

**REPUBLIC OF VANUATU**  
**OFFICE OF THE OMBUDSMAN**

**PUBLIC REPORT**

**(Pursuant to art 63(3) of the Constitution)**

**ON THE**  
**DISCRIMINATORY RECRUITMENT**  
**PROCEDURES**

**BY THE**  
**PUBLIC SERVICE COMMISSION**  
**CONCERNING POSITIONS**  
**IN THE**  
**FORESTRY DEPARTMENT**

This report contains the findings of fact, opinions, views and of unlawful conduct and the recommendations of the Ombudsman pursuant to the Constitution of the Republic of Vanuatu and the Ombudsman Act No.14 of 1995.

9th July 1997

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## **PREAMBLE**

*"...What doth the Lord require of thee but to do justly, and to love mercy, and to walk humbly with thy God..." Micah 6 v 8.*

**This is a fairly minor Report dealing with a relatively small matter, but it is symptomatic of a widespread practice which is having a paralysing effect on the development of the country.**

**There is a very deeply entrenched opinion in a very large proportion of the country's officials and politicians regardless of which party is in power that the occupation of an official post at whatever level, ought to give the occupant power to do whatever he likes regardless of the official procedures which put clear limits of their activities.**

**The appointment of friends, political cronies and relatives appears to be taken for granted as a legitimate way of paying off favours or getting an easy salary for the favoured person even if he or she has no experience, no training and sometimes very little education.**

**If the population will insist on allowing this practice to grow, there is no way for the country to go but down. There is little point in pursuing and promoting education and training for the young, if those who are trained are passed over in favour of "old friends" or political colleagues.**

**There are clear written guidelines for the officials, MPs and Ministers to follow in selecting suitable qualified candidates for posts in the public service, but these are being regularly ignored or violated in order to provide undeserved financial rewards for favourites.**

**I am aware that there are people who wish to continue this practice on the grounds of a custom called WANTOK, which appears to encourage the destructive growth of nepotism that is, the preferring of relatives.**

**I repeat, if this custom is allowed to continue the quality of administration which is already a source of disillusion and cynicism to the public will simply deteriorate further and further and discourage those who wish to seek excellence and training in public service roles.**

**It is not too late to change, if the will to do so can be strengthened.**

## **1 SUMMARY**

- 1.1 On 11 January 1995 Mr Y lodged a complaint with the Office of Ombudsman concerning his appointment as an employee of the Forestry Department ("**Department**").
- 1.2 This complaint was directed against the Public Service Commission ("**PS Commission**") under the Chairmanship of William Mael ("**Mr Mael**"). The PS Commission is responsible for the appointment and promotion of public servants as set out under the Constitution art 60(1). Its operational functions are carried out by the Public Service Department ("**PS Department**").
- 1.3 Mr Y was recruited by the Department as a casual employee to the position of Vote Book Controller or Assistant Accountant ("**Asst. Accountant**"). The Director of the Department, Mr Aru Mathias ("**Mr Mathias**") recommended that Mr Y be appointed permanent to the position of Asst. Accountant.
- 1.4 When the Commission met on 01/12/94, they appointed Mrs B to the position of Assistant Accountant ("**Asst. Accountant**") on salary scale P.8 and Mr Y as Storeman Purchasing Clerk ("**Storeman**") on salary scale P.5.1. Mrs B was appointed by the Commission to the Asst. Accountant position which she never specifically applied for.
- 1.5 Mr Y alleged that he was improperly appointed by the PS Commission to the position of Storeman within the Department because he had applied for the position of Accountant and not the position of Storeman.
- 1.6 The Ombudsman's opinion is that the Commission breached the Constitution, Public Service Act ("**PS Act**") and the appointment procedures of the Public Service Staff Manual ("**Manual**"). The PS Commission wrongfully appointed Mrs B to the position of Accountant and Mr Y to the position of Storeman. The PS Department illegally bypassed the lawful recruitment procedures by appointing casual employees to permanent positions. The Ombudsman had to accordingly recommend that the PS Commission and the PS Department follow the laws and the Constitution and that these illegal practices immediately cease.
- 1.7 In the following months, Mr Y, unsatisfied, resigned and Mrs B was transferred to another Department because her position did not exist.

## **2 JURISDICTION AND SCOPE OF ENQUIRY**

- 2.1 Pursuant to arts 62(1) and 62(2) of the Constitution and s14(1) of the Ombudsman Act No.14 of 1995 ("Act") the Ombudsman has jurisdiction to investigate into administrative defects and improper administrative practices.
- 2.2 Accordingly, the Ombudsman conducted an enquiry into Mr Y's complaint to determine whether his allegation was true and whether the PS Commission's decision was made according to law and fairly.
- 2.3 The scope of the investigation was to establish the following:
- whether the appointment procedures of the Manual and Casual Employees Manual("CE Manual") the Public Service Act and the Constitution were followed regarding Mr Y's recruitment into the Forestry Department and his subsequent appointment.

## **3 COMMENTS BY INDIVIDUALS OR ORGANISATIONS AFFECTED BY THIS REPORT**

- 3.1 S16(4) of the Ombudsman Act states that the Ombudsman is not obliged to hold a hearing and no person has a right to be heard by the Ombudsman unless a report of the Ombudsman will affect a person or body. In those cases the person or body concerned is given the opportunity to reply or comment on matters that may affect them. Likewise where an opinion is published that is adverse to or derogatory of any person/body any statement of explanation or defence by the responsible person/body is to be included in the Ombudsman's public report.
- 3.2 People who received the preliminary report are:
- (a) Members of the PS Commission at the time of the appointment of the Accountant in the Forestry Department
- William Mael
  - Edwin Basil
  - Johnny T. Lulu
  - Kalori Koriaru
  - Amos Andeng

