

CHAPTER 10

Rules for dealing with grievances of members of the senior management service, including heads of department

The Public Service Commission has under section 11 of the Public Service Commission Act, 1997 (Act No. 46 of 1997), read in conjunction with section 196 (4) (f) (ii) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) and section 35 (1), (2) and (3) of the Public Service Act, 1994 (as amended) drafted Rules for dealing with grievances of Senior Management Service (SMS) members in the Public Service set out hereunder.

1. Introduction

1.1 This Chapter contains the procedures that must be followed in dealing with grievances of members of the Senior Management Service (hereafter referred to as member(s)), including heads of department, as defined in Schedule of the Public Service Act, 1994 (as amended). Section 35 of the *Public Service Act*, 1994 (as amended), provides for a member to lodge a grievance with the relevant executive authority and for his/her grievance to be referred to the Public Service Commission (PSC) for consideration.

1.2 Section 35(3) of the *Public Service Act*, 1994, determines that -

“(3) A head of department may lodge any such grievance with –

- (a) the relevant executive authority in terms of subsection (1); or*
- (b) directly with the Commission under the prescribed circumstances, on the prescribed conditions and in the prescribed manner.*

(4)(a) An employee may only refer a dispute to the relevant bargaining council in the public service or the Commission for Conciliation, Mediation and Arbitration (CCMA), or institute court proceedings, in respect of a right referred to in subsection (1) if –

- (i) he or she had lodged a grievance in terms of that subsection; and*
- (ii) the department does not resolve the grievance to his or her satisfaction within the period prescribed in the rules, contemplated in subsection (5) or the period for referring such dispute or instituting such court proceedings, whichever period is the shorter.*

(b) Paragraph (a) shall not apply to a head of department who has lodged a grievance directly with the Commission in terms of subsection (3) (b).”

2. Purpose and application

(a) The purpose of the grievance procedure is to advance sound labour relations and address grievances of members. The primary objectives of this procedure are –

- (i) to give effect to section 196(4)(f)(ii) of the Constitution, 1996, which empowers the PSC to investigate grievances of employees in the Public Service concerning official acts or omissions, and recommend appropriate remedies;
- (ii) to give effect to section 35 of the *Public Service Act, 1994* (as amended); and
- (iii) to promote –
 - (a) the speedy, impartial and equitable handling of grievances;
 - (b) sound labour relations; and
 - (c) the resolution of individual grievances.

3. Managing a grievance

- (a) A grievance must as far as possible be resolved by an employer and as close to the point of origin as possible.
- (b) The employer must ensure that the grievance is dealt with in a fair, impartial and unbiased manner, and that the principles of natural justice are observed.
- (c) The procedure must be such that it assists and enables an employer and a member to address dissatisfactions in the employment relationship.
- (d) No member may be victimized or prejudiced, directly or indirectly as a result of lodging a grievance.
- (e) If disciplinary action is taken against a member, utilization of the grievance procedure to address any matter related to the disciplinary action shall not halt the disciplinary procedure.
- (f) A grievance must be lodged in writing by completing the prescribed Grievance Form at Annexure A and all decisions taken during the process must be in writing.

4. Adherence to time limits

- (a) In determining adherence to time limits, this should be calculated by excluding the first day and including the last day.
- (b) The parties must adhere to the time limits set out in this procedure, unless they mutually agree to extend them.
- (c) A grievance must be lodged with the executive authority within 90 days from the date on which the member became aware of the official act or omission which adversely affects him or her.

- (d) If a head of department opts to lodge a grievance with the PSC in terms of Rule 8, such grievance must be lodged within 90 days from the date on which he/she became aware of the official act or omission which adversely affects him or her.
- (e) A grievance should be resolved within 45 days from the date it was lodged and the period may be extended by mutual agreement in writing between the employer and the member.
- (f) Should the member remain dissatisfied with the decision of the executive authority, he or she may demand that his or her grievance be referred to the PSC within 10 days of receipt of such decision.
- (g) Where the member requests the referral of his/her grievance to the PSC in terms of paragraph 4(f), he or she must give an explanation in writing for his or her dissatisfaction with the executive authority's decision by completing Part C of the prescribed Grievance Form at Annexure A.
- (h) Where the head of department refers a grievance to the PSC in terms of section 35(3) (b) of the *Public Service Act, 1994* (as amended) the PSC should deal with the grievance within 45 days, which period may be extended by mutual agreement.

5. Provision of information

- (a) The employer must provide relevant information necessary for a member to lodge or pursue a grievance, within 30 days after receipt of such request.
- (b) The provision of such information is subject to any limitations imposed by law.
- (c) The employer must provide the member with information in writing about the status of the grievance resolution and the progress made towards the finalisation thereof.
- (d) The employer must provide the member with a copy of the grievance form after each level of authority has dealt with the grievance.

