



GOVERNMENT GAZETTE OF THE REPUBLIC OF NAMIBIA

WINDHOEK — 7 August 1995

No. 1121

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No. 135 Promulgation of Public Service Act, 1995 (Act 13 of 1995), of the Parliament

Government Notice

OFFICE OF THE PRIME MINISTER

No. 135

|

1995

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 13 of 1995: Public Service Act, 1995.

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on the recommendation of the Commission, but with a salary or scale of salary or grade not higher than the salary or scale of salary or grade previously applicable to him or her, and in such a case the period of his or her absence from his or her office or official duties shall be deemed to have been absence on vacation leave without pay or leave on such other conditions as may be approved by the Prime Minister on the recommendation of the Commission.

PART III

MISCONDUCT

Definition of misconduct.

25.

(1) Any staff member shall be guilty of misconduct if he or she -

- (a) contravenes or fails to comply with any provision of this Act;
- (b) performs or causes or permits to be performed, or connives at, any act prejudicial to the administration, discipline or efficiency of any office, ministry or agency or any organisational component thereof;
- (c) disobeys, disregards or makes wilful default in carrying out any lawful order given to him or her by any person authorised to do so, or by word or conduct shows insubordination;
- (d) is negligent or indolent in the performance of his or her duties;
- (e) operates or undertakes, without the approval of the Prime Minister, any private agency or private work in regard to any matter directly or indirectly related to the performance of his or her official functions or any matter directly or indirectly related to the field of operations of the office, ministry or agency in which he or she is employed or fails to declare that any member of his or her household operates or undertakes any such private agency or private work;

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- (f) uses his or her position in the Public Service or utilises any property of the State to promote or prejudice the interests of any political party;
- (g) uses his or her position in the Public Service or utilises any property of the State to promote or prejudice the interests of any private business or private agency, except in the performance of his or her official duties;
- (h) conducts himself or herself in a disgraceful, improper or unbecoming manner causing embarrassment to the Government or to the Public Service or, while on duty, is grossly discourteous to an person;
- (i) uses intoxicating liquor excessively or uses stupefying drugs without a prescription of a medical practitioner resulting in his or her incapacity to perform his or her duties efficiently;
- (j) uses or is under the influence of intoxicating liquor or stupefying drugs during the prescribed official hours of attendance without a prescription of a medical practitioner;
- (k) without first having obtained the permission of the permanent secretary concerned, discloses otherwise than in the performance of his or her official duties any information gained by or conveyed to him or her by virtue of his or her employment in the Public Service, or uses such information for any purpose other than the performance of his or her official duties, whether or not she discloses such information;
- (i) accepts or demands in respect of the performance of or the failure to perform his or her duties any commission, fee or reward, pecuniary or otherwise, so which he or she is not entitled by virtue of his or her office, or fails to report forthwith to the permanent secretary concerned the offer of any such commission, fee or reward;

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- (m) misappropriates or improperly uses any property of the State without committing a criminal offence;
 - (n) commits a criminal offence relating to the performance of his or her official duties or to the administration of any office, ministry or agency;
 - (o) absents himself or herself from his or her office or official duties without leave or valid cause;
 - (p) with a view to obtain any privilege or advantage in relation to his or her official position or his or her duties, or to cause prejudice or injury to the Government or any office, ministry or agency or any member of the Public Service, makes a false or incorrect statement, knowing it to be false or incorrect;
 - (q) contravenes or fails to comply with any provision relating to his or her employment or conditions of service, or contravenes or fails to comply with any provision of a prescribed code of conduct.
- (2) For the purposes of the application of subsection (I) to a staff member who holds the office -
- (a) of permanent secretary, any reference in that subsection to the permanent secretary shall be construed as a reference to the Secretary to the Cabinet;
 - (b) of Secretary to the Cabinet or of Secretary to the President, any reference in that subsection to the permanent secretary shall be construed as a reference to the Prime Minister.

Misconduct and suspension of staff members.

26. (1) If a permanent secretary has reason to believe that any staff member in his or her office, ministry or agency is guilty of misconduct, he or she may charge the staff member in writing under his or her hand with misconduct.

- (2) (a) The permanent secretary concerned may, on the recommendation of the Commission, suspend any staff member at any time before or after he or she is charged under this section, if the permanent

secretary has reason to believe that the staff member is guilty of misconduct: Provided that the staff member shall be suspended only where the nature of the misconduct dictates that the staff member be removed from his or her place of duty or if the possibility exists that the staff member may interfere of tamer with witnesses or evidence.

