 5.1.10.2 Sgt B Siyotula=100%
- 5.1.10.3 Const NR Jacobs=96%
- 5.1.10.4 Const ZY Gora= 96%
- 5.1.10.5 W/O BE Esben=96%
- 5.1.10.6 Const S Putuzo=96%
- 5.1.10.7 W/O Mtyobile=96%

5.1.11 According to General Lebeya's response, W/O Tiyeka was one of the candidates that were shortlisted and interviewed, and attained 93% with two other candidates. They were rated as the third preferred candidates.

5.1.12 From an analysis of the documents, it was established that W/O Tiyeka was amongst the twenty (21) candidates interviewed for post with reference number

DPCI/ACI/EC/02. W/O Tiyeka together with W/O Mcetywa and W/O Mtyibilizi all attained a score of 93% and they were not part of the recommended seven (7) top scoring candidates.

5.1.13 General Lebeya also submitted copies of affidavits from Brigadier K D Galawe (now Major General KD Galawe) and Brigadier K Moodley (now Major General K Moodley) wherein the following was stated:

Affidavit by Major General K Moodley

5.1.13.1 In his affidavit dated 2 August 2019, Major General K Moodley denied that he was a member of the Section Panel and stated that it appears that his signature was copied to a Selection Panel Recommendations document that he did not sign.

Affidavit by Major General K D Galawe

5.1.13.2 Major General K D Galawe confirmed in his affidavit, dated 30 April 2020 that he chaired the Selection Panel in respect of posts under reference DPCI/ACI/EC/02.

5.1.13.3 He also confirmed that from the group of twenty one (21) candidates interviewed, only highest scoring seven (7) candidates were recommended for appointment by unanimous decision of the Selection Panel, namely: SGT J H Fourie, SGT B Siyotula, Constable N R Jacobs, Constable Z Y Gora, W/O B E Esben, Constable S Putuzo and W/O Mtyobile.

5.1.13.4 According to General Galawe, some of the recruitment documents appeared to have been tampered with after the Selection Panel had concluded its work. General Galawe further indicated that the Selection Panel had decided that the

three candidates who scored 93% (W/O Tiyeka, W/O Mtyibilizi and W/O Mcetywa) could be considered in the event that any of the top scoring seven (7) candidates could not take up the position.

- 5.1.14 Mr J W Baloyi, Acting Director: National Special Investigation Team (NSIT) of the IPID confirmed on 13 May 2020 that IPID is investigating a case of fraud in connection with this matter. The investigation was delayed due to the COVID-19 restrictions, but is progressing and the outcome will be reported.

Application of the relevant legal framework

- 5.1.15 The legal framework discussed below is applicable to all the issues identified for investigation and applies *mutatis mutandis*.

- 5.1.16 Section 195 of the Constitution provides for basic values and principles which govern public administration. It states that:

“(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained;

...

(f) Public administration must be accountable;

(g) Transparency must be fostered by providing the public with timely, accessible and accurate information...”

- 5.1.17 Section 24(1)(b) of the South African Police Service Act (SAPS Act) provides that the Minister of Police may make regulations regarding the recruitment, appointment, promotion and transfer of members of the SAPS.

- 5.1.18 Section 11(1) of the SAPS Act provides that the National Commissioner of the SAPS shall exercise control over and manage the SAPS.
- 5.1.19 The National Commissioner of the SAPS may, in terms of section 25 of the SAPS Act, issue national orders and instructions regarding all matters which fall within his or her responsibility in terms of the Constitution and the Act.
- 5.1.20 In terms of section 17H(4) of the SAPS Act, the National Commissioner is the accounting officer of the SAPS, as contemplated by the Public Finance Management Act (PFMA).
- 5.1.21 Section 17 of the South African Police Service Amendment Act, 2012 provides that the National Head of DPCI shall appoint the staff of the Directorate and the Deputy National Head of the DPCI shall exercise such powers and perform such functions as the National Head may in terms of this Act or any other law assign to him or her.
- 5.1.22 It follows therefore that certain administrative functions can be delegated to the Deputy National Head of DPCI as it happened in this case.
- 5.1.23 The SAPS National Instruction 6 of 2005 (National Instruction) regulates the Selection and Appointment of employees at Post Levels 1 to 12 and applies to the posts that are the subject of the complaints.
- 5.1.24 Paragraph 6(1) of the SAPS National Instruction provides that the Provincial or Divisional Commissioner under whose command a vacant post resorts, must appoint a selection panel to consider applications for the vacant posts and to make recommendations to the relevant Provincial or Divisional Commissioner.

