

DEPARTMENT OF SOCIAL WELFARE
GOVT. OF NCT OF DELHI
7TH FLOOR, MSO BUILDING, ITO, NEW DELHI
(ADMINISTRATION BRANCH)

F.No.1(59)/2020/DSW/Estt./ 11908-11967
Circular

Dated:- 22 SEP 2023

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

Please find enclosed herewith letter bearing No. F.10(87)/S-IV/CS Office matters/1391-1394 dated 25.08.2023 received from Services Department enclosing letter bearing No. CS/12651-12657 received from Office of the Chief Secretary on the above mentioned subject.

Encl: As above.

[Signature]
22/9/23
Section Officer(Admn.)

F.No.1(59)/2020/DSW/Estt./ 11908-11967
Copy to:

Dated:- 22 SEP 2023

- 2021
22/9
A.P.
1. All DDs/DSWOs/DDO/HOO/Supdt./In-charge of Homes/Institutions/Schools.
 2. Sr. System Analyst for uploading on the website of the Department.
 3. Guard File

[Signature]
22/9/23
Section Officer(Admn.)

1006/cc
22/9/23

24711

Office of the Secretary (SW)
Deptt. of Social Welfare
Govt. of NCT of Delhi
28 AUG 2023
Dy. No. 2127

Services Department, Govt. of NCT of Delhi
Services-IV Branch
5th level, B-wing, Delhi Secretariat

F.10(87)/S-IV/CS Office matters/1391-1394-

dated:- 25.08.2023

To

All the Administrative Secretaries/ HoDs
Govt. of NCT of Delhi.

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

Sir/Madam,

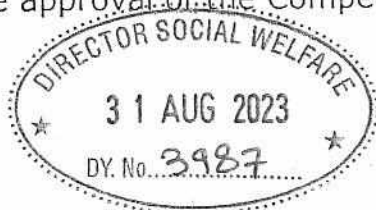
I am directed to enclose herewith Report of the Chief Secretary, Delhi bearing No. CS/12651-12657 dated 21.08.2023 made under Section 45J(5) of GNCTD Act, 1991 with respect to directions issued to him by Hon'ble Minister (Services/Vigilance) on 16.08.2023 and 19.08.2023.

2. In this regard, I am further directed to convey that the administrative Secretaries of the departments of GNCTD have to ensure that directions by the Hon'ble Ministers 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.

3. I am further directed to convey that non-compliance of statutory provisions will be viewed seriously under the respective Conduct Rules applicable to the officer concerned.

4. This issues with the approval of the Competent Authority.

Encl: As above.



Yours faithfully,

(Bharat Dutt)

Dy. Secretary (Services)

Copy for information to:-

1. OSD to Chief Secretary, Delhi
2. PA to Pr. Secretary (Services)
3. PA to Spl. Secretary (Services)

21/08/23
P.S. to Secy.

5/9/23

3512/DOA
04/09/23
SoC Admin

4057/SoA
5/9/23

Sh. Shant

5/9/23

No. CS/12651-12657

Government of NCT of Delhi

Office of the Chief Secretary

Subject: Report under section 45J(5) of GNCTD Act, 1991 with respect to directions issued by Hon'ble Minister (Services / Vigilance) on 16.08.2023 and 19.08.2023 which are in material departure from the provisions of GNCTD Act, 1991 and rules made thereunder - regarding

Recently amendments have been introduced by the Parliament of India in the Government of National Capital Territory of Delhi (GNCTD) Act 1991 (hereinafter called 'Act 1991') by virtue of the GNCTD (Amendment) Act 2023 (Act No. 19 of 2023) (hereinafter called 'Amendment Act 2023') which came into force w.e.f. 19th day of May 2023.