**(b) Former Directors of PS Department**

- **Maria Crowby**
- **André Lesines**

**(c) Mr Mathias the Director of the Forestry Department and Mrs B who was appointed to the post of Asst. Accountant in the Forestry Department.**

**3.3 People who responded to the preliminary report**

- **Johnny T. Lulu**
- **Mrs B**
- **Mr Mathias**

**4 RELEVANT LAWS**

**4.1 Art 57(4) of the Constitution provides:**

**The Prime Minister or the Chairman of a Local Government Council may, exceptionally, make provision for the recruitment of staff for a specified period to meet unforeseen needs.**

**In urgent cases, the Public Service Commission may, after consulting the Ministers responsible for Finance and public administration make such a decision instead of the Prime Minister.**

**4.2 The Commission is given the mandate under art 60 of the Constitution to appoint and promote public servants. The Commission is not subject to the direction or control of any other person or body in the exercise of its functions.**

**4.3 S2 of the PS Act gives the Commission all powers necessary to perform the functions and carry out the duties vested in it by the Constitution.**

**Daily Rated Appointment**

**4.4 Clause 1.3 of the CE Manual states that employees shall only be engaged if adequate budgetary provisions have been made by the employing department.**



- 4.5** According to the CE Manual the qualifications required for Daily Rated appointment is decided by the Director of Public Service (s.1.1). Accordingly Annex A II of the CE Manual provides the qualifications and/or experience required for the different grades/categories that apply to an individual (see Appendix "A"). Annex A II of the CE Manual is therefore determined by the Director of the PS Department. The minimum level of education for a daily rated employee is completion of primary school. Assessment of individual applicants for employment from among those qualified (as per Annex A II) is done by the head of the employing department (s 1.2).
- 4.6** Annex A II is directed specifically at menial and labouring jobs. The rates of pay are therefore low. The purpose of the CE Manual is to provide the machinery for Heads of Department to recruit cleaners and drivers and so forth without the need of going through the PS Department or PS Commission.
- 4.7** What is happening is that in order to avoid the recruitment procedures required by the Manual for public servants (non-menial jobs), Heads of Departments are recruiting management and other positions of responsibility as daily rated employees. These appointees are paid on the daily rate scale but are then, as a further breach of the selection machinery in the Constitution and Manual, made permanent appointees. These people then go on the pay scale per the Manual and become permanent public servants. This is illegal.
- 4.8** A daily rated employee can not legally be made a permanent employee as requirements of the Manual apply to daily rated employees. The recruitment of persons to permanent positions can only be done through the normal procedures set out in the Constitution, Public Service Act and the Manual. The CE Manual only applies to a limited category of menial jobs. In other words the daily rated employee must apply along with everyone else in the ordinary way for the majority of the permanent positions offered by public service.

### **Permanent Appointment**

- 4.9** The Manual sets out the procedure for permanent appointment (Clauses 3.11 to 3.19) which is relevant to this case. In summary the procedure is as follows:

- (a) Vacancies are to be approved by the Minister for Public Service ("Minister"). All job descriptions and advertisement are submitted for prior approval to the Minister.**
- (b) When all applications are received, they are sent to the recruiting department. The head of that department makes his recommendations and returns the applications to PS Department.**
- (c) The PS Department submits all these applications to the Commission. After the Commission makes its decision a letter of acceptance is sent out to the successful applicant.**
- (d) Temporary appointments are approved by the Minister of Public Service where a vacancy exists and needs to be filled in *urgently*. This is pending normal recruitment procedures or where a temporary vacancy exists for a short period (three months or less), awaiting the return of the substantive holder of the post. The Minister must be satisfied that a vacancy exists and sufficient money is available before the appointment is made. Temporary appointments are made within a specified period. This is provided for under art 57(4) of the Constitution.**

### **Classification of positions within the Department**

- 4.10 It is helpful to get out exactly what the requirements of the various positions are:**
- 4.11 The Accountant in the Forestry had the following responsibilities:**
  - (a) Enter and maintain the department votebook and records of revenue collected;**
  - (b) enter details of the commitment and expenditure of departmental funds in votebook;**
  - (c) File all departmental copies of vouchers, other payment documents, and all records required for purposes;**
  - (d) Prepare draft statements of commitment of expenditure of funds;**
  - (e) Prepare draft statements of revenue collected; and**
  - (f) Maintain head office petty cash advance.**



**4.12 The Asst. Accountant and Vote book Controller are no different. A vote book is a record of all transactions of income and expenditure of a department. Evidence from the Department revealed that there is no position for an Asst. Accountant/Vote Book Controller and what happened at that time was that Mr Y was performing the functions of the Accountant. The Asst. Accountant does not have a job description. Mr Y was recruited as an Asst. Accountant but was performing all the duties and responsibilities of the Accountant.**

**4.13 The Storeman's responsibilities are as follows:**

- (a) Purchase of stores, both local and abroad to meet the Department's operational requirements, ensuring that stores of the most appropriate quality and price are bought;**
- (b) Keep the Department's storeroom at Tagabe stocked with the appropriate level of consumable and non-consumable stores;**
- (c) Maintain stock cards and store ledgers for the central storeroom and exercise proper stock control; and**
- (d) Maintain a record of all stores sent to and returned from out-stations.**

## **5 FACTUAL BACKGROUND**

**5.1 The facts set out below by chronological order revealed by information gathered from interviews and investigation by the Ombudsman's Office.**

### **Chronology of Facts**

<b>Date</b>	<b>Event</b>
<b>13/04/94</b>	<b>The PS Department placed an internal advertisement (aimed at members of the Public Service) for an accountant on salary scale P.5 within the Forestry Department. See appendix "A".</b>
<b>23/05/94</b>	<b>A list of applications including Mr Y's was sent to Mr Mathias the Director of Forestry Department.</b>