- 5.1.25 The Chairperson of the appointed selection panel must, in terms of paragraph 7(3), ensure that records are kept of all the proceedings during the interviews and other meetings of the selection panel as well as of every decision made and the reason(s) for such decision(s).
- 5.1.26 Paragraph 8(4) of the SAPS National Instruction 6 of 2005 provides that written records of all proceedings during the selection process must, after completion of the process, be retained by the relevant division or provincial offices for safe keeping, for a period of three years.
- 5.1.27 The selection panel must, in terms of paragraph 9(5) consider all applications and must compile a shortlist of not more than eight (8) candidates to be interviewed.
- 5.1.28 Paragraph 12 of the SAPS National Instruction 6 of 2005 provides that a selection panel must, after having completed the evaluation of candidates, make a recommendation on their first and second choice for the post and cite reasons for their decision.
- 5.1.29 In terms of paragraph 13 of the SAPS National Instruction 6 of 2005, the chairperson of the selection panel must submit the recommendations of the panel to the relevant Provincial or Divisional Commissioner. The Provincial or Divisional Commissioner may approve the appointment of a candidate after he or she has taken all the relevant information into consideration.
- 5.1.30 The Provincial or Divisional Commissioner is in terms of paragraph 13(3) of the SAPS National Instruction 6 of 2005 not under any obligation to fill a post.

- 5.1.31 The Labour Court of South Africa in Johannesburg under unreported case number: J1781/17³, held *inter alia* that “in the absence of any contention that the appointed candidate lacked the prescribed skills, expertise, competencies and qualifications, it cannot be said that the City of Johannesburg acted irrationally in overlooking the applicant/ Mbulelo Allan Ruda and in appointing the fourth Mafoane Mogashoa, who did not score the highest during the interview.”
- 5.1.32 Similarly, in this case no contention was raised about the suitability of W/O Mtyibilizi by way of qualifications, skills, competency or expertise save for the mere fact that she did not score the highest during interviews.
- 5.1.33 Guided by the above case and the statutory powers conferred on the National Head of DPCI, it stands to reason that General Ntlemeza could lawfully appoint any candidate despite his/her scoring during the interview, as long as there was no valid dispute/contention relating to qualifications, skills, competency or expertise of the appointed candidate.

Conclusion

- 5.1.34 Based on the exposition of the evidence discussed above, in particular the affidavit by General Galawe, I am persuaded to conclude that the panel chaired by General Galawe in respect of post reference number DPCI/ACI/EC/02 discharged its duties in line with the SAPS National Instruction 6 of 2005 and other applicable legal prescripts.
- 5.1.35 The documents submitted by W/O Tiyeka to my office in which he was recommended as the second candidate for appointment were disputed and

³ Mbulelo Allan Ruda vs City of Johannesburg and others, 2017

alleged to be fraudulent by the Selection Panel, since the person who allegedly signed it as Chairperson, namely General Moodley, denied having never part it.

5.1.36 The criminal investigation by IPID as per Silverton CAS 243/04/2020 would reveal the truth behind the allegations of fraud and this was not the focus of my own investigation.

5.1.37 On 19 August 2020 the investigating team consulted with the Complainants to discuss the discretionary letters issued on 13 August 2020 informing them of the findings on this issue. During this consultation all indicated their satisfaction with the outcome and agreed that they will allow IPID to conclude its investigation.

5.2 Regarding whether the recruitment and selection process followed by the DPCI for the post of Captain under reference number DPCI/EC/447/2016, complied with the SAPS National Instruction 6 of 2005.

Common cause or undisputed facts

5.2.1 The two (2) posts of Captain were advertised by the DPCI National Office under reference number DPCI/EC/447/2016. The advertisement was approved by the Deputy National Head of the DPCI: Major General KI Kgamanyane (General Kgamanyane), on 23 December 2016.