- (b) Any staff member suspended in terms of paragraph (a) shall not be entitled to any remuneration for the period of his or her suspension, except to such an extent as may be approved by the Prime Minister on the recommendation of the Commission: Provided that the staff member may, within seven days after his or her suspension, appeal in writing to the Prime Minister against his or her non-entitlement to any remuneration or any part thereof.
- (c) Any staff member who has been suspended shall forthwith be permitted by the permanent secretary concerned to reassume duty and shall be paid his or her full remuneration for the period of his or her suspension -
- (i) if no charge is brought against him or her under this section within 14 days after his or her suspension;
 - (ii) if he or she is found not guilty on the charge brought against him or her;
 - (iii) if his or her appeal is allowed against the finding that he or she is guilty on the charge brought against him or her;
 - (iv) if he or she is dealt with in a manner contemplated in subsection (12)(a)(i), (ii), (iii) or (iv).
- (d) The suspension of any staff member may at any time be abrogated -
- (i) by the permanent secretary who has suspended the staff member under subsection 2)(a), if in his or her opinion all the reasons for the suspension have lapsed; or

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(ii) by the Prime Minister -

(aa) if in his or her opinion no valid cause exists for the suspension: or

(bb) if the Commission has recommended to the Prime Minister the abrogation thereof.

but the abrogation of the suspension shall not affect any proceedings in connection with the charge of misconduct.

(3) (a) The permanent secretary who has signed the charge shall cause the charge to be served on the staff member charged, together with any statement of particulars of the alleged misconduct.

(b) The charge shall contain or be accompanied by a direction calling upon the staff member charged to transmit or deliver, within 14 days from the date of the charge, to a person mentioned in the direction a written admission or denial of the charge and, if he or she so desires, a written explanation of the misconduct with which he or she is charged.

(4) If the staff member charged admits the charge or fails to comply with the direction referred to in subsection (3)(b), he or she shall be deemed to have been found guilty in terms of this section of misconduct as charged -

(a) in the case of an admission of the charge, on the date of admitting the charge and not to have noted an appeal against the finding;

(b) in the case of a failure to comply with the direction referred to in subsection (3)(b), on the date of the expiry of the period mentioned in that subsection.

(5) If the staff member charged denies the charge, the permanent secretary concerned shall, within seven days from the date of receipt of the written denial, establish a disciplinary committee consisting of -

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- (a) a member of the management cadre of the office, ministry or agency in which the staff member charged is employed, who shall be the chairperson; and
- (b) the head of the organisational component her representative; and
- (c) any other staff member who in the opinion of the permanent secretary concerned possesses expertise of the subject on which the charge of misconduct is based, but who shall not be the head of the organisational component in which the staff member charged is employed or the supervisor of that staff member; and
- (d) if the staff member charged so desires, a representative of a recognised trade union, who shall serve on the disciplinary committee merely as an observer without partaking in any proceedings thereof,

to inquire into the charge.

(6) The chairperson shall, in consultation with the other members of the disciplinary committee, fix the time and place of the inquiry and shall give the staff member charged reasonable notice in writing of the said time and place: Provided that such inquiry shall be conducted within 21 days after the establishment of the disciplinary committee.

(7) The chairperson may authorise any staff member, except a person referred to in subsection (5)(d), to adduce evidence and arguments in support of the charge and to cross-examine any person who has given evidence in rebuttal of the charge.

(8) (a) At the inquiry the staff member charged shall have the right to be present and to be heard, either personally or through a representative, to cross-examine any person called as a witness in support of the charge, to examine any documents produced in evidence, to give evidence himself or herself and to call other persons as witnesses.

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- (b) The chairperson shall keep or cause to be kept by any staff member designated by him or her a record of the proceedings at the inquiry and of all evidence given.
- (c) The failure of the staff member charged to be present at the inquiry shall not invalidate the proceedings.

(9) The acquittal or the conviction of any staff member by a court of law on a charge of any offence shall not be a bar to proceedings against him or her in terms of this Act on a charge of misconduct, notwithstanding the fact that the facts set forth in the charge of misconduct would, if proved, constitute the offence set forth in the charge on which he or she was so acquitted or convicted or any other offence on which he, or she might have been convicted on his or her trial on the said first-mentioned charge.

(10) If the misconduct with which a staff member is charged, constitutes an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court shall, upon the identification of the staff member as the person referred to in the record, be conclusive proof -

- (a) of the commission by him or her of that offence;
- (b) to the disciplinary committee that he or she is guilty of misconduct on account of the commission of that offence,

unless the conviction has been set aside by a superior court.