- 06/06/94** Mrs B wrote a letter of application to the Deputy Director of PS Department, Mr André Lesines ("Mr Lesines") attaching her curriculum vitae seeking employment as an accountant within the PS Department. (Refer to Appendix "B").
- 20/06/94** Mr Y was recruited as a casual employee by the Forestry Department on the salary scale of C4.4. because an accountant was needed urgently.
- 29/06/94** Mr Mathias forwarded a memorandum to the PS Department notifying them that Mr Y was still waiting for permanent appointment for the post of accountant P.5.
- 03/08/94** PS Department advertised for Storeman's position on P.5. in the Forestry Department.
- 04/10/94** Mr Mathias sent a second memorandum to the PS Department informing it that Mr Y was still waiting for permanent appointment.
- 26/10/94** Despite advertising for an Accountant the submission form from the PS Department to the PS Commission requested the PS Commission to appoint an Asst. Accountant and not an Accountant. See appendix "C".
- 01/12/94** The PS Commission met and appointed Mrs B to the non-existent permanent position of Asst. Accountant on P.8 and Mr Y to the position of Storeman on P.4 in the Forestry Department. Refer to appendix "D".
- 09/12/94** The letter of appointment for the position of Clerk was sent to Mr Y notifying him that his appointment was effective as of 16/12/94. See appendix "E".
- 09/01/95** Mrs Maria Crowby("Mrs Crowby") wrote informing Mr Y that the PS Commission confirmed its decision that he be appointed as Clerk.
- 10/01/95** Mr Mathias wrote to the PS Commission expressing concern that his Department did not have the budget to pay Mrs B at P.8. The post of accountant was advertised on P.5 a lower salary level, not P.8. Mr Mathias recommended that Mrs B be transferred to another department.

- 12/01/95**     **Mr Y accepted the post of the Clerk but insisted on doing the work of the Accountant.**
- 31/07/95**     **Mr Y sent his letter of resignation to Mrs Crowby.**
- 08/09/95**     **Mrs Crowby notified Mr Y that the PS Commission had approved his resignation.**
- 19/09/95**     **The PS Department requested the Finance Department to pay Mr Y's outstanding leave.**

**Information obtained through interviews and investigation**

- 5.2**     **The PS Department placed an advertisement for an Accountant within the Forestry Department which was dated 13/04/94. However, when the submissions were sent to the Commission the PS Department requested that the Commission appoint an Asst. Accountant from the list of applicants to the Department rather than an Accountant.**
- 5.3**     **There were 22 applications to the PS Department excluding Mrs B's which did include five suitable candidates for the post of Accountant. However most of the applicants did not have experience in accounting. Mrs B's application was not amongst these.**
- 5.4**     **From the five suitable applications the most suitable candidate was working in the Department of Finance, Mr X. Mr X had a Diploma in Business and Finance from the Solomon Islands College of Higher Education and one year's work experience with the Accounts Section of the Department of Public Works. The other four candidates had no practical experience.**
- 5.5**     **Mr Y did not have any accounting or financial qualifications. His practical experience was limited to his previous employment in the Salaries Section of the Finance Department. At that time (1992-1993) Mr Y was a casual worker who was filling a vacancy after the general strike of 1992. Mr Y was terminated by the Finance Department for showing confidential information on the office computer to some people from outside. He was young at the time of his employment in the Salaries Section.**

- 5.6** On the other hand Mrs B who was appointed to the job had a Certificate from Institute National de Technologie de Vanuatu (INTV). At the time she did not attach a copy of her certificate with her CV so the PS Commission would not have known what she specialised in. Mrs B had 2 years experience as a secretary in various jobs and 2 years accounting experience from her previous employment with Smet Ltd.
- 5.7** The PS Department at no time during the processing of the applications saw Mrs B's application. As shown in the chronology (06/06/94) Mrs B wrote directly to Mr Lesines; therefore Mr Lesines would have been the only person who knew about Mrs B's interest in seeking a job as a secretary or Asst. Accountant. During Mr Lesines' time as Deputy Director he attended the Commission meetings regularly.
- 5.8** Mr Mael who was the Chairman of the Commission at the time of the appointments stated that he did not see the applications for the post of Accountant. Evidence obtained from Mr Mael and Mr Basil showed that they had not seen Mr Mrs B's application. However, there was an oral recommendation from one of the Directors of the PS Department to appoint Mrs B as Asst. Accountant. Mr Mael does not remember whether it was Mr Lesines or Mrs Crowby. At that time, the Director responsible for PS Department was Mrs Crowby. The Commission's reason for making the appointment of Mrs B according to Mr Mael were :
- (a) Mrs B was doing the job of Asst. Accountant before while the holder of the post was away on study leave in Fiji.
  - (b) She had some experience in accounting from previous jobs.
- 5.9** Mr Mael's explanation for Mr Y's appointment was as follows:
- (a) Mr Y was appointed Storeman as the post was vacant. Mr Mael said there were no applications for this post.
  - (b) The Commission thought the job of Storeman required someone who could do manual work so it was given to Mr Y as he was male.
- 5.10** Mr Basil, a member of the PS Commission stated that the PS Commission appointed Mr Y to the post of Storeman as he was already in the Department despite Mr Mathias' recommendation to appoint him Asst. Accountant.

- 5.11** Mr Mael also said in his statement that *"he knew it was against the law to appoint someone to a post when that person did not apply for the job but the Commission has the right to appoint whoever they want."*
- 5.12** Mrs B had been politically appointed twice in 1994 as Secretary/Typist by the former Prime Minister Honourable Mr Maxime Carlot Korman and Honourable Sethy Regenvanu who was Acting Prime Minister in November 1994 to the Ministry of Agriculture which was at that time under Minister Thomas Brothi Faratia, a UMP member (see Appendix "F" and "G").
- 5.13** As noted in the chronology Mr Mathias' letter dated 10/01/95, shows that he was not satisfied with the appointments. He did not have the budget to pay Mrs B therefore he requested that she be transferred elsewhere. He added that Mr Y should remain as Asst. Accountant as he was more useful there than being a Storeman.
- 5.14** Mr Mathias said to the Ombudsman that at the time of Mrs B's appointment, he had no knowledge of Mrs B's interest in the post of Asst. Accountant within his department. In an interview with the Ombudsman Mr Mathias stated that the post of Clerk was already occupied by Mr Camille Atuary so he wanted Mr Y to perform the functions of Asst. Accountant.