5.2.2 General Ntlemeza approved the following Selection Panel for the shortlisting and interviewing of candidates for the posts:

5.2.2.1 Chairperson: Major General I J Zikhali;

5.2.2.2 Panel member: Brigadier M A Ndlovu;

5.2.2.3 Panel member: Colonel C K Gwayi;

5.2.2.4 Panel member: Colonel N M Makubalo

5.2.2.5 Secretary: Captain N P Batyi

5.2.3 D/WO M Tiyeka, D/WO N Vumazonke and D/WO N Mcetywa (three of the Complainants) applied for the vacant posts of Captain, and were interviewed on 27 February 2017 in East London.

5.2.4 The Selection Panel recommended Warrant Officer B Mtyibilizi as the best candidate for one post, on 27 February 2017.

Issues in Dispute

5.2.5 D/WO N Mcetywa and D/WO M Tiyeka (two of the Complainants) were rated as the highest scoring candidates by the Selection Panel on the Recommendation List signed by the Chairperson of the Selection Panel and the other Panellists on 2 March 2017, however they were not appointed.

5.2.6 In a letter addressed to General Lebeya on 9 May 2019, Major-General I J Zikhali, who was the Chairperson of the Selection Panel, stated that:

“Please note that the panel recommended candidate number 01 (WO N Mcetywa) as he was the highest scoring candidate. After the recommendations were sent to Head Office, the Moderation Committee chaired by the Acting National Head appointed candidate number 03 (WO B Mtyibilizi) for unknown reasons to the panel.”

5.2.7 In his response to the above during the investigation, General Lebeya stated on 29 May 2019 that the Secretary of the Selection Panel did not compile the minutes of the interview meetings immediately thereafter, which caused *“the mix up of the information.”*

5.2.8 General Lebeya further stated that *“the panel also missed the fact that the post they should have considered was for two (2) candidates but only considered one (1) candidate. Based on this, it is the intention of the National Head: Directorate for Priority Crime Investigation to approve the appointment of the two (2) highest rated members for the post.”*

5.2.9 According to General Lebeya’s further response on 30 August 2019, he took note of the deficiencies in the recruitment and selection process that was followed in respect of this post.

5.2.10 On 28 October 2019 General Lebeya accordingly appointed W/O N Mcetywa and W/O MS Tiyeka as Captains as since they were rated first and second respectively. The appointments were made retrospectively with effect from 1 April 2017 to ensure redress.

5.2.11 In a letter dated 22 September 2020, General Lebeya further clarified that the utilisation of the three Captains namely, Mtyibilizi, Mcetywa and Tiyeka is operational in nature and that the relevant Commander shall utilize them within the structure to serve the community.

5.2.12 General Lebeya further indicated that administrative issues shall be dealt with internally to ensure alignment of the three Captains within the approved organisation structure. As a result DPCI considers the complaint of Mcetywa and Tiyeka as finalised.

Conclusion

5.2.13 As indicated above, General Lebeya admitted during the investigation that the recommendations of the Selection Panel were not fully in line with the scoring of

the candidates during the interviews. Further, that two candidates were supposed to have been recommended and appointed, instead of one.

5.2.14 The National Head of the DPCI has a discretion to appoint any candidate that is recommended for appointment.

5.2.15 He further conceded that there was a “*mix up of information*” pertaining to the selection process and indicated that he will appoint the two candidates that scored the highest during the interview process, namely D/WO N Mcetywa and D/WO M Tiyeka to the rank of Captain with effect from 1 April 2017 in order to remedy the prejudice that they suffered as a result.

5.2.16 It can be concluded therefore that the selection and appointment process in this instance did not fully comply with the provisions of the SAPS National Instruction 6 of 2005, that the National Head of the DPCI took note of the shortcomings in this particular instance and implemented remedial action to address the prejudice suffered by the Complainants.

5.2.17 On 19 August 2020 the investigating team consulted with the Complainants to discuss the discretionary letters issued on 13 August 2020 informing them of the findings on this issue. During this consultation both indicated their satisfaction with the outcome and were both happy about my intervention and the decision of General Lebeya in addressing the situation.

