



**OFFICE OF THE OMBUDSMAN**

## **PUBLIC REPORT**

# **ON THE UNLAWFUL TRANSFER OF MR BADDGIO MALAPA BY THE PUBLIC SERVICE COMMISSION**

Date: 8 April 2025



**REPUBLIC OF VANUATU**

**OMB24/0003/2025/01**

## TABLE OF CONTENTS

1. PURPOSE	3
2. SCOPE	3
3. ISSUE	3
4. OUTLINE OF EVENTS	3
5. DISCUSSION	4
6. RESPONSES BY THOSE WITH COMPLAINTS AGAINST THEM	10
7. FINDINGS	10
8. RECOMMENDATIONS	11

**1. PURPOSE**

The purpose of this investigation is to determine whether the Public Service Commission (PSC) acted as good employer while transferring Baddgio Malapa out from PSC to the Ministry of Education.

**2. SCOPE**

The scope of the investigation is;

- 1 . To look into the conduct of PSC whether or not their decision to transfer Badgio Malampa was in line with the process under the Public Service Act and the Public Service Staff Manual
- 2 To look into the reasoning's of the transfer and to determine whether PSC acted as good employer before making such decision to transfer Badgio Malapa out from his substantive position.
- 3 To look into the scope of the new position and determine whether or not Baggio has the capacity and knowledge to carry out the role as expected.

**3. ISSUES**

There is only one issue arising in this matter, namely:

- whether the process undertaken by PSC to transfer Badgio Malapa from Public Service Commission was in line with the process under the PSC Act and PSSM.

**4. OUTLINE OF EVENTS**

- 1 . On 4 October 2023, PSC served a permanent transfer letter to Baggio Malapa. In the letter, it stated that PSC in its meeting NO. 11 of 22<sup>nd</sup> September 2023, decision NO.3 revokes its decision NO.55 of meeting NO.8 of temporary Baggio's temporary transfer to the position of Principal HRMIS at the Corporate Service Unit of OPSC.
2. The Commission further approved his permanent transfer from the Office of the Public Service Commission, VIPAM Unit to the position of Industrial/BDS Coordinator at the Ministry of Education and Training on position NO.3508 of the Ministry of Education. The permanent transfer letter was signed by the Acting Deputy Secretary of the Public Service Commission, Mr Stephane Bong.

## 5. DISCUSSIONS

The issue arising in this matter is:

- whether the process taken by PSC to transfer Baggio Malapa from the Public Service Commission to the Ministry of Education and Training was in line with the process under the PSC Act and PSSM.

It was observed that Baggio Malapa was Acting in the position of HRMIS Officer within the VIPAM Unit under the Public Service Commission before being permanently transferred out by the PSC to the Ministry of Education and Training. Throughout the investigation, the Ombudsman noted that there was no consultation with the Director General of the Ministry of Education prior to his transfer.

There are available evidences from a number of sources. First from the Director General of the Ministry of Education and Training Mr Bergman lati. The relevant part of his statement goes as follows:

"Mi no save good issue blo transfer ia, be mi save nomo se / gat wan disciplinary matter we PSC hemi stap tekemaot and 0/1' write or call / kam down and informem mi 10 transfer ia. Mi nomo remember gud 10 time, be mi think se oli been text or call ikam. Be 10 level blo mi olsem DG mi no been request blo any transfer from PSC blo kam down 10 Ministry blo Education and Training"

### **Chapter 7, Subsection 5.11 of the Public Service Staff Manual states the following;**

"5.11 Refusal to accept a transfer without valid reason

(a) An officer who fails to accept a transfer or take a posting from one position or locality to another within the Public Service may be dismissed without notice, if in the opinion of the Commission the officer fails to provide a valid or sufficient reason for refusing the transfer or posting [Public Service Act, section. 26(2)1.

(b) However, no action shall be taken by the Commission in relation to the transfer or posting of an officer without first consulting with the Director-General of the Ministry where the officer is located. The Director-General, in turn, should consult with the Director of the Department and the officer before providing advice to the Commission.

(c) Any such action, including any intended dismissal action, shall also only be taken in accordance with the Commission's obligation to act as a good employer"

### **Public Service Act**

#### **49. Duty of Commission to consult with director-general**

(1) The Commission must consult with the relevant director-general in relation to any action it proposes to take involving any ministry or department prior to taking the proposed action.