### **Conclusion on complaint**

- 5.15** Even though Mr Y had the right to report this case of maladministration to me, I found from the list of candidates that another candidate Mr X was more suitable for the post of Asst. Accountant. Mr Y's recruitment to the post of Asst. Accountant was illegal as it was in breach of the procedures set out in clauses 3.11 to 3.19 of the Manual. Mr Y did not have any experience or qualifications in accountancy. His previous experience was unrelated to his ultimate appointment to Asst. Accountant in the Forestry Department. Mr Y's termination in the Finance Department was one major factor which was unfavourable to his application.

## **6 REPLIES**

### **Mr Johnny Tinsley Lulu, former PS Commission Member**

- 6.1** Mr Lulu sent a 3 page letter replying to my preliminary report. He stated that:



- **The PS Commission went through a very hard and difficult transactional [sic transitional] period during the period of this particular appointment. This was because of the change of government.**
- **During the change of government there were political interferences in all sectors, the public service, statutory bodies and private. Then there was the civil servants strike which saw the sacking of 400 civil servants. All of these would be political interferences if you wish to call it that.**
- **All appointments made in 1991 to 1995 are some what connected with politics but the PS Commission carefully balances the situation in making sure that all appointments must be made not to discriminate/politically but by merit.**  
**\*See appendix "H".**

**6.2 As to the appointments made in this report Mr Lulu said the PS Commission had carried out its function at the time of hardship without any discrimination. The PS Commission took into consideration whether Mr Y or Mrs B were suitable candidates taking into account Mr Y's previous employment record.**

### **Ombudsman's comments**

**6.3 Mr Lulu stated that during the period from 1991 to 1995 there were a lot of political interferences in the public service and elsewhere. Therefore, most of the appointments during that time may be questioned; such as in this case. Yet in the same breath Mr Lulu contradicts himself by saying that the PS Commission did not breach their duty.**

**6.4 Supposing Mrs B had applied for the job of Asst. Accountant then Mr Lulu's explanation would have been reasonable. Mrs B's appointment did not follow the proper legal procedures for permanent appointment. There was another candidate who was more qualified than her who was Mr X from the Finance Department. He was not appointed. His application was ignored by the PS Commission.**

**6.5 If the PS Commission appointed candidates according to merit then the person most qualified for the post of Asst. Accountant would have been Mr X as outlined in paragraph 5.4.**



**Mrs B who was appointed to the post of Asst. Accountant**

- 6.6 Mrs B's reply is marked annexure "I". She stated in her reply that she was happy that the PS Commission appointed her to the position of Asst. Accountant within the Forestry Department. She stated that she did not know what happened between the PS Department and the PS Commission.
- 6.7 Mrs B said she did not have any affiliation with political people and did not want to involve herself with politics. She stated that Mr Lesines was a friend of hers.

**Ombudsman's comment**

- 6.8 Mrs B admits she knew Mr Lesines as a friend. Although Mrs B said she did not have connections with political parties she worked as a political appointee in the Ministry of Agriculture, Livestock, Forestry and Fisheries from the periods of 04/03/94 - 04/04/94 and 22/09/94-24/10/94. Refer to appendix "G" and "H".

**Mr Mathias, the Director of the Forestry Department**

- 6.9 Mr Mathias' reply is annexure "J". He said that it took a very long time for the application for the accountant to be processed by PS Commission. Mr Mathias said that he had recommended Mr Y to the post of Asst. Accountant. He said that he was advised by PS Department that if he wanted that person at the earliest then he may be recruited on a temporary basis and await his proper appointment. Mr Mathias said "*I had no intention nor any plan to recruit anyone illegally even Mr Y*".
- 6.10 Mr Mathias blamed the PS Department for not advising him that the recruitment would be illegal and that he would have to wait. He said the PS Department prepared the letter of Daily Rated Employment and he had no input into this nor did he try to influence or force PS Department to make this appointment.

**Ombudsman's comment**

- 6.11 Mr Mathias should not be putting the blame on PS Department as all Heads of Department are expected to know the public service laws

and procedure and should they need any advice, they have the Attorney General's Chambers to assist them. However, it is regrettable that PS Department did not nevertheless point out the legalities to a newly appointed Director.

## **7 FINDINGS OF WRONGFUL CONDUCT AND MALADMINISTRATION**

**The PS Commission comprising of Messrs Mael, Basil, Lulu, Andeng, and Koriaru**

### **FINDING NO.1: BREACH OF THE CONSTITUTION ART 60 AND PUBLIC SERVICE LAWS**

- 7.1** The commissioners breached their constitutional duty and the public service laws by failing to act independently and fairly when they followed Mr Lesines' recommendation without satisfying themselves that the applications were processed properly following the standard public service laws and procedures.

### **FINDING NO.2: FAILURE TO FOLLOW PROCEDURE OF THE MANUAL**

- 7.2** The commissioners failed to take into account major essential considerations that are mandatory before any appointment including:
- (a)** That the positions were advertised;
  - (b)** That all the applications were considered and that the most qualified and suitable person for the job, i.e based on merit, was appointed;
  - (c)** That the position existed (in this case the PS Commission created one P.8 Accountant position forcing the Forestry Department to spend more money). The creation of an additional permanent position on P.8 salary scale in the Forestry Department on a political basis has contributed to the inefficiency of the Public Service. In the end result because the Forestry department could not afford to pay Mrs B's position the PS Commission transferred her to the Department of Ports and Marines;

(d) That the Department had enough funding.

