

# APPEALS AND GRIEVANCES

During the year under review the Public Service Commission dealt with matters relating to appeals in cases of misconduct, and grievances of serving and former officers. This scrutiny was confined to national departments, save for where provincial service commissions indicated that they were non-functional or unable to deal with such cases.

However, in terms of the Constitution, 1996, the Public Service Laws Amendment Act, 1997, and the Public Service Commission Act, 1997, the Public Service Commission's role in respect of appeals and grievances will change, as will be reflected later.

The Commission has been constitutionally tasked with developing rules that will be effective in the promotion of a healthy working environment and professional ethos throughout the Public Service. The grievance rules to be developed by the Commission will apply nationally to all departments and provincial administrations.

## Appeals in terms of section 26 of the Public Service Act, 1994

The maintenance of discipline in the Public Service is necessary to ensure an acceptable standard of behaviour so that the Public Service is not brought into ill repute by the actions of individual public servants. The State President's public commitment

### Objectives:

- To investigate grievances in the Public Service and recommend appropriate remedies
- To assess the merits of appeals
- To conduct research on issues related to appeals and grievances in the Public Service

### Outputs:

- 44 appeals dealt with
- 177 grievances processed
- Research projects and position papers

to the maintenance of discipline in the Public Service has sent a clear message that transgressions will be viewed in a serious light. Furthermore, the need for effective management of misconduct was once again highlighted at the Public Sector Anti-Corruption Conference.

The discernible increase in the number of appeals dealt with by the Commission reflects the extent of the scrutiny of the decisions of heads of department and the challenge to their decisions. This not only arises out of an established practice to appeal, but an emerging awareness of an appellant's right under section 26 of the Public Service Act, 1994.

Against this prevailing climate the need for strict adherence and compliance to fair labour practice needs to be seen to withstand any challenge. The need for an independent, impartial and mutually acceptable body to deal with appeals becomes relevant.

In terms of the Public Service Act, 1994, the Commission's role in respect of the misconduct of officers entails -

- giving directions in respect of an appeal of an officer against a finding of guilty by the presiding officer and/or a decision of the head of department relating to disciplinary action; and

- recommending suitable action against an officer found guilty of misconduct in terms of the now repealed prescripts which were applicable to the public services of the former RSA, TBVC states and self-governing territories.

In dealing with appeals, the Commission performs a full documentary investigation. It assesses the merit of the grounds of appeal submitted by the appellant, evaluates the various mitigating and aggravating circumstances pertaining to the specific case, scrutinises procedural and substantive fairness and observes consistency throughout the Public Service, within the context of established labour law principles.

Table 3 reflects a comparison of appeals in terms of section 26(1) of the Public Service Act, 1994, dealt with by the Commission over the past three years, i.e. 1996 to 1998. During 1998, the Commission made a direction in thirty-two (32) appeals, an increase of 23 percent over 1997.

During the past year, the Commission also recommended disciplinary action in respect of one case in terms of the repealed prescripts which were applicable to the public services of the former RSA, TBVC states and self-governing territories. This case was submitted by the Department of Justice. As can be expected, the number of cases dealing with the repealed prescripts has reduced since 1994.

**TABLE 2: APPEALS 1998: WORKLOAD AND WORK COMPLETION**

Cases	Number
On hand 1 January 1998	8
Received during 1998	71
<b>Total workload</b>	<b>79</b>
Cases where PSC gave a direction	33
Cases lodged outside mandatory 21 days period	5
Cases where PSC did not have authority to give direction*	6
<b>Total dealt with during year</b>	<b>44</b>
On hand at 31 December 1998	35

\* The Commission does not have authority to make a direction in respect of appeals not properly lodged in terms of section 26 (1) of the Public Service Act, 1994. This includes cases where officers resigned from the Public Service, whilst their appeals were under consideration and officers not appointed in terms of the Public Service Act, 1994.

**TABLE 3: APPEALS WHERE THE PSC GAVE DIRECTION/ RECOMMENDATION, 1996-1998**

	1996	1997	1998
Appeals in terms of section 26(1) of the Public Service Act, 1994	19	26	32
Cases relating to repealed prescripts	15	5	1
<b>TOTAL</b>	<b>34</b>	<b>31</b>	<b>33</b>

The forty-four (44) appeals dealt with during 1998 emanated from the departments shown in Table 4.

Table 5 shows the nature of the transgression in the cases dealt with by the Commission. The majority of cases, nearly two-thirds, involved fraud

and theft. This table reflects the level of detected corruption in the Public Service that reached the Commission through misconduct proceedings. It is also an indication that departments are committed to Government's call for clean administration by actively dealing with corruption.