(2) The Commission must take into consideration the views and requirements of the director-general prior to taking the proposed action, and must cooperate and be prepared to compromise where appropriate in the action initially proposed

I am more concerned about clause 5.1 1 (b) above. There was no record of consultation between PSC and the Ministry of Education and Training through DG's Office about the transfer of Baggio Malapa.. That, to me, PSC's intended action was not made in accordance With the Commission's obligation to act as a good employer.

I quote the meaning of consultation from google as mentioned under subsection 5.1 1 , clause (b) as follows,

"The act of exchanging information and opinions about something in order to reach a better understanding of it or to make a decision, or a meeting for this purpose"

There was no record of formal meeting with the Director General about the transfer.

The second evidence comes from Lolina Navui, Human Resource Officer of the Ministry of Education and Training. The relevant part of her statement goes as follows;

"PSC oli been call I kam b/o askem wan vacant position then umi reply se I gat and from hem / gat power blo mekem transfer and hemi mekem so Ministry hemi no requestem any transfer from the Public Service Commission. Badgio hemi kam inside 10 wan vacant position we wan staff hemi been sta [em be hemi pass away few months ago. "

The third evidence come from Baggio Malapa. The relevant part of his statement goes as follows;

"Transfer blo mi I kam o/sem wan surprise, mi no aware to se bai mi transfer go 10 MoET, Suspension blo former Manager corporate Service Adrina Woi we I happen 10 same date 10 22nd september 2023. Taem we mi kam 10 Office be mi luk boss blo mi hemi mekem sign blo hand 10 neck. Time mi go Stephane Bong hemi singoutem mi through 10 wan fled officer wetem witness blo wan Compliance Officer Mrs Marlene Salwai blo givim letter blo mi.

Oli talem se bai wan officer blo PSC / escortem mi I go 10 Ministry blo Education. „Mi no save reason blo transfer blo mi from 10 letter 0/1 no statem clearly. MO position blo mi to we mi go lem scale blem hemi no stret so PSC oli kam blo stretem back through 10 wan nara letter bakeken I kam.

Current boss blo mi Johnson Toa hemi rush 10 olgeta 10 PSC (Willie Kalmatak Principal Human Ressource Officer'.

The above statement of Baggio Malapa goes to the heart of duty of Public Service Commission's major function and duty to act as good employer.

## Public Service Act

### "8. Major functions of the Commission

(2) In carrying out its functions, the Commission must have regard to the policies of Government as communicated to the Chairman of the Commission from time to time in writing by the Minister.

(2A) The Commission must perform its functions efficiently, effectively and properly.

(3) Notwithstanding subsection (2), in matters affecting employees (whether matters relating to the appointment, remuneration, promotion, demotion, transfer, disciplining or the cessation of any employee or other matters), the Commission shall act independently but have regard to its obligation to act as a good employer.

### 15. Duty to act as a good employer

(1) It shall be the duty of each member of the Commission to ensure that the Commission shall, in the performance of its functions, responsibilities and duties, be a good employer.

(2) The Commission shall as a good employer:

- (a) ensure the fair and proper treatment of employees in all aspects of their employment; and
- (b) require the selection of persons for appointments and promotion to be based upon merit; and (c) promote good and safe working conditions, and
- (d) encourage the enhancement of the abilities of individual employees; and (e) promote and encourage an equal opportunities programme; and (f) abide by the principles set out in section 4.

(3) In determining a person's merit for appointment or promotion to a post or salary increment regard must be had to:

- (a) skill and ability to perform the duties and responsibilities of the post; and
- (b) the standard and efficiency of work performance; and
- (c) formal qualifications and training"

In my view, the PSC has acted outside of the requirements under section 8 and section 15 of the Public Service Act to ensure that its decision reflect its functions as a good employer.

**The fourth evidence comes from Nicole Matan. The relevant part of her statement goes as follows;**

- "Mif/a i just save nomo time Officer (Baddgio) i kam wetem Letter blo transfer blem ikam 10 MoET and hemi karem i swem [o mifla 10 office. After then mifla i go presentem hem 10 boss blem, boss blo mi (Lolina Nafuj) nao hemi tekem hem mifla i go wetem two narafala Officer blo PSC and Mr Johnson Toa hemi argue smol from Officer



blem i just dead nomo mo o/ thing blem i stap yet 10 Office and PSC oli mekem transfer. After 10 argument blem hemi just coo/ down. Before transfer i kam mifla 10 HR management mifla i no aware 10 transfer. However PSC oli call I kam nomo blo double chekem wan vacant position and mifla confirm be mifla i no save intention blo PSC blo oli mekem transfer. I no event gat wan letter or wan email i kam blo notifiem mifla 10 transfer ia...