**FINDING NO.3, 4 & 5: BREACH OF LEADERSHIP CODE**

- 7.3 In my opinion the commissioners breached the Leadership Code by reason of their incompetence and their negligence as outlined above.
- 7.4 It also appears that they placed themselves in a position in which they have or could have a conflict of interests or in which the fair exercise of their public or official duties might be compromised because Mrs B was appointed politically rather than on merit. They have therefore demeaned their positions by their actions.
- 7.5 The public of Vanuatu has a right to expect the members of the PS Commission to act in the best interest of the Public Service and not to be manipulated by a Director who wants to appoint a person with a similar political colour or a friend.

**Mr Lesines Former Deputy Director of PS Department**

**FINDING NO.6: BREACHES OF THE LAWS**

- 7.6 Mr Lesines breached the laws governing Public Service by not following the proper recruitment procedures set out in the Manual. He has also interfered with the PS Commission's constitutional duty to act independently. In my opinion he may have committed an offence under s20 of the PS Act which prohibits interference with the independent functioning of the PS Commission.

**FINDING NO.7: BREACHES OF THE LEADERSHIP CODE**

- 7.7 As a result of finding No.6 I consider that Mr Lesines breached the Leadership Code like the PS Commission. His actions have demeaned his office and he has placed himself in a position in which he has a conflict of interest in which the fair exercise of his official duties might be compromised.

**Mr Mathias - Director of the Department**

**FINDING NO.8: BREACH OF PUBLIC SERVICE LAWS**

- 7.8 Mr Mathias as Head of the Department did not follow the appointment procedures of the Manual by recruiting Mr Y to the post

of Asst. Accountant before the PS Commission formally made the appointment of Asst. Accountant. Mr Mathias used the procedures set out in the Casual Employees Manual. These procedures cannot be used for recruiting permanent employees. Therefore Mr Mathias' appointment of Mr Y was illegal however he has a reasonable excuse as he was new to the position and "had no Executive or even a Financial Officer". The application took "ages to go through" and he was advised by "PS Department that if he wanted that person at the earliest then that person may be recruited on a temporary basis and await his proper appointment". See appendix marked "J".

## **8 RECOMMENDATIONS**

### **RECOMMENDATION NO.1: STRUCTURE AND PROCEEDINGS OF PS COMMISSION TO BE AMENDED**

**8.1 The PS Commission has very limited human resources. It appears that the PS Commission has a small office with no support staff.**

- (a) At the moment the only assistance given to the PS Commission comes from the PS Department. If the PS Department gives assistance it should do it professionally by making sure that all applications are processed properly and have all necessary documents such as qualifications of all applicants to enable the PS Commission to appoint candidates on merit. If the PS Commission is not satisfied that all the legal requirements are met they should not make an appointment. The PS Commission should never allow itself to be directed by the Directors of PS Department or anyone else for that matter.**
- (b) The PS Department is under the direct supervision and authority of the Prime Minister. This is unsatisfactory as far as the independent status of PS Commission is concerned. For example, the PS Department submission form has the Prime Minister's recommendation and may influence the PS Commission in its decision making.**
- (c) I consider that the solution would be to strengthen PS Commission by giving it more advisers and more qualified staff in order to re-establish its independence or by transferring the PS Department under the authority of the PS Commission to facilitate their management and to strengthen the independence**

of the Public Service cutting it from the direct political interference of the Prime Minister who is now the Minister responsible for PS Department. I understand that similar recommendations have been issued by the recently appointed Comprehensive Reform Program Task Force.

**RECOMMENDATION NO.2: APPOINTMENT LAWS AND  
PROCEDURE BE OBSERVED AT ALL  
TIMES**

8.2 The PS Commission is to ensure that:

- (a) proper appointment procedures are followed and appointments are made based on qualifications and merit;
- (b) there is sufficient budget for the appointments.

**RECOMMENDATION NO.3: ALL PUBLIC SERVICE APPOINTMENTS  
FROM 1991 TO 1995 BE REVIEWED**

8.3 If all public service appointments have been done in an irregular manner as stated by Mr Lulu from 1991 to 1995 then all the appointments should be reviewed.

**RECOMMENDATION NO.4: RECRUITING OF EMPLOYEES TO  
PERMANENT POSITIONS THROUGH  
THE PROCEDURES UNDER CASUAL  
EMPLOYEES MANUAL TO BE STOPPED**

8.4 As most Directors of Government departments have been recruiting employees to permanent positions through the procedures in the Casual Employees Manual I recommend that this practise be stopped immediately. It is an illegal practice. All the previous appointments should be reviewed and annulled if this is so and the positions should be advertised.

**RECOMMENDATION NO.5: PS DEPARTMENT TO STOP ACCEPTING  
THE ABOVE PRACTICE**

8.5 The PS Department is to stop accepting this practice and advise all Heads of Departments that the proper way to recruit employees to permanent positions is by the procedures set out in clauses 3.11 to 3.19 of the Manual.

**RECOMMENDATION NO.6: PUBLIC SERVICE LAWS BE MADE ACCESSIBLE**

- 8.6 All Heads of Departments and public servants are to have access to all laws governing the public service, and may be a summarised presentation should be prepared by the PS Department and distributed freely in the Public Service.**

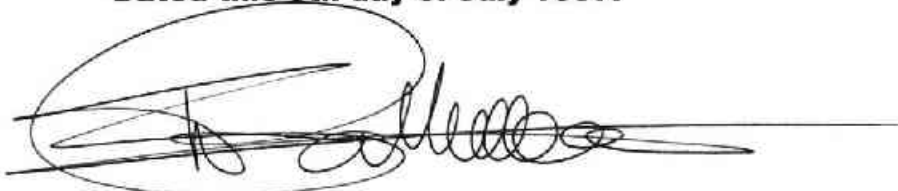
**9 CONCLUSION**

In accordance with art 63(4) of the Constitution and s23 of the Ombudsman's Act No.14 of 1995, I am forwarding a copy of this report to the President of the Republic of Vanuatu and the Prime Minister who is Minister responsible for Public Service and the relevant public authorities. According, to the Constitution their duty is to "decide upon the findings of the Ombudsman within a reasonable time and the decisions, with reasons, shall be given to the complainant forthwith".