(11) At the conclusion of the inquiry the disciplinary committee shall find whether the staff member charged is guilty or not guilty of the misconduct with which he or she has been charged and shall inform him or her of the finding.

- (12) (a) If the disciplinary committee finds the staff member charged guilty of the misconduct with which he or she has been charged, the chairperson shall forthwith submit to the Commission and the permanent secretary concerned a copy of the

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record of the proceedings at the inquiry, including documentary evidence adduced at the inquiry, together with a written statement of the disciplinary committee's finding and its reasons therefor and its recommendation that -

- (i) the staff member charged be cautioned or reprimanded: or
 - (ii) a fine not exceeding N\$2 000 be imposed upon him or her; or
 - (iii) he or she be transferred to any other post or that he or she be retained in employment additional to the establishment; or
 - (iv) his or her salary or scale of salary or rank be reduced or decreased, or both, to such an extent as may be recommended; or
 - (v) he or she be discharged or be called upon to resign from the Public Service.
- (b) Except where the disciplinary committee makes a recommendation in terms of subparagraph (v) of paragraph (a), it may make a recommendation in terms of more than one of the other subparagraphs of that paragraph.

(13) The permanent secretary concerned shall, at the request of the staff member charged made within seven days from the date on which he or she has been informed of the finding of the disciplinary committee, furnish that staff member with a copy of the record, statement, reasons and recommendation referred to in subsection (12).

(14) (a) The staff member charged may, within 14 days from the date of receipt by him or her of the record, statement, reasons and recommendation referred to in subsection (13), appeal in writing to the Prime Minister against the finding of the disciplinary committee stating fully the grounds of appeal.

(b) The appeal -

(i) shall be accompanied by the record, statement, reasons and recommendation referred to in subsection (13).

- (ii) may be accompanied by written representations made by that staff member in support of the appeal.
- (c) Upon receipt of the appeal the Prime Minister shall cause a copy thereof to be transmitted to the Commission.
- (15) (a) After consideration of all the documents submitted to him or her, the Prime Minister may, subject to the provisions of paragraph (b) -
 - (i) allow the appeal in whole or in part and vary or set aside the finding;
 - (ii) dismiss the appeal and confirm the finding in whole or in part;
 - (iii) refer any matter in connection with the inquiry to the permanent secretary concerned, who shall thereupon remit the said matter to the disciplinary committee and direct it to report thereon or to hold a further inquiry and to make a finding and recommendation thereon; or
 - (iv) inform the permanent secretary concerned that a staff member or staff members in the Prime Minister's office will inquire into the matter.
- (b) Before arriving at a final decision on the appeal, the Prime Minister shall obtain the advice of the Commission.
- (c) For the purposes of a remittal or an inquiry referred to in paragraphs (a)(iii) and (a)(iv), respectively, the provisions of subsections (6), (7), (8), (11) and (12) shall apply *mutatis mutandis*.
- (16) If the Prime Minister has arrived at a final decision on the appeal, he or she shall convey that decision to the appellant and to the Commission and the permanent secretary concerned.
- (17) If the staff member charged is deemed to have been found guilty or has been found guilty of misconduct in terms of subsection (4) or (11), respectively, and has not

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Appealed against the finding within the period mentioned in subsection (14)(a), or has appealed against the finding as been dismissed in whole or in part (15)-

(a) the permanent secretary concerned may approve the recommendation made by the disciplinary committee in terms of subsection (12)(a)(i) or(ii), or, if the staff member charged is deemed to have been found guilty, take any action which he or she could have taken if the disciplinary committee had recommended it in terms of that subsection;

(b) the Prime Minister may, on the recommendation of the Commission, approve the recommendation made by the disciplinary committee in terms of subsection (12){a}(iii), (iv) or (v), or, if the staff member charged is deemed to have been found guilty, take any action, on the recommendation of the Commission, which he or she could have taken if the disciplinary committee had recommended it in terms of that subsection.

(18) If in terms of subsection (17) -

(a) a fine imposed upon that staff member, the fine may be recovered by deducting it from his or her remuneration in such installments as the Treasury may determine;

(b) that the staff member is transferred to any other post or retained in employment additional to the establishment, he or she shall assume duty in that post or employment with effect from a date fixed by the Prime Minister,

(c) the salary or scale of salary or rank of that staff member is reduced or decreased, he or she shall assume duty at the reduced salary or scale of salary, or in a lower rank and an appropriate grade, or both at the reduced salary or scale of salary and in a lower rank and an appropriate grade with effect from a date fixed by the Prime Minister;

(d) that staff member is discharged from the Public Service, the discharge shall take effect on a date fixed by the Prime Minister,

- (e) that staff member who has been called upon to resign from the Public Service with effect from a date fixed by the Prime Minister, fails so to resign, he or she shall be deemed to have been discharged from the Public Service on account of misconduct with effect from that date.