Mrs. Matan confirmed that the Human Resources Management team at the Ministry of Education and Training (MoET) were not informed about Mr. Baggio's transfer. The transfer letter from the Public Service Commission did not provide any reasons for the transfer. She further explained that during Mr. Malapa's introduction to the office, his current supervisor, Director Mr. Johnson Toa, expressed his disappointment regarding the transfer, noting that the previous officer in that position had passed away and his belongings were still in the office. At that time, Director Toa had a disagreement with the PSC officers who accompanied Mr. Malapa to his new position at MoET.

Based on assessments of witness statements provided to the Ombudsman's Office, it is evident that the Public Service Commission (PSC) failed to comply with the formal processes outlined in Chapter 7 (5.11)(b) of the Public Service Staff Manual (PSSM). The PSC did not consult the Ministry of Education for prior consent before issuing the transfer. This negligence was confirmed by the victim, Mr. Baddgio Malapa, and two Human Resources officers.

#### 26. Failure to comply with a direction to transfer or posting

- (1) The Commission may direct that a director-general, director or an employee transfer or take a posting from one position or locality to another within the Public Service but subject to the Commission's obligations to act as a good employer.

Any employee who fails to comply with a direction of the Commission requiring him or her to transfer or accept a posting may forthwith be dismissed or demoted with a consequent reduction in remuneration unless, in the opinion of the Commission, the employee justifies the non-compliance by adducing some valid and sufficient reason for it.

I refer to section 26(1) above, which stipulates that the Public Service Commission must consistently act as a good employer prior to executing any transfer. The statements provided above indicate otherwise. That to me, the members of the Public Service Commission have breached their obligations under section 13 of the Leadership Code Act by failing to comply with and observe the law.

Now I come to the Law. Subsection 5.1 1 of PSSM, Section 8, 15, 26 and 49 of the PSC Act and Section 13 of Leadership Code Act.

## **Public Service Staff Manual (PSSM)**

### **5.11 Refusal to accept a transfer without valid reason**

- (a) An officer who fails to accept a transfer or take a posting from one position or locality to another within the Public Service may be dismissed without notice, if in the opinion of the Commission the officer fails to provide a valid or sufficient reason for refusing the transfer or posting [Public Service Act, section 26(2)].
- (b) However, no action shall be taken by the Commission in relation to the transfer or posting of an officer without first consulting with the Director-General of the Ministry where the officer is located. The Director-General, in turn, should consult with the Director of the Department and the officer before providing advice to the Commission.
- (c) Any such action, including any intended dismissal action, shall also only be taken in accordance with the Commission's obligation to act as a good employer

## **Public Service Act**

### **Section 8 Major functions of the Commission**

(1 ) Subject to Article 60 of the Constitution and to the provisions of this Act, the major functions of the Commission are:

- (a) to provide policy advice to Government on matters relating to the efficiency and effectiveness of the Public Service and in human resource development; and
  - (b) the appointment and promotion of employees on merit
- (3) Notwithstanding subsection (2), in matters affecting employees (whether matters relating to the appointment, remuneration, promotion, demotion, transfer, disciplining or the cessation of any employee or other matters), the Commission shall act independently but have regard to its obligation to act as a good employer

### ***15. Duty to act as a good employer***

- (1) It shall be the duty of each member of the Commission to ensure that the Commission shall, in the performance of its functions, responsibilities and duties, be a good employer.
- (2) The Commission shall as a good employer:
  - (a) ensure the fair and proper treatment of employees in all aspects of their employment; and (b) require the selection of persons for appointments and promotion to be based upon merit; and
  - (c) promote good and safe working conditions, and
  - (d) encourage the enhancement of the abilities of individual employees; and
  - (e) promote and encourage an equal opportunities programme; and



(f) abide by the principles set out in section 4.

