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Our Ref: vp/M0026

Your Ref:

Date: 29 October 2012

THE ACTING DIVISIONAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE
CRIME INTELLIGENCE & PROTECTION SERVICES
PRETORIA

For Attention : Major General C. Ngcobo
Per e-Mail : ngcoboc@saps.gov.za
Fax No : 012-3478681

Dear General,

RE: NOTICE OF INTENDED SUSPENSION IN TERMS OF REGULATION 13 (1) OF THE
SOUTH AFRICAN POLICE SERVICE DISCIPLINE REGULATIONS, 2006 OF PERSAL
0622244-7: MAJOR GENERAL: DEENADAYALIN MOODLEY

1. We act for Major General D. Moodley.
2. Your Notice of intention to suspend or temporarily transfer our client dated the 15th of October 2012 and served on our client on the 23rd of October 2012 refers.
3. Our client vehemently denies that he allegedly committed serious misconduct by "inviting" a certain Mr Panday to a meeting and "made him to listen" to his intercepted communication and in amplification of his denial has the following affidavits, which will be made available when appropriate.
 - ☐ General Moodley's affidavit that provides a factual account of his meeting with Mr Panday and details associated thereto.
 - ☐ An affidavit from Warrant Officer S. Moodley who facilitated the meeting at the request and insistence of Mr Panday.
 - ☐ An affidavit from Colonel B. Padayachee the Authorised Person in terms of Act 70, 2002 who was present at the meeting as the Principal Intelligence Investigator.
 - ☐ An affidavit from Lieutenant Colonel J.S Chetty who was present at the meeting as an independent witness.
 - ☐ An affidavit from Colonel D. Zulu the safe keeper of the Act 70 [2002] recordings which states that neither Colonel B. Padayachee nor our client had access to Mr Panday's intercepted material on 2011-09-18.

All of the above prove beyond any doubt that no misconduct occurred in any manner whatsoever. We place you on terms in this regard to adduce evidence to the contrary within seven days from date hereof. In this regard we want to be advised as to what steps were taken to verify the clearly unsubstantiated, bland allegations made against our client.

You are reminded that Mr Panday has a history of making false unwarranted allegations and has used the names of prominent politicians to intimidate officials. In this regard Government has warned of unscrupulous businessman misusing the name of the President and his family.

4. Further to the above our client denies committing the following specified acts of misconduct as indicated in your Notice:

4.1 **Regulation 20 (z): Obstructing, hindering or interfering with an authorised person executing the direction and defeating or attempting to defeat the course of Justice.**

The affidavit of Colonel B. Padayachee clearly states that he is the Authorised Person in terms of legal Direction obtained to intercept Mr Panday's communication in terms of Act 70, 2002. He was present at the meeting and observed the interaction between our client and Mr Panday. At no stage did he or our client play any recording to Mr Panday. Colonel B. Padayachee further states that he did not have either the recordings or the decryption software with him on the day of the meeting as such sensitive material was stored at another location and secured as prescribed by the Minimum Information Security Standards (MISS) guidelines. Colonel B. Padayachee states further that he could only access the intercepted material through Colonel D. Zulu who in turn confirms in his affidavit that Colonel B. Padayachee only has access to such material during regular working hours and not over weekends. Notwithstanding the above Colonel B. Padayachee has clearly exonerated our client from obstructing, hindering or interfering with him in the exercise of his duties as an authorised person. It is therefore our client's contention that he could not have defeated or attempted to defeat the course of Justice.

4.2 **Regulation 20 (a): Failing to comply with, or contravened an Act, Regulation or Legal obligation.**

It is our client's view that in light of the available affidavits that he did not contravene or fail to comply with any Act or Regulation or Legal obligation. Our client is well versed with the various Acts of the Republic, Departmental Regulations and his legal obligations as a Police Officer. Our client is particularly knowledgeable about Act 70, 2002 and knows the extent of his powers and obligations under the Act. He therefore would not compromise himself and / or cause undue embarrassment to the Department by playing Mr Panday recordings. Our client is under no obligation to grant Mr Panday any favour or advantage by doing so. To the contrary our client has been put under tremendous pressure for investigating Mr Panday and his associates. It is our view that this latest allegation of Mr Panday is nothing more than an attempt by him to exert more pressure and impugn the character and reputation of our client to his own advantage.

