

दिल्ली शहरी आश्रय सुधार बोर्ड  
एन.सी.टी. का दिल्ली सरकार के  
(प्रशासन शाखा)

No. DD(Admn)/DUSIB/23/0-836

Date: 07/11/23

**ENDORSEMENT**

The copy of under mentioned letter is forwarded herewith for information and further necessary action:-

Name of Deptt.	Circular N. and Date	Subject
Department of Urban Development, Delhi Secretariat, New Delhi-110002	F.No. 7(1175)/UD/Admn/2022/4939-64 dated: 05-09-2023	Regarding Disposal of business by the departments of GNCTD under the provisions of GNCTD Act 1991 & amendments thereto issued from time to time including GNCTD (Amendment) Act 2023.

Encl : As above

07/11/23.  
उप निदेशक(प्रशासन)

Copy to:-

- 1 PS to CEO(DUSIB) for information.
- 2 PS to Member(Admn) for information.
- 3 Chief Engineer, DUSIB
- 4 All SEs/EEs/Coordn.
- 5 All Directors/Dy. Directors
- 6 B&FO/Dy.CA- 1& 11
- 7 Competent Authority, Tis Hazari Court
- ✓ 8 Dy. Director(IT)- upload on DUSIB website portal.
- 9 Guard file
- 10 Office Copy

07/11/23

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Programmer

Diary No. 110/00044018  
Date 07/11/23  
Computer Division (DUSIB)  
Govt. of NCT of Delhi

①

**DEPARTMENT OF URBAN DEVELOPMENT**  
**9<sup>TH</sup> LEVEL, 'C' WING, DELHI SECRETARIAT**  
**NEW DELHI-110002**

F.No. 7(1175)/UD/Admn/2022/ 4939-64

Date: 05.09.23

**CIRCULAR**

**Sub: Disposal of business by the departments of GNCTD under the provisions of GNCTD Act 1991 & amendments thereto issued from time to time including GNCTD (Amendment) Act 2023..**

I am directed to enclosed herewith a letter dated 25.08.2023 on the subject cited above received from Services Department along with a report of the Chief Secretary Delhi bearing No. CS/12651-12657 dated 21.08.2023 made under Section 45J(5) of GNCTD Act, 1991 with respect to directions issued to him by Hon'ble Minister (Services/ Vigilance) on 16.08.2023 and 19.08.2023.

It has been informed to ensure that directions by the Hon'ble Minister of GNCTD issued in the matter of disposal of business are in consonance to the provisions of GNCTD Act and Rules made thereunder including Transaction of Business Rules and Allocation of Business Rules. Further, as required under the Section 45J(5) of GNCTD Act, 1991, the directions issue by Hon'ble Ministers which are in material departure from provisions of GNCTD Act and Rules made thereunder are required to be reported as per procedure prescribed under the provision.

Further, Non compliance of statutory provisions will be viewed seriously under the respective Conduct Rules applicable to the officer concerned.

This is for information and necessary action.

Encl: As Above

F.No. 7(1175)/UD/Admn/2023/ 4939-64

Copy to:

1. PS to Secretary (UD)
2. PS to Spl. Secy. (UD)-I
3. PA to Spl. Secy. (UD)-II
4. PA to Spl. Secy. (UD)-III
5. Controller of Accounts(UD)
6. Dir. (Plg.)
7. Dy. Dir. (LB)-I, II & III
8. Dy. Secy. (SBM/Smart City/AMRUT)
9. Dy. Secy. (UC/NULM)
10. Dy. Secy.(SNA/PC/RTI Cell)
11. Dy. Secy./S.O. (Water)
12. Dy. Secy. (PWM Cell)
13. S.O. (MLALAD)
- ✓ 14. S.O. (BSUP/DUSIB)
15. Care Taker
16. Guard File

