

# SUPREME COURT OF APPEAL OF SOUTH AFRICA

## PRESS RELEASE

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### **Minister of Defence v Dunn**

*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.*

The Supreme Court of Appeal today held that, in an application to review a decision of an administrative body, a court cannot award compensation to an aggrieved party which has the effect of substituting its own decision for that of the administrative body.

Captain Dunn was employed by the South African Navy. He applied for promotion to a new post in the South African National Defence Force. He was one of four candidates who were considered by a special placement board for a new post at a level higher than that held by Dunn. The special board met to consider the candidates and recommended to the Minister that another officer be appointed to the new post. It was not a promotion for him as he was already on that level. The Minister made the appointment.

Dunn was aggrieved at the decision and sought to have it set aside on several bases under the Promotion of Administrative Justice Act 3 of 2000. He complained that the procedure was not transparent, was unfair and was flawed by several irregularities. The Pretoria High Court upheld an alternative claim that

Dunn be awarded compensation. It ordered the SANDF to pay Dunn the salary he would have been paid had he been promoted to the post.

The Supreme Court of Appeal found that none of the irregularities complained of had been established. The SANDF had complied with the procedures laid down for appointment and promotion to high-level posts. It found also that Dunn had no legitimate expectation to be interviewed by the special placement board despite the fact that he had been asked to make himself available for an interview, which had subsequently been cancelled. An interview would not necessarily have resulted in a different outcome.

Compensation may be awarded under the Act but only in exceptional circumstances. None had been shown to exist and Dunn had suffered no financial loss. The award of damages to him was thus impermissible.

The appeal was upheld.