2. As per Section 45J(5) of the Act, 1991, responsibility has *inter-alia* been cast upon the Chief Secretary, GNCTD for the compliance of the provisions of the Act 1991 and to inform the Hon'ble Minister In-charge, the Hon'ble Chief Minister and the Hon'ble Lt. Governor in case of the material departure from the provisions therein. The said Section 45J(5) of the Act 1991 is reproduced herein as under:

"45J(5) : The Chief Secretary and the Secretary to the Department concerned shall be responsible for compliance with the provisions of this Act and the rules made under section 44, and when either of them considers that there has been any material departure for the same, instead of giving effect to such departure, he shall personally bring it to the notice of the Minister in-charge, the Chief Minister and the Lt. Governor immediately in writing."

3. It is apposite to bring to the notice that certain directions have been issued by Hon'ble Minister (Services/Vigilance) on 16.08.2023 to the undersigned with a copy to Pr. Secretary (Services) as well as Secretary (Vigilance), besides others, which are in apparently in blatant violation of the provisions of not only of Article 239AA(4) of the Constitution of India, but also of the provisions of the Act 1991. After referring to Section 45H(1) and Section 45H(2) of Act 1991, the Hon'ble Minister (Services / Vigilance) has issued certain directions on 16.08.2023, with copies to Pr. Secretary (Services) and Secretary (Vigilance), the operative paragraph of which is reproduced as under:

"...

To ensure smooth functioning of NCCSA and its coordination with various departments of Government of NCT of Delhi, it is hereby directed that:

1. *All proposals for transfer and posting under Section 45H(1) will be put up to NCCSA with the approval of Minister Services. After obtaining the approval of Minister Services, Secretary (Services) shall send the proposals to the Member Secretary of the NCCSA for putting up before the NCCSA.*

2. *All proposals for vigilance and non-vigilance related matters under Section 45H(2) will be put up to NCCSA with the approval of Minister Vigilance. After obtaining the approval of Minister Vigilance, Secretary Vigilance shall send the proposal to the Member Secretary of NCCSA for putting up before the NCCSA.*

sd/-

(Atishi)

Minister (Services/Vigilance)

16.08.2023 "

4. Another direction dated 19th 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 advice 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

this purpose, attention is invited to provisions of Section 41 of the Act 1991:

"41: Matters in which Lieutenant Governor to act in his sole discretion.- (1) The Lieutenant Governor shall act in his sole discretion in a matter-

(i)

(ii)

(iii) In discharge of his functions under Part IV-A of this Act."

9. Prior to the amendments introduced to the Act, 1991 w.e.f. 19.05.2023, the word used in this Section 41 was 'discretion' which has now been substituted with the words 'sole discretion'. Accordingly, a conjoint reading of Article 239AA(4) of the Constitution read with Section 41 of the Act 1991 categorically mandate that for the purposes of discharging his functions under Part-IV A of the GNCTD Act as introduced by Amendment Act 2023, the Hon'ble Lt. Governor is not required to act on the aid and advice of the Council of Ministers. The Hon'ble Lt. Governor is under obligation to perform the functions assigned to him under Part IV of the GNCTD Act in his sole discretion. We have to go by the purposive interpretation of Section 41. The words 'sole discretion' as introduced in Section 41 of Act 1991 is self-explanatory in the sense that it has eroded all confusions which cropped up earlier prior to Amendment Act 2023 by the use of the word 'discretion'. Since the Hon'ble Lt. Governor has sole discretion for the functions assigned to him under Part-IV A of Act 1991, the Council of Ministers with due respect have no role to play and are *functus officio* for the purposes of implementation of provisions under this Part IV A of the Act 1991. This is not only the command of the Act 1991 but also the dictum of Constitution of India under Article 239AA(4).

10. The brief history behind introducing this Part-IV A in the Act 1991 by virtue of Amendment Act 2023 assumes relevance and hence is explained hereinafter in brief. There has been a long drawn litigation w.r.t. the issue regarding the jurisdiction of the Service Matters i.e. whether the same is the prerogative of the political executive of National Capital Territory of Delhi or the Union Government acting through the Hon'ble Lt. Governor. Finally, the Parliament has enacted the Amendment Act 2023 through which the dust has been tried to be blown away and the operational challenges faced for the smooth affairs of the administration regarding Service Matters have now been settled down.