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05/9/23

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K/519

**DY. SECRETARY (ADMN)**

Date: 05.09.23

**DY. SECRETARY (ADMN)**

4. Another direction dated 19<sup>th</sup> August, 2023 has been issued by Hon'ble Minister (Vigilance) to the undersigned/ CVO, with a copy to the Secretary (Vigilance), which reads as hereunder:

*"All files, letters or any other written communication shall be sent from Vigilance Department, to any other Department or autonomous body of Government of NCT of Delhi (GNCTD) or to the Hon'ble LG or outside GNCTD, only with the approval of the Minister in Charge.*

*This applies to all service related matters as well, since services is a transferred subject, after the order of the Hon'ble Supreme Court on 11.05.2023, and the removal of the Section 3A (that was present in the GNCTD Amendment Ordinance) from the GNCTD (Amendment) Act 2023, which has now been notified on 11.08.2023 by the Hon'ble President of India.*

Sd/-  
(Atishi)  
Minister (Vigilance)  
19.08.2023"

5. It is required to be dealt with in detail as to how aforementioned directions if implemented would lead to material departure from the provisions of the GNCTD Act 1991 (as amended up to date).

6. The Constitution of India has prescribed special status provisions w.r.t. National Capital Territory of Delhi (NCTD). Article 239AA(4) of the Constitution of India is reproduced herein below for better understanding of the issue in hand:

*"239AA: Special provisions with respect to Delhi ....*

*...  
(4) There shall be a Council of Ministers consisting of not more than 10% of the total number of members in the Legislative Assembly with the Chief minister at the head to aid and advise the Lt. Governor in the exercise of his functions in relations to matters with respect to which the Legislative Assembly has powers to make laws, except in so far as he is, by or under any law required to act in his discretion:*

*PROVIDED that in case of difference of opinion between the Lt. Governor and his ministers on any matter, the Lt. Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lt. Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary."*  
(emphasis added)

7. Accordingly, it is clear from the aforesaid Article 239AA(4) the Constitution of India that the Hon'ble Lt. Governor of Delhi in exercise of his functions in relation to matters w.r.t. which the Hon'ble Legislative Assembly has powers to make laws has to act on the aid and advise of Council of Ministers. But simultaneously a rider has been provided with the said provision that in case the Lt. Governor is by or under any law required to act in his discretion, he is not required to act on the aid and advice of the Council of Ministers.

8. Now the question is what are the relevant provisions wherein the Hon'ble Lt. Governor is required to act in his discretion under the existing laws, which are covered under the abovementioned rider attached to Article 239AA(4) of the Constitution. For

(4) All recommendations of the Authority shall be authenticated by the Member-Secretary.

(5) The head office of the Authority shall be at Delhi.

45F. (1) The Authority shall meet at such time and place as the Member-Secretary may decide with approval of the Chairperson of the Authority, as and when so required. Meetings of Authority.

(2) The Chairperson of the Authority shall preside over the meetings of the Authority.

(3) The quorum for the meeting of the Authority shall be of two Members.

45G. (1) The Central Government, in consultation with the Authority, shall determine the nature and the categories of officers and other employees required to assist the Authority in the discharge of its functions and provide the Authority with such officers and employees, as it may deem fit.

(2) The officers and other employees of the Authority shall discharge their duties and functions under the general superintendence and control of the Authority.

(3) The salaries, allowances and conditions of service of the officers and other employees appointed under sub-section (1) shall be by rules made by the Central Government.

45H. (1) Notwithstanding anything contained in any other law for the time being in force, the Authority shall have the responsibility to recommend the transfers and postings of all Group 'A' officers and officers of DANICS serving in the affairs of the Government of National Capital Territory of Delhi but not officers serving in connection with any subject matter, either fully or in part, connected with Entries 1, 2 and 18 of List II of the Seventh Schedule to the Constitution, and Entries 64, 65 and 66 of List II of the Seventh Schedule to the Constitution insofar as they relate to Entries 1, 2 and 18 or any other subject matter which is connected therewith or incidental thereto, to the Lieutenant Governor:

Provided that Authority may, if it deems appropriate, by way of a recommendation, delegate the responsibility to any other authority of the Government of National Capital Territory of Delhi.