6. Procedural stages to address the grievance of a member

- (a) A member must use the Grievance Form at Annexure A to lodge a grievance with a designated employee appointed by the department to facilitate the resolution of grievances. A grievance which is not submitted to a designated employee is not regarded as a grievance lodged in terms of the grievance procedure.
- (b) The designated employee must liaise with the relevant structures of authority of the department in an attempt to resolve the grievance.

- (c) The grievance may be resolved by any person within the relevant structures of authority who has the requisite authority to do so. If the grievance cannot be resolved within the departmental structures, it must be submitted to the executive authority for a decision within the prescribed time-frame.
- (d) The member must be informed in writing by the designated employee about the status and progress made towards the resolution of the grievance.
- (e) If the grievance is resolved, the confirmation thereof must be reduced to writing by the designated employee.
- (f) If a grievance has been referred to the executive authority for a decision, he/she must inform the member of his/her decision in writing by completing Part C of the prescribed Grievance Form within the prescribed time-frame.
- (g) The department (*including the executive authority*) has 45 days to finalise the grievance. In the event that a department discovers that it will require more time to finalise the grievance it must inform the member without delay. The period may be extended by mutual agreement in writing.
- (h) If after the member is informed of the decision of the executive authority in respect of the outcome of the grievance, and he/she remains dissatisfied–
 - (i) he/she must inform the executive authority in writing within 10 days of the reasons for his/her continued dissatisfaction by completing Part C of the prescribed Grievance Form at Annexure A;
 - (ii) the executive authority must in terms of section 35 (1) of the Public Service Act, 1994 (as amended), forward the grievance and all relevant documentation and information to the PSC for a recommendation within five days of being informed by the member.
- (i) If the grievance constitutes an alleged unfair labour practice as defined in the Labour Relations Act, 1995, the member *must* after the departmental process has been exhausted and if he/she remains dissatisfied, inform the executive authority in writing that he/she wishes to utilise the dispute resolution mechanisms provided for in the constitution of the Public Service Coordinating Bargaining Council (PSCBC) or the relevant sectoral council or the CCMA, whichever is applicable. The department should within five (5) days inform the PSC of the member's decision.
- (j) If there is failure on the part of the department to respond to the grievance within the period referred to in paragraph 6(g) above, the member may, after having directed an enquiry in writing to the designated employee, regarding the status of his or her grievance and not having been provided with a response after five (5) days of the written enquiry, lodge his or her grievance with –
 - (i) the PSC directly; or

- (ii) in the case of an alleged unfair labour practice, with the PSCBC or the relevant sectoral councils, or CCMA (whichever is applicable) in terms of its dispute resolution procedure.

7. Procedural stages to address the grievance of a head of department

- (a) If a head of department has a grievance, he/she may lodge the grievance within 90 days from the date he/she became aware of the official act or omission, with–
 - the relevant executive authority; or
 - the PSC directly.
- (b) The executive authority must consider the grievance of a head of department, within a period of 45 days. In the event that the executive authority requires more time to finalise the grievance, he/she must inform the head of department without delay. The period may be extended by mutual agreement in writing.
- (c) If after the head of department is informed of the outcome of the grievance, and he/she remains dissatisfied –
 - (i) he/she must inform the executive authority in writing within 10 days of the reasons for his/her continued dissatisfaction by completing Part C of the prescribed Grievance Form at Annexure A;
 - (ii) the executive authority must in terms of section 35 (1) of the Public Service Act, 1994, forward the grievance and all relevant documentation and information to the PSC for a recommendation within five days of being informed by the head of department.
- (d) If the grievance constitutes an alleged unfair labour practice as defined in the Labour Relations Act, 1995, the head of department *must* after the executive authority has made a decision, and if he/she remains dissatisfied, inform the executive authority in writing that he/she wishes to utilise the dispute resolution mechanisms provided for in the constitution of the PSCBC or the relevant sectoral council or the CCMA, whichever is applicable. The executive authority should within 5 days inform the PSC of the head of department's decision.

8. Grievances of a head of department lodged with the PSC

- (a) A head of department may opt to lodge a grievance with the PSC directly, using the grievance form at Annexure B. In referring the grievance to the PSC, the head of department must indicate what steps have been taken to resolve the grievance and what necessitated the direct referral of the grievance to the PSC. The grievance form must be copied to the relevant executive authority.
- (b) The PSC must investigate the grievance and inform the executive authority of the outcome of the investigation and its recommendation(s), within a period of 45 days. In the event that the PSC requires more time to finalise the investigation of the grievance, it must inform the head of department without delay. The period may be extended by mutual agreement in writing. Upon finalisation of its

investigation, the PSC must inform the head of department in writing that the matter has been finalised and that the executive authority would inform him/her of the outcome.