(19) Any staff member who, while suspended under subsection (2)(a) or while a charge brought against him or her under this section has not been finally dealt with in accordance with the provisions of this section, resigns from the Public Service or assumes duty in other employment, shall be deemed to have been discharged on account of misconduct with effect from the date on which he or she resigned or assumed duty in other employment.

Misconduct and suspension of permanent secretaries.

27. (1) If the Secretary to the Cabinet has reason to believe that any permanent secretary is guilty of misconduct he or she may, in consultation with the Prime Minister and the Minister of the permanent secretary concerned, charge the permanent secretary in writing under his or her hand with misconduct.

(2) The Secretary to the Cabinet may, on the recommendation of the Commission, suspend any permanent secretary at any time before or after he or she is charged under this section, if the Secretary to the Cabinet has reason to believe that the permanent secretary is guilty of misconduct.

(3) The provisions of subsection (2) of section 26 shall apply *mutatis mutandis* to a suspension contemplated in subsection (2) of this section, and for that purpose any reference in the first-mentioned subsection to the permanent secretary shall be construed as a reference to the Secretary to the Cabinet.

(4) The Secretary to the Cabinet, in consultation with the Prime Minister and the Minister of the permanent secretary concerned, shall establish a disciplinary committee, consisting of himself or herself, as chairperson, and any other two persons or staff members, to inquire into the charge of misconduct.

(5) The provisions of subsections (3), (6) to (12), inclusive, (17), (18) and (19) of section 26 shall apply *mutatis mutandis* to an inquiry contemplated in subsection (4) of this section, and for that purpose any

reference in subsections (3), (6), (7), (8), (9), (10), (11), (18) and (19) of the first-mentioned section to the permanent secretary shall be construed as a reference to the Secretary to the Cabinet and any reference in subsections (12) and (17) of the first-mentioned section to the permanent secretary shall be construed as a reference to the Prime Minister.

Misconduct of Secretary to the Cabinet and Secretary to the President.

28. (1) If the Prime Minister has reason to believe that a staff member who holds the office of Secretary to the Cabinet or of Secretary to the President is guilty of misconduct, he or she may, in consultation with the President, charge such staff member in writing under his or conduct.

(2) The staff member charged shall have the right to adduce evidence to the Prime Minister in rebuttal of the charge within such period as may be determined by the Prime Minister.

(3) (a) If the Prime Minister finds the staff member charged guilty of the misconduct with which he or she has been charged, the Prime Minister shall forthwith recommend to the President that -

(i) the staff member charged be cautioned or reprimanded; or

(ii) a fine not exceeding N\$2 000 be imposed upon him or her; or

(iii) he or she be transferred to any other post or that he or she be retained in employment additional to the establishment; or

(iv) his or her salary or scale of salary or rank be reduced or decreased to such an extent as may be recommended; or

(v) he or she be discharged or be called upon to resign from the Public Service.

(b) Except where the Prime Minister makes a recommendation in terms of subparagraph (v) of paragraph (a), he or she may make a recommendation in terms of more than one of the other subparagraphs of that paragraph.

(4) The President may, on the recommendation of the Commission, approve the recommendation made by the Prime Minister in terms of subsection (3).

(5) For the purposes of subsection (4), the provisions of subsection (18) of section 26 shall apply *mutatis mutandis*.

Manner in which notices may be given or certain documents may be served.

29. Where it is for the purposes of this Part required that -

- (a) a person be advised or informed of any decision or finding, he or she shall be advised or informed thereof in writing;
- (b) a notice, statement or other document be given or furnished or sent to or served upon any person or that a decision, finding or any other matter be conveyed to any person in writing, the notice, statement, document or writing may be sent to the person by registered post addressed to his or her last known address or be delivered to him or her personally or be left at his or her last known place of residence.

PART IV

GENERAL PROVISIONS

Political rights of staff members

30 (1) Subject to the provisions of section 25(l)(f) and subsection (2) of this section, a staff member may -

- (a) be a member of a political party;
- (b) attend, preside at or speak at a public political meeting;
- (c) draw up or publish any writing to promote the interests of any political party;
- (d) be an office-bearer of whatever designation of a political party:

Provided that no staff member shall, at any time while he or she is required to discharge his or her official duties in