(2) The Authority shall have the responsibility to recommend for all matters connected with and falling under the subject of vigilance and non-vigilance matters for the purpose of initiation of disciplinary proceedings and recommend for grant of prosecution sanctions to the Competent Authorities under the relevant Constitutional or statutory provisions against all the Group 'A' officers, including the officers of the All India Services and DANICS, serving in the affairs of the Government of National Capital Territory of Delhi but not officers serving in connection with any subject matter, either fully or in part, connected with Entries 1, 2 and 18 of List II of the Seventh Schedule to the Constitution, and Entries 64, 65 and 66 of List II of the Seventh Schedule to the Constitution insofar as they relate to Entries 1, 2 and 18 or any other subject matter which is connected therewith or incidental thereto, to the Lieutenant Governor.

Provided that the Authority may, if it deems appropriate, by way of a recommendation, delegate the responsibility in respect to such officers serving in the affairs of the

act independently of the decisions of Hon'ble Ministers. Further, these views are fortified by other provisions like Section 45G of Act 1991 which provides for separate Secretariat to the 'Authority' thus exhibits the independent nature of the 'Authority'. Under section 45G of the Act 1991, the Central Government is empowered in consultation with the Authority to determine the nature and category of officers and employees required to assist the Authority in discharge of its functions, and that the service conditions of such officers and employees shall be laid down by rules made by the Central Government. Therefore, there is no scope for Hon'ble Minister to act as a Secretariat to the 'Authority'.

14. The Hon'ble Lt. Governor is required to act on the aid and advise of the Council of Ministers in terms of Article 239AA(4) of the Constitution of India, however, as highlighted in the proviso to said Article, in case there is difference of opinion between the Council of Ministers and the Hon'ble Lt. Governor, the Hon'ble Lt. Governor is required to escalate the matter for the decision of the Hon'ble President of India and pass directions to be followed pending decision of Hon'ble President. However, since the 'Authority' constituted under the Act 1991 is independent in nature, and in case the Hon'ble Lt. Governor differs with the recommendation made by the Authority, whether based on the material so called for or otherwise, the Hon'ble Lt. Governor may for the reasons to be recorded in writing return the recommendation to the Authority for reconsideration. It has further been provided in Section 45H(3) of Act 1991 that in case of difference of opinion between the Authority and the Hon'ble Lt. Governor persists, then the decision of Hon'ble Lt. Governor shall be final.

15. This differentiation of the decision making power of the Hon'ble Lt. Governor on the aid and advice of the Council of Ministers under Article 239AA(4) and the decision making power under Section 45E of the Act 1991 may undoubtedly compel one and all by ordinary prudence to believe that the recommendations of the 'Authority' for the matters contained in Part IV-A of Act 1991 are independent. Therefore, the Hon'ble Minister (Service/Vigilance) sans jurisdiction to deal with the files pertaining to Service & Vigilance which are to be dealt with by the Authority constituted under Part-IV A of the Act 1991. The Hon'ble Minister (Service/Vigilance) accordingly does not have any authority to issue directions to the concerned Secretaries to send the proposals to her for approval before putting up the same to the Authority.

16. Another feature that paints the independence of the 'Authority' is the "Title" of Part-IVA of Act 1991. It is reproduced as under:

*"PART-IV A  
PROVISIONS RELATING TO THE MAINTENANCE OF THE DEMOCRATIC AND  
ADMINISTRATIVE BALANCE IN THE GOVERNANCE OF NATIONAL CAPITAL  
TERRITORY OF DELHI"*