**TABLE 4: NUMBER OF CASES OF APPEALS PER DEPARTMENT**

Department	Number of cases
Department of Home Affairs	22
Department of Labour	7
Department of Defence	4
Department of Health	2
Department of Justice	2
Department of Safety and Security	2
Department of Land Affairs	2
Office of the President	1
Department of Public Works	1
Department of Environmental Affairs and Tourism	1
<b>TOTAL</b>	<b>44</b>

**TABLE 5: NATURE OF TRANSGRESSION**

Nature of the transgression	Number of cases	Percentage
Fraud and theft	28	64
Disgraceful and improper conduct	6	14
Absence without leave	4	9
Disobey lawful order	3	7
Alcohol abuse	2	4
Racism	1	2
<b>TOTAL</b>	<b>44</b>	<b>100</b>

Table 6 reflects the outcome of appeals where the Commission gave a direction in terms of section 26(3) of the Public Service Act, 1994. The Commission dismissed the appeal in the majority of cases.

As already mentioned, the enactment of the new legislation empowers executing authorities, rather than the Public Service Commission, to deal with appeals. However, due to its level of experience and expertise, the Commission will take on an advisory role in relation to the handling of appeals. The Commission intends to develop a manual in early 1999 to assist executing authorities.

**TABLE 6: OUTCOME OF APPEALS DEALT WITH BY THE COMMISSION**

	Total	Appeal dismissed	Appeal allowed	Other action in terms of section 24(2)(a)
<b><i>(a) Appeal against decision of Head of Department</i></b>				
Discharge from Public Service	16	16		
Reduction in salary and/or grade	3	2	1	
Transfer to another post	1		1	
Fine	2	1		1
Caution and reprimand	1	1		
More than one of the above	2	1	1	
<b><i>(b) Appeal against finding of guilty by Presiding Officer and decision of Head of Department</i></b>				
Discharge from Public Service	6	6		
Reduction in salary and/or grade	1	1		
Appeals against finding of guilty by Presiding Officer	1		1	
<b>TOTAL</b>	<b>33</b>	<b>28</b>	<b>4</b>	<b>1</b>

## Grievances

In the spirit of the Labour Relations Act, 1995, and the Constitution, 1996, all employees are to be treated with dignity, equality and fairness. This implies that employers should deal with employees' grievances in order to promote sound labour relations at the workplace and in a manner that will not prejudice those who have lodged such grievances.

The Commission is empowered to make recommendations or give directions on grievances submitted by former officers, as well as grievances of serving officials that could not be resolved at departmental level. The Commission's jurisdiction is confined to national departments.

The Commission has no legal standing to consider grievances that have not been referred to it in the prescribed manner or which fall within the ambit of the provincial service commissions. Eighty-four (84) such grievances were referred back to the officer, department or person concerned, compared with seventy-one (71) during 1997.

The Commission considered ninety-three (93) grievances during the reporting year. In twenty-one (21) cases representations of officers or former officers were successful or partially successful. The Commission upheld the department's handling of grievances in seventy-two (72) cases.

**TABLE 7: GRIEVANCES 1998: WORKLOAD AND WORK COMPLETION**

Cases	Number
On hand 1 January 1998	31
Received during 1998	167
<b>Total workload</b>	<b>198</b>
Cases where PSC made recommendation	93
Cases referred back	84
<b>Dealt with during year (total)</b>	<b>177</b>
On hand at 31 December 1998	21

Grievances were submitted by twenty (20) different national departments, organisational components and provincial administrations (in cases that encroached provincial boundaries). The majority of the cases involved such issues as alleged unfair dismissals, service benefits, personnel evaluations, merit awards and promotions. More than half related to dissatisfaction with alleged unfair dismissal and personnel evaluation.

Tables 8 and 9 reflect a comparison of grievances handled over the past three years.

**TABLE 8: HANDLING OF GRIEVANCES**

Origin of grievance				Outcome of grievance			
	1996	1997	1998		1996	1997	1998
Referred by department	27	21	36	Commission upheld Department's handling	24	41	72
Referred by third party	1	6	5	Representation successful/ partly successful	9	12	21
Submitted by former officer or employee	5	26	52				
<b>TOTAL</b>	<b>33</b>	<b>53</b>	<b>93</b>	<b>TOTAL</b>	<b>33</b>	<b>53</b>	<b>93</b>

In terms of its new role and functions, the Commission has been charged as the independent and impartial adjudicator of the frustrations and dissatisfactions of serving officers. In terms of the Constitutional mandate, it has been given the very crucial responsibility of putting in place grievance rules which will address and resolve the dissatisfactions and unhappiness that may emerge. Representing national policy, it will require that the rules should comply with the basic values and

principles of public administration as contained in the Constitution, as well as fair labour practices.

Although cases have become more complex, there has been an increase of 75,5 percent in the number of grievances finalised by the Commission during 1998, compared to 1997. The Commission is confident that it will be able to meet the demands and pressures of an increase in the number of grievances.