11. Vide Part-IV A of Act 1991, Section 45E has been introduced. The relevant part of same is reproduced as under:

"45E. (1) There shall be an Authority to be known as the National Capital Civil Service Authority to exercise the powers conferred on, and discharge the functions assigned to it under this Part.

(2) The Authority, referred to in sub-section (1), shall consist of the following Members, namely:—

(a) the Chief Minister of Government of National Capital Territory of Delhi, who shall be the Chairperson of the Authority, *ex officio*;

(b) the Chief Secretary of Government of National Capital Territory of Delhi, Member, *ex officio*; and

(c) the Principal Home Secretary, Government of National Capital Territory of Delhi, who shall be the Member-Secretary to the Authority, *ex officio*.

(3) All matters required to be decided by the Authority shall be decided by majority of votes of the Members present and voting.

Government of National Capital Territory of Delhi to an officer of All India Services.

(3) The Lieutenant Governor, after the receipt of such recommendation under sub-section (1) or sub-section (2) of this section, may pass appropriate orders giving effect to the recommendation made:

Provided that the Lieutenant Governor, before passing appropriate orders on such recommendation, may ask for any relevant material regarding 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:

Provided further that in case the Lieutenant Governor differs with the recommendation made, whether based upon the material so called for or otherwise, the Lieutenant Governor may, for reasons to be recorded in writing, return the recommendation to the Authority for reconsideration by the Authority:

Provided also that in case of difference of opinion, the decision of the Lieutenant Governor shall be final.

(4) Without prejudice to the generality of the provisions contained in sub-section (1), the Authority shall—

(a) make recommendations to the Lieutenant Governor for framing policies on—
(i) stability of tenure of posting of officers and other employees;
(ii) rotational transfers and postings from sensitive to non-sensitive posts and vice-versa;
(iii) determining suitability of officer for posting as Head of the Department;
(iv) transfers and postings of all officers and other employees serving in the affairs of the Government of National Capital Territory of Delhi;

(b) make policy insofar as it relates to—
(i) the capacity building of the officers and other employees serving in the affairs of the Government of National Capital Territory of Delhi;
(ii) ensuring effectiveness in public services delivery in the Government of National Capital Territory of Delhi;
(iii) ensuring good governance and e-governance in public administration in the Government of National Capital Territory of Delhi;
(iv) ensuring greater transparency in the administration of the Government of National Capital Territory of Delhi;
(v) ensuring the presence of a citizen centric administration in the Government of National Capital Territory of Delhi; and
(vi) any other matter connected therewith or incidental thereto."

12. A bare perusal of the aforementioned provisions of the Act 1991 undoubtedly goes to establish that the Hon'ble Chief Minister is required to perform his duties as Chairperson of the 'Authority'. The Constitution of the 'Authority' as prescribed under Section 45E of the Act 1991 lays down that the other members of the Authority are the 'Chief Secretary' and the 'Principal Home Secretary'.

13. It has further been elaborated in Section 45E that all matters required to be decided by Authority shall be decided by majority of votes of the members present and voting, meaning thereby each member has one vote and in case the Hon'ble Chief Minister or any other member express his dissent in some matter, the majority decision shall prevail. So, it has emerged out from these provisions itself that 'Authority' has to

(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

the administration of the NCT of Delhi.

18. Now turning to the responsibility aspect, as contained in Section 45H(1) of Act 1991, which initiates with non-obstinate clause that:

"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 ...

(2) The Authority shall have 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 sanction to the Competent Authorities ..."

19. These provisions as contained in section 45H of Act 1991 clearly and without any doubt cast a duty/obligation upon the members of the Authority, and if any other law contains anything contrary to it then as contained in Section 45H of the Act 1991, such other law, shall have no effect over the proceedings of the 'Authority' and the 'Authority' shall have the sole responsibility to make such recommendations.

