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Public servants sentenced for conducting business with the state

The Director-General for the Department of Public Service and Administration (DPSA), Ms Yoliswa Makhasi, said the work that has been done by the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit (PAEIDTAU) in conjunction with the National Prosecuting Authority (NPA) and the South African Police Service (SAPS) is finally starting to pay off. This is after two members of the SAPS were charged and convicted for conducting business with the State.

Sergeant Makwakwa of Mpumalanga was sentenced on 11 November 2021 to R10 000 or 18 months imprisonment, half of which was suspended on certain conditions. He has paid R 5 000 fine.

On 25 October 2021 Constable Handon was also convicted of conducting business with the State and was sentenced to R5000 or 12 months imprisonment wholly suspended for five years on certain conditions.

“The convicted members will duly be subjected to departmental processes that the SAPS will embark on as a matter of urgency. This is only the beginning, as the NPA and the PAEIDTAU anticipate enrolling more cases of employees doing business with the State, in due course.

“Public servants are reminded once more that, it is a criminal offense for public service employees to conduct business with the State. The court judgments in both cases send a message to prevent public service employees from channelling tenders to their own pockets and to prevent double-dipping from State coffers – in particular by those public servants appointed in national and provincial departments but continue to earn remuneration as board members of public entities and state-owned companies. We also want to prevent conflicts of interest that detracts public servants from focusing on delivering quality services to our communities,” Ms Makhasi said.

The DPSA introduced a prohibition on public service employees conducting business with the State under the Public Service Regulations, 2016 (Regulation 13(c), and expanded it to the public administration under the Public Administration Management Act, 2014 (section 8), and public servants conducting business with the State was declared a criminal offense.

This was further extended to include political advisors. Accordingly, any person found guilty of such offenses is liable to a fine or imprisonment for a period not exceeding 5 years, or both a fine and imprisonment. This also constitutes serious misconduct which may result in the termination of employment by the employer.

The recently launched PAEIDTAU is a Chief Directorate within DPSA that monitors the implementation of this prohibition and provides implementation support to departments. All business entities that have an intention to render services to the government are compelled to register on the CSD and DPSA has access to such info for the purpose of monitoring compliance with the above regulations through matching the information on the Central Supplier Database (CSD) with information on the Personnel Salary System (PERSAL). This enables flagging of those individuals in the employ of the state registered in CSD (demonstrating an intention to do business with the state) or actively doing business with the state. Once a match is done, the person is flagged and the PAEIDTAU would then engage the relevant department to investigate the matter further and report on the steps taken.

The criminalization of employees conducting business with the State was necessitated by the increase in the number of employees who were possibly conducting business with the State, which increased steadily since 2017. At the end of February 2017, National Treasury found 580 employees to be conducting business with the State. In March 2018, this increased to 679 employees. At the end of March 2019, National Treasury found 1068 employees to be conducting business with the State. In April 2020, this number increased to 1539 (initially it was 1544, but the Department of Trade and Industry confirmed the 5 cases identified in their departments were in fact employees officially representing that department and these were removed from the list).

In July 2020, the Ministers of Police; Justice, and Correctional Services convened by the Minister for the Public Service and Administration met with Directors General from their departments in order to devise strategies to eliminate the challenge of employees doing business with the state.

An agreement was reached that a multi-departmental team consisting of DGs and senior management from these departments be established to ensure the implementation of this prohibition.

The immediate focus of this Task Team was to analyse the list of 1539 public service employees identified to be possibly conducting business with the State, to prioritize the top 10 cases, and to ensure the top cases are processed in the criminal justice system. After thorough interrogation, the Task Team identified 579 of the 1539 cases to

have merit and prioritized 10 of such cases. The number of employees registered on the CSD had decreased by January 2021 to 484 and by end of July 2021, it further declined to 118.

“This reduction is attributed to amongst others the sustainable collaboration between the DPISA, SAPS, and NPA as well as improved cooperation with national and provincial departments. The oversight bodies and media have also played an important role in raising awareness among public servants and society at large,” DG Makhasi said.

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