**TABLE 9: GRIEVANCES DEALT WITH BY THE COMMISSION**

	1996	1997	1998
Number of grievances finalised by Commission	33	53	93
Cases referred back to parties	113	71	84
<b>TOTAL</b>	<b>146</b>	<b>124</b>	<b>177</b>

**TABLE 10: DEPARTMENTS FROM WHICH THE GRIEVANCES EMANATED**

<b>Department/Service/Provincial Administration</b>	<b>Number</b>
South African Revenue Service	18
Department of Labour	17
Department of Justice	14
Department of Foreign Affairs	8
Department of Home Affairs	7
Department of Defence	7
Provincial Administration: Western Cape	3
Department of Minerals and Energy	3
Department of Public Works	2
Statistics South Africa	2
Department of Transport	2
Department of Agriculture	2
Department of Land Affairs	1
Provincial Administration: Northern Cape	1
Department of Public Service and Administration	1
Department of Safety and Security	1
Department of Education	1
Department of Trade and Industry	1
Department of Water Affairs and Forestry	1
Department of Welfare	1
<b>TOTAL</b>	<b>93</b>

## Litigation proceedings

During the year under review there was an increase in the number of cases in which the Commission was cited as respondent or was indirectly involved in proceedings. Powers were divided between the Commission and the Department of Public Service and Administration (DPSA) in February 1996. The latter Department became responsible for advising the Commission on legal actions instituted against either the Office of the Public Service Commission or the Commission itself in respect of those functions that are now carried out by the DPSA. Despite this, the Office continues to work in close liaison with the DPSA in terms of the necessary consultation and preparation of the necessary defence against any challenge instituted. The disputes raised in these cases included a variety of issues such as reinstatement, conditions of service and promotion.

Twelve (12) of the cases received during 1998 were referred to the DPSA, while one (1) case was settled out of court. This total reflects an increase of 20 percent in the number of cases dealt with by the Commission during 1998, compared to 1997.

## Projects in progress

In previous years, the Commission confined its role to the evaluation and assessment of appeals and grievances in terms of the Interim Constitution, 1993. In line with the Commission's new role, research is continuously undertaken to understand the emerging trends and to keep abreast with the dynamic field of appeals and grievances. In this regard the following projects were embarked upon:

- An investigation into the reasons for the increase and the trends in the number of grievances referred to the Commission by various departments since January 1996. The aim of this project is to identify the shortfalls of the existing grievance procedure, to put in place a consultation and communication strategy with regard to the grievance rules and to create a database that would assist in the drafting of a code of good practice.

- Drafting of grievance rules. This project will give effect to the Commission's Constitutional mandate to draft rules with regard to the manner in which and the time within which a complaint/grievance of an employee should be investigated and be submitted to the Commission.
- Investigation of the trends in the management of suspensions in the Public Service in terms of section 22(7) of the Public Service Act, 1994, Public Service Regulations and Public Service Staff Code. Suspensions in the Public Service as from 1 January 1996 will be investigated against the backdrop of the Labour Relations Act, 1995, and the prevailing Public Service Legislation.

## Position papers

The nature of labour relations as laid down in legislation and court precedents is continuously subject to interpretation. The field of appeals and grievances falls directly in this arena and is therefore subject to the turbulence of interpretation. The Commission's response in dealing with this environment is to continuously engage in written debate in the form of position papers. This debate contributes in assisting the Commission in keeping abreast with developments and also in the evaluation of appeals and grievances. The following topical issues have been covered in these papers:

***Disciplinary procedure:*** This paper offers a snapshot view on providing a broad overview of the application of the disciplinary procedure in the Public Service and proposes ways to address the shortcomings identified in the existing disciplinary procedure.

***Access to information:*** In anticipation of the Open Democracy Bill which will regulate access to information provided for in section 32 of the Constitution, 1996, the Commission deemed it prudent to implement an internal policy on access to information.

***Functioning of the Special Tribunal as contemplated in section 236 of the Interim Constitution, 1993:*** This position paper emanated from the fact that the Commission received grievances from former officials relating to the rationalisation of the Public Service.

It is envisaged that in future the position papers will be distributed in the Public Service to stimulate debate and hopefully enhance public administration.

In the new year the Commission will not only be involved in the development of grievance rules and address grievances, but will assist in promoting a healthy working environment throughout the Public Service. In preparation for the above, the Office of the Public Service Commission has negotiated the retention of Public Service Regulation A.22 in revised form as the interim rules of the Commission in the Public Service Co-ordinating Bargaining Council. The Commission is committed to work closely with all role players in developing the new grievance rules that will be acceptable to all. The Commission looks forward to taking on this new role with the vigour and expertise for which it has become recognised.