- (c) Grievances relating to the outcome of the evaluation of a head of department must be dealt with in terms of the dispute resolution mechanism provided for in her/his Performance Agreement, before it is referred to the PSC in terms of the Grievance Rules.

- (d) In order to ensure co-ordination and rationalization of dispute resolution mechanisms, it should be noted that section 35(4) (b) of the Public Service Act, 1994 (as amended), determines that a head of department may not lodge a dispute on the same matter that was referred to the PSC, with the PSCBC or the relevant sectoral council or the CCMA.

Definitions

In this procedure, unless the context indicates otherwise –

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“days” refers to working days;

“executive authority” means an executive authority as defined in section 1 of the Public Service Act, 1994 as amended;

“employer” means –

- (i) in respect of all members (excluding heads of department in their capacity as employees), the head of department; and
- (ii) in respect of heads of department, the relevant executive authority;

“grievance” means a dissatisfaction regarding an official act or omission by the employer which adversely affects an employee in the employment relationship, excluding an alleged unfair dismissal;

“head of department” means the incumbent of a post mentioned in Schedules 1, 2 and 3 of the Public Service Act, 1994, as amended, or the person acting in such post;

“member” means a member of the Senior Management Service, including a head of department;

“PSC” means the Public Service Commission established in terms of section 196(1) of the Constitution;

“Public Service Act” means the Public Service Act, 1994 (as amended); and

“resolve” means to settle a grievance to the satisfaction of the aggrieved member.

GRIEVANCE FORM

PLEASE READ THE FOLLOWING INSTRUCTIONS BEFORE COMPLETING THIS FORM

This form must be used to lodge a grievance (excluding an alleged unfair dismissal) when you are dissatisfied with an official act or omission and you have been unable to resolve the problem through informal discussion.

1. You have to lodge your grievance within 90 days from the date on which you became aware of the official act or omission which adversely affects you.

2. Please complete all information accurately. The completed form must be given to the employee designated to facilitate grievances at your institution. The Department must attach this form to the grievance documentation, which will be used through all the stages of the grievance procedure.

3. At each stage where a person within the relevant structure of authority attempts to resolve the grievance, each party will complete the appropriate part of the form. You will be given an opportunity to respond to each and every comment.

4. At the conclusion of each stage of the grievance procedure, the Department must provide you with a copy of the completed form.

5. Once the grievance has been resolved, you do not need to complete the rest of the form. The Labour Relations or Human Resource Section of your Department will file the form, which will be used to report statistics to the Public Service Commission annually.

6. You are required to complete Parts A and B of this form and hand it to the designated employee who facilitates grievances at your institution. The designated employee will affix his/her signature in the block below Part B of the form to indicate that the grievance has been received. Ensure that you receive a copy of the form where receipt of your grievance has been acknowledged.

SIGNED: _____	
Member	Date
Receipt of grievance form acknowledged and copy given to aggrieved member	
SIGNED: _____	
Designated employee	Date
Name:	
Rank:	
PART C: GRIEVANCE RESOLUTION: LEVELS	

Notes: This part of the form provides for various levels of authority to attempt to resolve the grievance. There are, however, no prescribed levels for the resolution of a grievance. Depending of the circumstances, one or more pages below need to be completed.

If the grievance cannot be resolved up to the level of the head of department, it has to be submitted to the executive authority (i.e. the page below that specifically refers to the executive authority, must be completed).

The grievance must be dealt with by all the applicable levels (**including the executive authority**) within a period of 45 days, unless extended by agreement with the aggrieved member.

LEVEL: DESIGNATED EMPLOYEE	
<i>To be completed by the designated employee</i>	
Name	
Designation	
Tel No _____	Fax _____ No
Was the grievance resolved? Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, give details of agreement (if the space below is insufficient, please attach additional page(s))	
SIGNED: _____	
Designated employee	Date

SIGNED:	
_____	_____
Member	Date
<i>Do you want the grievance to be referred to the Public Service Commission? Yes <input type="checkbox"/> No <input type="checkbox"/></i>	
Note: If you wish to utilize the dispute resolution mechanisms provided for in the constitution of the Public Service Coordinating Bargaining Council or the relevant sectoral council or the Commission for Conciliation, Mediation and Arbitration (whichever is applicable), please indicate your decision below.	