4.3 **Regulation 20 (f): Prejudicing the administration, discipline, or efficiency of a Department, office or institution of State.**

This act of misconduct is premised on the fatally flawed assumption that our client played the intercepted communication of Mr Panday to him. Evidence available by way of the affidavits in our possession, prove that Mr Panday's allegation has been fabricated and is patently false. The basis for the charge under this Regulation is therefore eroded and has no legal footing.

- 4.4 Regulation 20 (q): Contravening the code of conduct of the Service by failing to act honestly and by failing to exercise the powers conferred upon him in a responsible and controlled manner and by failing to work towards preventing corruption.

This contention is also premised by the assumption that Mr Panday's version is the true and correct one. The assumption remains flawed as our client took extraordinary steps to ensure that there are independent witnesses at the meeting. These observers have now deposed to affidavits that the version of our client is true and a correct reflection of proceedings at the meeting. Mr Panday clearly cannot back up his allegation in such a substantial and credible manner otherwise he would not have waited thirteen months before making a last ditch effort at tarnishing the image of our client. It is our view that Mr Panday is clearing the ground for his forthcoming criminal matters by attempting to cast aspersions on key state witnesses such as our client. Our client raises by way of example the prominent role played by Mr Panday in the eventual suspension of Major General Booyesen, another key witness against him, as a further indication of Mr Panday's ulterior motives.

5. With the above in mind it should be further noted that it has been held in the Labour Court that there is a duty on the employer to act fairly in making decisions and as you will appreciate an allegation of misconduct that was committed more than a year ago will militate against any need for suspension or temporary transfer at this stage.
6. It is also apposite to refer you to a quote reported in the case of the South African Post Office Limited v Jansen and others [JR832/07]:

"It is suspension pending disciplinary action that requires considered review. There are two abuses: arbitrary decisions and the inordinate periods of suspension. Suspension is the employment equivalent of arrest. The only rationale for suspension is the reasonable apprehension that the employees will interfere with investigation or repeat the misconduct. The employee suffers palpable prejudice to reputation, advancement and fulfilment. These limited reasons for suspension and this prejudice make a compelling case for regulation."

It therefore follows that it is only in exceptional circumstances that an employee should be suspended pending a disciplinary enquiry.

7. Given the paucity of details and absence of any facts to back up the allegation it is our considered view that it would have been more appropriate for your office to have conducted a Standing Order 101(4) enquiry first before contemplating such draconian steps as the suspension or temporary transfer of our client. No reasonable and objective commander can justify suspension or temporary transfer every time a member of the public complains; if there is no compelling evidence to back up such a complaint. Clearly with the scenario at hand there is none.
8. Under the principal of acting fairly, the labour court has determined that the employer is only permitted to suspend an employee pending disciplinary action when reasonable grounds exist for suspecting that the employee is guilty of serious misconduct and that the employee's presence may compromise the preliminary enquiry. It has been decided that both conditions required need to be present. It is our submission that both conditions do not exist firstly as an enquiry was already conducted by both the Detective Service and the Inspector General of Intelligence and to date no blameworthiness has been levelled against our client that there is no prima facie case for our client to answer to. Further to this no reasonable grounds exist for justifying a suspension at this stage according to the attached affidavits negating the allegation that recording was played. Secondly our client is no longer employed at the Crime Intelligence component and can therefore not influence your preliminary enquiry.