17. This 'Title' of Part-IV A is self-explanatory and it provides a different picture altogether. Even though, this Part-IV A of Act 1991 falls within the domain of 'sole discretion' of the Hon'ble Lt. Governor in terms of Section 41 of the Act 1991 read with Article 239AA(4), yet the Parliament of India, i.e. the Apex Legislative body has decided to involve the Hon'ble Chief Minister of NCT of Delhi in the decision making process of 'Authority' for matters referred to in the Part-IV A of GNCTD Act in accordance with the provisions mentioned therein. The conjoint reading of the 'Title' of Part-IV A of the Act 1991 read with the role of Authority prescribed in that Part clearly warrants that 'Authority' constituted under this Part-IV A is to act independently without the interference of Hon'ble Minister (Service / Vigilance). Accordingly, a balance has been created by the Parliament for the smooth functioning of the affairs of

*Delegation of the Financial Powers Rules, 1978.*

(2) *The Minister, in consultation with the Secretary concerned, may issue standing orders, concerning the matters or classes of matters which are to be brought to the personal notice of the Minister:*

*Provided that no such standing order shall be issued in contravention of the provisions of the Constitution or any other law for the time being in force including the provisions of this Act or the rules made thereunder or the statutory powers conferred provisions of this Act or the rules made thereunder or the statutory powers conferred under any law upon the officials, and financial powers delegated under the Delegation of the Financial Powers Rules, 1978.*

(3) *The copies of directions and standing orders shall be forwarded to the Lieutenant Governor and the Chief Minister*

(4) ...  
(emphasis added)

24. In this attention is invited to provisions of sub-rule (3) of Rule 46 of the Transaction of Business of the Government of National Capital Territory of Delhi Rules, 1993 (hereinafter called 'ToBR'):

(3) *All correspondence with Union Public Service Commission and the Central Government regarding recruitment and conditions of service of persons serving in connection with the administration of National Capital Territory shall be conducted by the Chief Secretary or Secretary of the Department concerned under the direction of the Lieutenant Governor.* (emphasis added)

25. The Hon'ble Supreme Court of India in *Noor Mohd. vs Khurram Pasha, Spl. Leave Petition (Crl. No. 2872 of 2022) delivered on 02.08.2022* have explained in para no. 13 of the judgment that while relying on the decision of the Privy Counsel in *Nazir Ahmad vs King Emperor (AIR 1936 Privy Counsel 253(2))* a Bench of three Judges of Hon'ble Supreme Court made following observations in *State of Uttar Pradesh vs Sindhara Singh & Ors. (AIR 1964 SC 358)*.

"7. In *Nazir Ahmed case, 63 Ind App 372; (AIR 1936 PC 253 (2))* the Judicial Committee observed that the principle applied in *Taylor v. Taylor [(1875) 1 Ch D 426, 431]* to a court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, ...

8. *The rule adopted in Taylor v. Taylor [(1875) 1 Ch D 426, 431] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. ..."*

26. Further, it was also elaborated in another judgment of Hon'ble Supreme Court that:

"What may not be done directly cannot be allowed to be done indirectly; that would be an evasion of the statute. It is a "well-known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance" (per Abbot, C.J. in *Fox v. Bishop of Chester*). "To carry out effectually the object of a Statute, it must be construed

the National Capital Civil Services Authority on proposal regarding transfers, postings, disciplinary proceedings and prosecution sanctions in respect of Group A officers and DANICS officers under section 45H of the Act, 1991. In this regard, the undersigned would like to reproduce the law laid down by the Constitution Bench of the Hon'ble Supreme Court in its judgement dated 11<sup>th</sup> May 2023 regarding division of the executive powers between the Central Government and the Hon'ble Council of Ministers of GNCTD:

"95. Thus, the scope of the legislative and executive powers of the Union and NCTD that has been discussed under this section is multi-fold. Under Article 239AA(3)(a), the legislative power of NCTD extends to all subjects under the State List and the Concurrent