I therefore request all the appropriate authorities to decide upon these findings within 21 days upon the date of receipt of this report:

- His Excellency the President of the Republic of Vanuatu
- Honourable Prime Minister
- The President of the Public Service Commission
- The Director of the Public Service Department

Dated this 9th day of July 1997.



**MARIE-NOËLLE FERRIEUX PATTERSON**  
**OMBUDSMAN OF THE REPUBLIC OF VANUATU**



## **10 APPENDICES**

<b>Annex "A"</b>	<b>A II of the Casual Employees Manual</b>
<b>Annex "B"</b>	<b>Letter of job application by Mrs B</b>
<b>Annex "C"</b>	<b>Advertisement form for Accountant</b>
<b>Annex "D"</b>	<b>Minutes of meeting by PS Commission</b>
<b>Annex "E"</b>	<b>Letter of Appointment to Clerk</b>
<b>Annex "F"</b>	<b>Mrs B's letter of Appointment I</b>
<b>Annex "G"</b>	<b>Mrs B's letter of Appointment II</b>
<b>Annex "H"</b>	<b>Mr Lulu's Reply</b>
<b>Annex "I"</b>	<b>Mrs B's Reply</b>
<b>Annex "J"</b>	<b>Mr Mathias' Reply</b>



# Annex AII of the Casual Employees Manual

## GOVERNMENT OF THE REPUBLIQUE OF VANUATU PUBLIC SERVICE DEPARTMENT VACANCY NOTICE

PSD. 206/04/94

The Vanuatu Government Administration wishes to recruit for the Forestry Department.

One (1) accountant (in main Office)

Applicants should provide evidence of their qualifications when applying.

Applicants are reminded that it is not necessary to forward a medical certificate with their application. Only the successful candidate will be required to produce a medical certificate before the appointment is made.

Forward birth certificate or declaration in lieu thereof and statement showing the applicants marital status and number of children.

### MINIMUM QUALIFICATIONS REQUIREMENTS ESSENTIAL TO THIS POST:

Qualifications and Experience: Qualification for entry to the Public Service on the job training.

SPECIALIZED TRAINING: in Accounting and administration

BOOKING COURSES: Preferably relevant work experience.

LANGUAGE(S): English or French with knowledge of other language where possible.

EXPERIENCES: At least 5 years relevant administrative experience in Government Services or Private Sector.

### DUTIES AND RESPONSABILITIES:

Enter and maintain the department votebook and records of revenue collected.

1. Enter details of the commitment and expenditure of departmental funds in votebook.
2. File all departmental copies of vouchers, other payment documents, and all records required for purposes.
3. Prepare draft statements of commitment and expenditure of funds.
4. Prepare draft statements of revenue collected.
5. Maintain Head Office petty cash advance.


Letter of job application by Mrs B

PORT VILA.

PORT VILA.

Cher Monsieur,

P. J. : 5



"C"

Advertisement form for Accountant

REPUBLIQUE DE VANUATU

NO. 0436... 1994

CONFIDENTIEL

Secur - file

DEPARTEMENT DE LA FONCTION PUBLIQUE  
SOUSSION A LA COMMISSION DE LA FONCTION PUBLIQUE

Session N°... 37... 1994

Objet : . APPOINTMENT OF ONE ASSISTANT ACCOUNTANT . - FORESTRY DEPT . .

Commentaires du Département de la Fonction Publique :

Vacancy notice closing date is 13th April 1994 . . . . .

Please see attached recommendation from Director of Forestry . . . . .

Recommandations du Département de la Fonction Publique :

Recommended . . . . .

Avis du Ministre de la Fonction Publique :

Aval du Ministre  
de la Fonction Publique :

Acting

Nom de l'Agent Emetteur :  
M. CROWBY

Titre : DIRECTOR

Signature :

26/20/94

Commission de la Fonction Publique

Approuvé/Non approuvé

Signature du Président :

Pse approves that Mrs E. take the position of ASS/Accountant P.2 and Mr Y as Storeman/Purchasing Clerk P.05

"D" Minutes of Meeting by  
PS Commission

**CONFIDENTIAL**

UTE NO.37 SESSION OF THE PUBLIC SERVICE COMMISSION MEETING  
D ON THE 1ST DECEMBER 1994 AT THE PSC SECRETARIAT AT 8.30 AM

<u>sent:</u> Mr Mael WILLIAM	Chairman
Mr Johnny T LULU	Member
Mr Edwin BASIL	Member
Mr Amos ANDENG	Member
Mr Kalori KORIARU	Member
MR Bergmans BEBE	Secretary

Appointments & Promotions:

- a) PSC approves the recruitment of Mrs B <sup>P.9</sup>  
Assistant Accountant on grade P.8 and Mr Y <sup>as</sup>  
as Storeman and Purchasing Clerk on grade P.5,  
effective from 16 December 1994 - Forestry Department.

7/12/94





GOVERNEMENT  
DE LA  
RÉPUBLIQUE DE VANUATU

SERVICE DE LA  
FONCTION PUBLIQUE

Sac Postal Privé No. 017  
Port Vila



GOVERNMENT  
OF THE  
REPUBLIC OF VANUATU

DEPARTMENT OF  
PUBLIC SERVICE

Private mail Bag 017  
Port Vila

PF.