5.3 Regarding whether the selection and appointment process by the DPCI for posts of Warrant Officer under reference number DPCI/EC/286/2016 complied with the SAPS National Instruction 6 of 2005

Common cause or undisputed facts

- 5.3.1 The two posts of Warrant Officer were advertised by the DPCI National Office under reference number: DPCI/EC/286/2016, on 28 August 2016.
- 5.3.2 General Ntlemeza approved the following Selection Panel for the shortlisting and interviewing of candidates for the posts:
- 5.3.2.1 Chairperson: Major General M N Nogwanya.
 - 5.3.2.2 Panel member: Brigadier M B Mokaba.
 - 5.3.2.3 Panel member: Brigadier G Govender.
 - 5.3.2.4 Panel member: Brigadier N Mabotja.
 - 5.3.2.5 Panel member: Colonel W N Mashwabane.
 - 5.3.2.6 Secretary: Captain N P Batyi.
- 5.3.3 All eleven candidates that applied for the posts were shortlisted for interviews. D/SGT Sonjani (one of the Complainants) was interviewed on 27 October 2016.
- 5.3.4 Sergeants Kem and Lulwandle were recommended and appointed as Warrant Officers as per letters signed by General Y Matakata on 31 October 2016.

Issues in Dispute

- 5.3.5 According to D/SGT Sonjani, he was shortlisted, interviewed and found to conform to all the requirements of the position of Warrant Officer by the Selection Panel, but was not appointed.

- 5.3.6 On 27 October 2016, the Selection Panel recommended the appointment of D/SGT Sonjani to the post of Warrant Officer in a document entitled: "*Evaluation of Short Listed Candidate*", signed by the Chairperson and the other Panellists. However, since D/SGT Sonjani was ranked as 9th out of the 11 candidates in terms of their scores, he was not appointed. Sergeants Kem and Lulwandle were appointed as they had the highest scores.
- 5.3.7 D/Sgt Sonjani questioned the authenticity of the document, appointing Sergeants Kem and Lulwandle, as it was not signed by the Acting National Head of the DPCI to approve the appointments.
- 5.3.8 In his response during the investigation, dated 22 September 2019, General Lebeya confirmed that all 11 candidates were shortlisted for interviews, because there were two posts advertised. General Lebeya denied that D/Sgt Sonjani was recommended ahead of others as he was rated number 9th out of 11 candidates.
- 5.3.9 General Lebeya further submitted in a letter dated 11 October 2019 that although the then National Head of DPCI, did not sign the Panel Recommendations document, the subsequent appointment of Sergeants Kem and Lulwandle as the two highest scoring candidates were not irregular as such administrative functions may be lawfully delegated by the National Head.
- 5.3.10 On 19 August 2020 my investigating team consulted with Sergeant Sonjani (one of the Complainants) to discuss the discretionary letter sent to them on 13 August 2020 informing them of the intention to close the file. During this consultation he indicated his satisfaction with the outcome and had no further input.

Conclusion

5.3.11 Based on the evidence and information obtained during the investigation, it can be concluded that D/Sgt Sonjani did not score the highest in order to qualify for appointment ahead of those who scored higher than him.

5.3.12 Furthermore, the evaluation of scores recorded by the Selection Panel on 27 October 2016, indicated that D/Sgt Sonjani was rated as 9th out of 11 candidates and was therefore not recommended for the post.

6. REASON(S) FOR CLOSURE

6.1 The reasons for closing this matter are as follow:

6.1.1 The IPID is currently investigating alleged fraudulent documentation sent to the Complainant relating to the post of Lieutenant under reference number DPCI/ACI/EC/2, and as such I could not make a determination on the matter.

6.1.2 General Lebeya has already implemented the appointment of D/WO N Mcetywa and D/WO M Tiyeka to the rank of Captain as redress to their complaint with effect from 1 April 2017, which was the issue under investigation under reference number DPCI/EC/447/2016.

6.1.3 The records of the Selection Panel clearly indicate that D/Sgt Sonjani was rated as 9th out of 11 candidates and was therefore not recommended for the post reference number DPCI/EC/286/2016. Although the then National Head of DPCI, did not sign the Panel Recommendations document, the subsequent appointment of Sergeants Kem and Lulwandle as the two highest scoring candidates were not

irregular as such administrative functions may be lawfully delegated by the National Head.

- 6.1.4 On 19 August 2020 the investigating team consulted with all Complainants to discuss the discretionary letters issued on 13 August 2020 informing them of the intention to close the file. During this consultation all indicated their satisfaction with the outcome and had no further inputs to make.



ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 30/09/2020

Assisted by:

P11: COASTAL
PUBLIC PROTECTOR SOUTH AFRICA