List, except the excluded entries. As the 2018 Constitution Bench judgment held, the executive power of GNCTD is coextensive with its legislative power. In other words, the executive power of GNCTD extends to all subjects on which its Legislative Assembly has power to legislate. The legislative power of the Union extends to all entries under the State List and Concurrent List, in addition to the Union List. The executive power of the Union, in the absence of a law upon it executive power relating to any subject in the State List, shall cover only matters relating to the three entries which are excluded from the legislative domain of NCTD. As a corollary, in the absence of a law or provision of the Constitution, the executive power of the Lieutenant Governor acting on behalf of the Union Government shall extend only to matters related to the three entries mentioned in Article 239AA(3)(a), subject to the limitations in Article 73. Furthermore, if the Lieutenant Governor differs with the Council of Ministers of GNCTD, he shall act in accordance with the procedure laid down in the Transaction of Business Rules. However, if Parliament enacts a law granting executive power on any subject which is within the domain of NCTD, the executive power of the Lieutenant Governor shall be modified to the extent, as provided in that law. Furthermore, under Section 49 of the GNCTD Act, the Lieutenant Governor and the Council of Ministers must comply with the particular directions issued by the President on specific occasions.

164 In view of the discussion above, the following are our conclusions:

f. The executive power of NCTD with respect to entries in List II and List III shall be subject to the executive power expressly conferred upon the Union by the Constitution or by a law enacted by Parliament." (emphasis added)

31. The special provisions have been made for the National Capital Territory of Delhi in Part VIII of the Constitution and the NCT of Delhi is to be governed by special arrangements, unlike the set up made for other States in Constitution of India. Reproduction of Article 239AA(7)(a) of the Constitution of India is required for further elaboration:

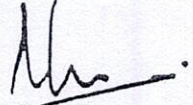
239AA

7(a): Parliament may, by law, make provisions for giving effect to, or supplementing the provisions contained in the foregoing clauses and for all matters incidental or consequential thereto.

(b): Any such law as is referred to in sub-clause (a) shall not be deemed to be an amendment of this Constitution for the purposes of Article 268 notwithstanding that it contains any provisions which amends or has the effect of amending, this Constitution."

32. Thus, from the provisions of this Article, it is clear that Parliament may make provisions for giving effect to or supplement the provisions of clause (1) to (6) of Article 239AA as well as for all matters incidental or consequential thereto, as provided

Governor under provisions of section 45J(5) of the Act, 1991.



(Naresh Kumar)

Chief Secretary-cum-Chief Vigilance Officer

21.08.2023

Hon'ble Lt. Governor

Hon'ble Chief Minister (separate copy)

Hon'ble Minister (Services / Vigilance) (separate copy)

Copy to:

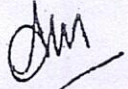
- (i) Union Home Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi – 110 001.
- (ii) Pr. Secretary (Services), Services Department, GNCTD.
- (iii) Director (Vigilance), Directorate of Vigilance, GNCTD.



OFFICE OF THE MINISTER  
EDUCATION, TTE, HIGHER EDUCATION, FINANCE,  
PLANNING, REVENUE, VIGILANCE, SERVICES, POWER,  
WCD, PWD, INFORMATION & PUBLICITY, TOURISM & ACL  
GOVERNMENT OF NCT OF DELHI  
A-608, 6<sup>TH</sup> LEVEL, DELHI SECRETARIAT,  
L.P. ESTATE, NEW DELHI

All files, letters or any other written communication shall be sent from Vigilance Department, to any other Department or autonomous body of Government of NCT of Delhi (GNCTD) or to the Hon'ble LG or outside GNCTD, only with the approval of the Minister In-Charge.

This applies to all Service related matters as well, since Services is a transferred subject, after the order of the Hon'ble Supreme Court on 11.05.2023, and the removal of the Section 3A (that was present in the GNCTD Amendment Ordinance) from the GNCTD (Amendment) Act, 2023, which has now been notified on 11.08.2023 by the Hon'ble President of India.