9. Our client is incensed by the allegation of Mr Panday. It is accordingly our instruction to serve summons on Mr Panday for criminal defamation as a result of your Notice that was served on our client. We hereby request a full copy of Mr Panday's letter / complaint / affidavit in terms of the Promotion of Access to Information Act. It must also be stated that it is highly irregular for the police to charge a General based on the allegation of an accused appearing before court. This sets a dangerous precedent which could see members involved in pursuing disciplinary action themselves being subjected to an inquiry. This would lead to a farcical situation.
10. Finally it is our submission that no exceptional circumstances exist that would necessitate the suspension or a temporary transfer of our client pending a disciplinary enquiry for contravening Regulation 20 (z) (a) (f) or (q).
11. In the above premises, our client should not be suspended or temporarily transferred. Such an act on your part would necessitate the declassification of sensitive material that would not serve the best interest of the SAPS. Indeed a pursuance of this matter only serves the interest of Mr Thoshan Panday and will provide a precedent for other hard core criminals to follow. It will also add fuel to the already raging belief that Mr Panday has political protection and provide fodder to the media.
12. For your consideration.
13. All our client's rights are reserved to approach an appropriate forum for relief including the Office of the Public Protector.

Yours faithfully



V. Premrajh

CC: [a] National Commissioner, SAPS
[b] Inspector-General, Intelligence
[c] POPCRU



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Our Ref: M0026

Your Ref:

Date: 12 NOVEMBER 2012

SOUTH AFRICAN POLICE SERVICE

PROVINCIAL COMMISSIONER: LIMPOPO
LIEUTENANT GENERAL ST MPEMBE

Per facsimile: 012 – 3937125
Via email: ngcoboc@saps.gov.za

DEAR GENERAL,

RE: ALLEGED MISCONDUCT / MAJOR GENERAL MOODLEY: KWAZULU NATAL

The above matter refers.

We record that in our previous correspondence dated 29 October 2012 the employer was requested to provide us with the alleged evidence against my client. To date we have not been provided with same.

We respectfully draw your attention to the various provisions of the Criminal Procedure Act 51 of 1977, which apply to pending criminal cases and the rules of evidence with which you are no doubt acquainted. In this regard note that the complainant Mr. T Panday is currently facing two criminal charges in court and is the subject of two further criminal investigations currently underway. This is a material fact which must be interrogated in the interest of the administration of justice in South Africa and the "war on corruption".

Any breach of the *Sub-judice* Rule relating to criminal proceedings will have far reaching implications not only for the criminal case and the accused, Mr. T Panday but also for the witnesses who are bound by privilege. Kindly bear this in mind as it will have far reaching implications in this matter, especially if the SAPS is seen to be assisting an accused person.

Any attempt to have recourse to witnesses or potential witness will require special permission from the highest echelons of the NPA.

Variksha Premrajh (BA; LLB; LLM – Business Law)(Natal)

We record that we have interviewed the witnesses mentioned in our earlier correspondence, taken affidavits and claim privilege thereto. We have advised and stressed that we will consider approaching the high court for an interdict against the SAPS when appropriate.

We record that our client Major General D Moodley is awaiting judgment in the Labour Court on a pending matter. He has since been served with the notice to suspend. This is the second attempt to suspend him unlawfully and appears to be an attempt to prevent him from being reinstated if the court orders same.

We have been advised that senior members of the SAPS have approached the NPA to have our client prosecuted. When appropriate we will expose these activities.

We record that we have advised our client that the conduct of the employer amounts to an attempt at constructive dismissal.

We stress that we are awaiting a copy of the complaint made against our client that has as yet not been furnished. On receipt thereof we will consider supplying you with the affidavits on hand.

We reserve our client's rights to pursue civil and criminal charges in this matter.

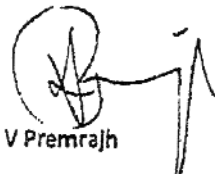
In view of your notice to suspend we record that you would have had to have sufficient evidence, and would not require our assistance.

Our client will be prepared to be placed on special leave until this matter is resolved in order to prevent further litigation between him and the SAPS management being heard in open court. This would have adverse consequences for the intelligence components of the SAPS and the newly appointed national Commissioner.

We still await a comprehensive response to our initial letter.

Kindly acknowledge receipt hereof.

Yours Faithfully



V Premrajh

Variksha Premrajh (BA; LLB; LLM - Business Law) (Natal)