(3) In determining a person's merit for appointment or promotion to a post or salary increment regard must be had to:

(a) skill and ability to perform the duties and responsibilities of the post; and

(b) the standard and efficiency of work performance; and Leadership Code Act:

**26. Failure to comply with a direction to transfer or posting**

(1) The Commission may direct that a director-general, director or an employee transfer or take a posting from one position or locality to another within the Public Service but subject to the Commission's obligations to act as a good employer.

Any employee who fails to comply with a direction of the Commission requiring him or her to transfer or accept a posting may forthwith be dismissed or demoted with a consequent reduction in remuneration unless, in the opinion of the Commission, the employee justifies the non-compliance by adducing some valid and sufficient reason for it

**DUTY OF COMMISSION TO CONSULT WITH DIRECTOR-GENERAL**

49 (1) The Commission must consult with the relevant director-general in relation to any action it proposes to take involving any ministry or department prior to taking the proposed action.

(2) The Commission must take into consideration the views and requirements of the director-general prior to taking the proposed action, and must cooperate and be prepared to compromise where appropriate in the action initially proposed.

**LEADERSHIP CODE ACT**

**13. Duties of leaders**

(1) A leader must:

(a) comply with and observe the law;

(b) comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution; (c) comply with and observe the duties, obligations and responsibilities established by this Code or any other

enactment that affects the leader; and (d) not influence or attempt to influence or exert pressure on or threaten or abuse persons carrying out their lawful duty.

## **6. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM**

- 6.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper was provided prior to preparation of this public report to give the individuals mentioned in this report another opportunity to respond.
- 6.2 There were no responses received.

## **7. FINDINGS**

### **Finding 1: Transfer of Baddgio Malapa was not made in accordance with the Public Service Act and the Public Service Staff Manual.**

The Public Service Commission (PSC) failed to comply with the formal processes outlined in the Public Service Act and the Public Service Staff Manual (PSSM) when transferring Mr Malapa to the Ministry of Education.

### **Finding 2: Breached of section 49 of the Public Service Act by the Public Service Commission**

The Public Service Commission breached section 49 of the PSC Act by neglecting their obligation to consult with the Director General regarding the decision to execute the transfer. This failure to consult undermines the statutory framework governing the PSC's operations.

### **Finding 3: Breach of the Leadership Code by Members of the Public Service Commission**

The members of the Public Service Commission are leaders defined by Article 67 of the Constitution of the Republic of Vanuatu. As leaders, they had a duty to conduct themselves so as not to allow their integrity to be called into question as per Article 66 (c) of the Constitution.

The PSC Commission members including the Chairman are categorised as leaders under section 5 (u) of the Leadership Code Act. Section 13 of the same states that a leader must comply with and observe the law.

As leaders, their decision to transfer Mr Baddgio Malapa from the Public Service Commission to the Ministry of Education was not done properly and in breached of the Public Service Act, the Public Service Staff manual and the Leadership Code Act. The Commission members failed their duty to comply with and observe the law.



The Public Service Commission's action to transfer Mr Baddgio Malapa without informing him resulted to breach of the Section 15 (2)(a) of the Public Service as the transfer was issued without taking into consideration his well fare and any damage that could evolved from it. As such, PSC failed to act as a good employer when dealing with Mr Malapa's transfer.

## 8. RECOMMENDATIONS

I make the following recommendations:

In light of the discussions and findings from the investigation, I hereby present the following recommendations:

1. Termination of Commission Members: It is recommended that the Head of State terminate the appointments of all members of the Public Service Commission, including the Chairman, due to their continued breaches of duty as outlined in the Public Service Act and the Leadership Code Act.
2. Compliance with the Public Service Act: The Public Service Commission must ensure strict adherence to the provisions of the Public Service Act [Cap. 246] and follow established procedures when managing employee transfers. This includes providing valid justifications for transfers and ensuring that all relevant parties are informed.
3. Good Employer Practices: The Public Service Commission should consistently uphold its responsibilities as a good employer. This entails fair and transparent processes when transferring employees across various government ministries and departments, ensuring that such actions are in the best interest of the employees and the public service.
4. Adherence to the Leadership Code Act: All members of the Public Service Commission must comply with the Leadership Code Act in the execution of their duties. This includes maintaining integrity, transparency, and accountability in all decision making processes.

Dated 08 April 2025

  
Dorah L. Samuel  
Officer in charge  
**OFFICE OF THE OMBUDSMAN**



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