(ATISHI)  
MINISTER (VIGILANCE)  
19.08.2023

Chief Secretary/Chief Vigilance Officer

No. Minister (Vigilance)/2023/675

Dated 19.08.2023

Copy to  
Secretary, Vigilance

DEPARTMENT OF URBAN DEVELOPMENT  
9<sup>TH</sup> LEVEL, 'C' WING, DELHI SECRETARIAT  
NEW DELHI-110002

F.No. 7(1175)/UD/Admn/2022/ 4808-23

Date: 22/8/23

CIRCULAR

**Sub: Instructions regarding communication to other Departments.**

I am directed to enclosed herewith U.O. dated 21.08.2023 received from the Office of Hon'ble Minister (UD) for information & necessary action vide which it has been directed by Hon'ble Minister (UD) that, all files, letters or any other written communication shall be sent from your Department to any other Department or Autonomous Body of Govt. of NCT of Delhi (GNCTD) or to the Hon'ble Minister or outside GNCTD, only with the approval of the Minister-in-Charge.

This applies to all Service related matters as well, since Services is a transferred subject, after the order of the Hon'ble Supreme Court on 11.05.2023, and the removal of the Section-3A (that was present in the GNCTD Amendment Ordinance) from the GNCTD (Amendment) Act, 2023, which has now been notified on 11.08.2023 by the Hon'ble President of India.

Encl: As Above

F.No. 7(1175)/UD/Admn/2023/ 4808-23

DY. SECRETARY (ADMINISTRATION)

Date: 22/8/23

Copy to:

1. PS to Secretary (UD)
2. PA to Spl. Secy. (UD)-I
3. PA to Spl. Secy. (UD)-II
4. PA to Spl. Secy. (UD)-III
5. Controller of Accounts(UD)
6. Dir. (Plg.)
7. Dy. Dir. (LB)-I, II & III
8. Dy. Secy. (SBM/Smart City/AMRUT)
9. Dy. Secy. (UC/NULM)
10. Dy. Secy.(SNA/PC/RTI Cell)
11. Dy. Secy./S.O. (Water)
12. Dy. Secy. (PWM Cell)
13. S.O. (MLALAD)
14. S.O. (BSUP/DUSIB)
15. Care Taker
16. Guard File

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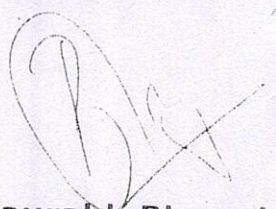
DY. SECRETARY (ADMINISTRATION)

**OFFICE OF MINISTER**  
**(HEALTH, WATER, UD, INDUSTRIES & I&FC)**  
GOVT. OF NCT OF DELHI  
7<sup>TH</sup> LEVEL, DELHI SECRETARIAT, NEW DELHI.  
Tel.Nos. 23392116/2117  
E-Mail : [moh.delhi@gov.in](mailto:moh.delhi@gov.in)

All files, letters or any other written communication sent from your Department to any other Department or Autonomous Body of Govt. of NCT of Delhi (GNCTD) or to the Hon'ble LG or GNCTD, only with the approval of the Minister-in-Charge.

This applies to all Service related matters as well, since Service is a transferred subject, after the order of the Hon'ble Supreme Court on 11.05.2023, and the removal of the Section-3A (that was present in the GNCTD Amendment Ordinance) from the GNCTD (Amendment Act, 2023, which has now been notified on 11.08.2023 by the Hon'ble President of India.

Urban Development  
Govt. of NCT of Delhi  
21 AUG 2023 2:21:10 pm  
Dy. No. Miny/2023/5838



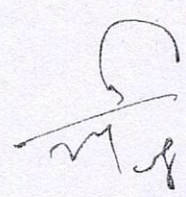
**(Saurabh Bharadwaj)**  
**Minister**

No.: Minhealth/2023/4360-66

Dated: 21.08.2023

Secretary (UD)

SSI  
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SSC  
DS/A to circulate to

24/8  
SOCAL  
23/8/23

Sh. Vikram