703/2073/94/MC/mjm

9th December 1994

Mr Y [REDACTED] *file*  
C/- Forestry Department  
PORT-VILA

Dear Mr Y [REDACTED],

I am directed by the Public Service Commission to offer you a permanent appointment to the post of a Storeman & Purchasing Clerk in the Forestry Department of the Vanuatu Government Public Service subject to the production of a certificate of medical fitness given by a medical practitioner approved by the administration. This medical certificate should be submitted within 28 days from the date of this letter.

The post is in grade PS.1 of the Public Service Salary Scales and your appointment would be on an annual salary of VT. 441,816 per annum plus a supplement of VT. 31,000 per annum with effect from 16th December 1994.

The terms and condition of service applicable to the Vanuatu Public Service are contained in the Staff Manual for the Public Service and will apply to you. You should familiarise yourself with the contents of the conditions of service including all the Public Service Instructions which have been issued so far to amend some of the sections of the Staff Manual which should be available in your Department.

No accommodation will be provided by the Government. However you will receive a lodging allowance in lieu thereof if you occupy privately rented house or apartment.

.../2...

# Mrs B's Letter of Appointment I

DEPT OF FINANCE VANUATU 678 25533

Attention: HOSEA TALLY

P.01

GOUVERNEMENT  
DE LA RÉPUBLIQUE  
DE VANUATU



DRL WAGES OFFICER

GOVERNMENT  
OF THE REPUBLIC  
OF VANUATU

BUREAU DU PREMIER MINISTRE

OFFICE OF THE PRIME MINISTER

PM/301/4/300/MCK/MK/mp/94

10th March 1994.

Mrs B.  
C/- Ministry of Agriculture  
Vanuatu Government  
PORT VILA.

RECEIVED

15 MAR 1994  
ACCOUNTANT GENERAL'S  
DEPARTMENT

Dear Mrs B


I have the honour to inform you that approval has been granted to appoint you as Secretary/Typist on a temporary and political basis.

Your appointment will be on Daily Rated basis at the salary scale of C4.4 which is equivalent to Vatu 2,020 per day plus a monthly supplement of Vatu two thousands five hundred (VT2,500) in respect of cost of living allowance as stipulated in the Casual Manual Employees Condition of Service.

Your appointment takes effect as from 4th March to 4th April 1994.

While on Daily Rated terms, the Casual Manual Employees Condition of Service will apply to you.

Yours faithfully,

  
MAXIME CARLOT KORMAN  
Prime Minister  
Vanuatu Government



cc : Director General of Finance ✓  
Director of Public Service  
First Secretary, Ministry of Agriculture  
Attorney General's Chambers  
Auditor General  
Second Secretary, PM's Office - Mrs Maria Kalsakau  
TELEPHONE : 22 413 PRIVATE MAIL BAG 053 TELEX : 1040 VANGOV



BUREAU DU PREMIER MINISTRE

OFFICE OF THE PRIME MINISTER

PM/301/4/1277/SJR/MK/mp/94

4th November, 1994.

Mrs B  
C/- Ministry of Agriculture  
Vanuatu Government  
PORT VILA.



Dear Mrs B,

I have the honour to inform you that approval has been granted to appoint you as Secretary/Typist on a temporary and political basis.

Your appointment will be on Daily Rated basis at the salary scale of C4.4 which is equivalent to Vatu 2.020 per day plus a monthly supplement of Vatu two thousands five hundred (VT2.500) in respect of cost of living allowance as stipulated in the Casual Manual Employees Condition of Service.

Your appointment takes effect as from 22nd September to 24th October, 1994.

While on Daily Rated terms, the Casual Manual Employees Condition of Service will apply to you.

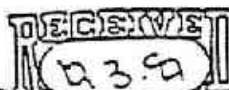
Yours faithfully,

  
**SETHY J. REGENVANU**  
Acting Prime Minister

cc : Director General of Finance  
Director of Public Service  
First Secretary, Ministry of Agriculture  
Attorney General's Chambers  
Auditor General  
Second Secretary, DM's Office - Mrs Maria Kalsakau

Mr Lulu's Reply

REPUBLIC OF VANUATU



REPUBLIQUE DE VANUATU

DEPARTMENT OF  
PROVINCIAL AFFAIRS

SERVICES CHARGÉ DES  
AFFAIRES PROVINCIALES

PRIVATE MAIL BAG 021  
PORT VILA  
VANUATU

Telephone: 22252 - 22561 - 25610 - 24639 Fax: 26405

SAC POSTALE PRIVÉ 021  
PORT VILA  
VANUATU

JTL-pa  
LG: 2/12/35

Port Vila, 12th March 1997

Mrs. Marie-Noelle Ferrieux PATTERSON  
Office of the Ombudsman  
P.O.Box 126  
PORT VILA  
VANUATU

Dear Madam,

SUBJECT: COMPLAINT/PRELIMINARY REPORT ON THE DISCRIMINATORY  
RECRUITMENT PROCEDURES BY THE PUBLIC SERVICE COMMISSION CONCERNING  
POSITIONS IN THE FORESTRY DEPARTMENT

I acknowledge received your letter dated 3rd March 1997 with the letter attached is a Preliminary Report concerning the above caption matter.

STATEMENT

As member of the Public Service Commission during that period, the Public Service Commission went through a very hard and difficult transactional period. This because the change of Government from Vanuaku Party to Union of Moderate Party.

During the change of Government political interference in all Sector, Public Service, Statutory Body and Private Sector and you will remember at the end of the day four hundred (400) Civil Servant were dismiss, this also involved a very high level of people, it would be a political interference you may wish to call it.

FIVE (5) FACTUAL BACKGROUND

There are factor should be establish in your Preliminary Report are not there :-

- a. Mr. Y employed by the Finance Department and was dismiss with mis-conduct.  
(You have no reported on that)

.../...

