

SAPS equity plan changed by wrong person

The police's employment equity plan was unilaterally changed and by the wrong individual, the Johannesburg Labour Court has been told.



"There was a plan and it was changed unilaterally and the change led to unfair discrimination of my client," said lawyer Corne Goosen.

He was representing the trade union Solidarity in its challenge against the police's refusal to promote Lt-Col Bernard van der Westhuizen on the grounds of gender.

Goosen referred to an instruction issued in 2009 by the then national police commissioner Bheki Cele.

In October that year, the the South African Police Service (SAPS) head office issued a letter to all departments instructing them to review all promotions from level eight upwards, to achieve gender equality.

Van der Westhuizen had been employed since 1988 and worked in the police's information and systems management division.

In June 2009, eight positions in this unit were advertised. Van der Westhuizen applied for the post of system manager of business intelligence.

Interviews were held in August 2009 and he was recommended as the only suitable candidate for appointment.

That October, the instruction was issued by Cele following a meeting with his deputies.

Goosen argued that Cele exercised the authority above Constitutional principles and that it was not his job to do so.

According to the Constitution, the Minister of Safety and Security was responsible for the employment equity plan and the

national commissioner was responsible for executing it, said Goosen.

"The final say doesn't rest with the national commissioner. It lies with the Minister of Safety and Security. This amounts to an unfair act," he told the court.

After Cele issued the instruction, the panel responsible for filling posts met to review its recommendations in the light of the new instruction.

In November 2009, the recommendation to appoint Van der Westhuizen was rejected and an instruction given to re-advertise the post.

The court heard that the initial police ratio plan -- for the job level Van der Westhuizen was on -- was 70% male and 30% female. This was changed on Cele's instruction.

Solidarity said 69 other posts were also withdrawn and re-advertised because of the affirmative action policy.

Lawyer for the SAPS, Nazeer Cassim, admitted to the court there was discrimination against Van Der Westhuizen.

"Yes, it is discrimination but it is justified as the Employment Equity Act seeks to address [other] discrimination," Cassim said.

"Yes, he did not get the job because of the equity plan and not any other reason," Cassim conceded.

Van Der Westhuizen's case was repeatedly compared in court with a similar case involving Captain Renate Barnard. In 2005, Barnard applied for a Lt-Col position in the National Evaluation Service. She was shortlisted and interviewed with six other candidates and she was considered the best candidate for the job. Despite this she was not appointed.

A year later, Barnard applied for the same position along with two black candidates. She was again recommended as the most suitable candidate but former police commissioner Jackie Selebi vetoed the appointment.

Barnard then went to the Labour Court and won. The court ruled that the failure to appoint Barnard compromised service delivery.

The police appealed against the decision and the Labour Appeals Court ruled that the purpose of employment equity was misunderstood and that white women were over-represented at the level Barnard wanted to be appointed to.

Solidarity says that Barnard is now planning to take the matter to the Supreme Court of Appeal. No court date has been set for a hearing.

At court, Goosen pointed out differences between Van der Westhuizen's case and Barnard's case, saying there were constitutional issues in Barnard's case that were not investigated and this was problematic.

Both cases might be taken to the Constitutional Court, he said.

Van der Westhuizen's case was postponed pending a ruling in the Barnard case.

Source: *Sapa* via I-Net Bridge.