



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Maarten Opperman v The Minister of Defence and Military Veterans (20752/2014) [2015] ZASCA 153 (2 October 2015)

The Supreme Court of Appeal (SCA) today delivered a judgment dismissing the appeal by the appellant, Mr Maarten Opperman against the judgment of the Gauteng Division of the High Court, Pretoria.

The issue before the SCA was whether the appellant was entitled to be remunerated in accordance with the Occupational Specific Dispensation (OSD).

The appellant's claim arose in the following circumstances: The appellant, a medical practitioner, became a member of SANDF in 1996. He held a rank of Senior Clinical Manager, an OSD post prior to his promotion in April 2012 and as such, he was remunerated in accordance with the Occupational Specific Dispensation. In April 2012 he was promoted to the rank of Inspector-General: South African Military Health Services and held a position of Senior Manager: Medical Services, a non-OSD post.

Despite the fact that after April 2012 he held a non-OSD post, he continued to be remunerated in accordance with the Occupational Specific Dispensation until December 2012 when the SANDF established that he was being incorrectly remunerated. To rectify the mistake the SANDF withdrew the OSD income and sought to recover from the appellant's March 2013 salary payments which it contended had been incorrectly made to the appellant. The appellant disputed this.

The decision by the SANDF prompted the appellant to launch an application in the high court seeking an order declaring that he had a contractual right to be remunerated in accordance with the Occupational Specific Dispensation and that the withdrawal of the OSD benefits constituted an unfair labour practice and was unlawful. In resisting the application the Minister of Defence contended that the application was premature and

had to be dismissed, because of the appellant's failure to utilise the internal grievance procedures before approaching the court. On the merits the Minister contended that the appellant was not entitled to be remunerated in accordance with the Occupational Specific Dispensation because the post he occupied was not an OSD post.

The high court accepted the Minister's contention that the application was premature and for that reason, dismissed it. The appellant appealed to the SCA contending, firstly, that the high court had erred in holding that his failure to exhaust internal remedies precluded him from approaching the court and secondly, that he was entitled to be remunerated in accordance with the Occupational Specific Dispensation.

The SCA dismissed the appeal. It found that the post he occupied was a common post and therefore the appellant could not be remunerated in accordance with the OSD. On the basis of that finding the SCA held that the provision in the performance agreement concluded by the appellant and the Surgeon-General providing for the payment of an OSD income was unlawful and unenforceable and for that reason there was no basis for the appellant to demand to be paid an OSD income.