- b) He was terminated on the ground that he had leak confidential financial matter of the Government.  
(You have no reported on that)
- c) He then recruited to the Forestry Department as casual employee.  
(You have no report on the matter how he was recruited to the Forestry Department)

I have not sited those issues in your preliminary report.

But I do believe that the Public Service Commission had carried out its function at that time of handship without discriminatory. The fact is the Public Service Commission is looking at the efficient to the Government in other word should Mr. Y will be a suitable candidate or Mr. B. will be a suitable candidate, taking into account also Mr. Y previous employment report.

#### PRELIMINARY FINDINGS OF WRONGFUL CONDUCT

Subction 6.2, "the Commission breached their duty". To my interpretation, I will not accept that the Public Service Commission breached their duties.

My reasons if the Public Service Commission breached their duty, then all appointment made from 1991 to 1995 including your appointment are all in breached of the Constitution Article 57-(1) to (8) and Article 61-(1).

All appointment made in 1991 to 1995 are some what connected with politic but the Public Service Commission carefully balance the situation in making sure that all appointment must be made not to discriminate/politically but appointment must be made in merit.

In conclusion, I believe that the Public Service Commission carried out its function in according with Section 2 of the Act further more Section 3 (a).

I wish to comment here that during my service as member of the Public Service Commission, there are many issues to be raise but I do not have the opportunity to do so. As member of the Public Service Commission, I have to keep my commitment to the Public Service Commission to keep all matter whether in writting or discussion this are all CONFIDENTIAL (SECRET).

.../...



18 March 1997

# Mrs B's Reply



From : Mrs B  
Dept of Ports & Marine  
Port Vila

To : Office of the  
OMBUDSMAN  
Port Vila

Dear Ombudsman,

I have received this day, thursday 13th March 1997, your letter about a complaint dated 4th March 1997 and thanked you for.

I have read the documents and understood them. Also, I have some few things to clarify as followed :

1. I have written an application letter in french to Mr Lesines that he may help me find a job in the P.S. seeing that the end of my working term with M.A.L.F.F. has nearly come to its end.  
~~XXXXXXXXXXXX~~
2. I have no idea about Mr Lesines background. I only knew him as a friend like any other friends.
3. I do not have any political area in my life and I do not even want to involve with politics either.
4. I do not have any good understanding about the Staff Manual or regulations about recruitment within Government Ministries or Departments.
5. The only thing I know is that I have received a letter from the P.S. Administration (Highest Authority) approving me to the Dept of Forests ; but there seems to have a problem from which the Director did not clear up this matter with me. Each time I went to have a talk with him, he is wether busy or out. So I gave up and went back to Mr Lesines and told him to withdraw my letter of appointment to the Forestry Dept I cannot go against the Director's agreement and I do not want to spoil my friend Mr Y . . . I will look for another job within the private sector.
6. On the 30th January 1995, I have received another letter from Mrs Crowby in reference "Transfer to Ports & Marine Dept". So I went and gave my letter to the Director and I started working there till now as a permanent staff.

.../...

7. I believe that if I had known about all the laws governing the P.S., I would follow the proper steps to find a job within the Government sector.
- I was very surprised to receive your letter telling me about finding or wrongful conduct and I was occupying another person's place etc... I understand that you and the P.S.C. are doing your duties but in accordance with your letter and my knowledge of how I came to work as a government officer, I considered myself not guilty apart from what I have mentioned to you but doer of what the Public Service Commission letter authorises me to, following its approval letters (2) which I have received.

I just want to add this clarification before I end my letter. I mention to you earlier that I found myself not guilty because I consider myself as a tool.

- a. I do not even know what the Commission is doing with my application and the Director of Forests comments about my recruitment within his Dept.
- b. The Commission approved me to the Dept of Forests and I wasn't applying for before but I was seeking for a vacancy within the Government sector for a Secretary or an Assistant Accounts.
- c. About the changes between Mr ~~██████████~~ and Myself, I am not aware of that matter also.
- d. I was happy that the Commission did not take long to answer my application and appointed me to the Forestry Dept. So I just follow their instructions. Somehow, the Director of Forestry refuses to see me or even to talk with me several times concerning my recruitment within his Dept. If he did, I would understand him. But anyway, I recognise and respect his authority over his Dept and again, I will not spoil my friend Kalfapun. I felt down hearted and I gave up.
- e. But then, unexpectedly and without applying for, I received another letter moving me from the Forests Dept to Ports & Marine Dept. As I was disappointed about my first letter I did not take this second one as an opportunity but for the sake of my family, I just agree to go for.
- f. I was wondering and praying for all these mysteries because I am a spirit filled believer living in a christian country and I trust God for in him there is no secrecy. One day he will give me the revelations of all my questions.

.../...

- g. This day, Wed. 12/03/97, after receiving your letter, it takes me two (2) years and a month to know about everything that happened to me since I begun to serve the Government as a permanent Civil Servant. However, I take this opportunity once more to thank you for your letter which clarify or gives me a clear view from the begining of my recruitment within the Government sector. And I thank God for.
- h. I feel glad to know the revelation of these hidden secrets and also sad at the same time because the Commission is trying to give a wrong picture of me and accusing me falsely and spoiling my name of something that I, even I have tried for a longtime to know what is going on.
- i. I see myself like a tool moving from one place to another without knowing anything but just a doer of what the Highest Authority (P.S.C.) wants me to do according to the acknowledgment of their letters (2). And I just humble myself and submit to their Authority.
- 8. I would like to ask you, Ombudsman, if it is possible that I may have an appointment with these commissioners.
- 9. Lastly, as I now serve the existing Government of today with fidelity and honesty as a permanent civil servant, I declare that the countenance of my letter is true according to our christian country's motto "In God we stand".

In case for more informations, do not hesitate to contact me. I am available at any time convenient.

Thank you very much.

Yours



MRS B