20. The word 'responsibility' as enshrined in section 45H of the Act 1991 in strict legal sense means 'a duty imposed on someone to do something whether imposed by law or created by agreement.'. Under Part-IV A of the Act 1991, duty has been cast upon the members of the Authority to the effect that they shall be responsible for making recommendations for transfer and posting as well as recommendations for initiation of the disciplinary proceedings and prosecution sanctions of the category of the officers mentioned therein in the Act 1991. The duty and responsibility are independent and are not to be guided by any other institution/platform as non-obstinate nature of this clause warrant so. The responsibility of members of the Authority are exclusive and provisions of section 45H under Part-IV A of the Act 1991 has not assigned any responsibility / duty to the Hon'ble Minister In-charge (Service / Vigilance) towards working of the 'Authority'.

21. Further, the Hon'ble Minister has no role to play in the affairs of Authority is further substantiated with the provisions of Section 45H(4) of Act 1991 wherein it is stated that upon the recommendations of the Authority, Hon'ble Lt. Governor may frame policies on various matters including the rotational transfer and postings of the officers serving in GNCTD besides other matters referred to in Section 45H(4) of Act 1991 (which is reproduced in para 10 above).

22. Therefore, it is clear that Hon'ble Minister has got no jurisdiction to interfere in the affairs of the statutory Authority constituted under Part-IV A of Act 1991, as even the framing of policy(s) is the prerogative of the Hon'ble Lt. Governor in his sole discretion.

23. Now adverting to the provisions of the Section 45I of the Act 1991, as introduced through the Amendment Act, 2023, the same is necessitated to get reproduced as under:

"45-I. (1) The Minister in-charge may, by means of standing orders, give such directions as he deems fit for the disposal of proposals or matters in his Department:

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 under any law upon the officials, and financial powers delegated under 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 advice 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

as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined." (Maxwell, 11th Edn., p. 109)."

[MANU/SC/0097/1978: (1979) 1 SCC 560]

27. Here, in this matter, the Act 1991 has prescribed the statutory power of the Authority in detail and has laid down the procedure to be followed thereof in Part-IV of the Act 1991. Accordingly, the same has to be complied with in its letter & spirit and also due credence is required to be given to the guidance showered by aforementioned judgments of the Hon'ble Apex Court. With due respect to the directions of the Hon'ble Minister, it is submitted that the directions as contained in the note dated 16.08.2023 of Hon'ble Minister are in contravention of the provisions of Constitution under Article 239AA(4) read with provision under Part-IV A of the Act 1991. The Hon'ble Minister under no circumstances is empowered to give such directions to the undersigned to get the files "approved" by her before being submitted to the Authority. The smooth functioning of Authority has to be ensured by the members of the 'Authority' itself in terms of the law laid down by the Parliament.

28. Further, it is submitted that the directions as contained in the note dated 19.08.2023 of Hon'ble Minister are in contravention of the provisions of Constitution under Article 239AA(4) read with provisions of section 44 of the Act 1991 read with Rule 46(3) of the ToBR made by the Hon'ble President as well as Provisos to sections 45I(1) and (2) of the Act 1991, as introduced through the Amendment Act, 2023. The Hon'ble Minister under no circumstances is empowered to give such directions to the undersigned to get the files "approved" by her before being submitted to the UPSC / Central Govt. / NCCSA.

29. It is not out of context to mention that the above mentioned directions issued by the Hon'ble Minister (Services/ Vigilance) amounts to taking of executive action by her, in such matters which are in the executive domain of the Central Government and the Hon'ble LG acting in his sole discretion. Through the Amendment Act 2023, the Parliament has, *inter-alia*, introduced section 45C in the Act 1991, which confers powers on the Central Government to make rules in the following matters:

- (i) Tenure of Office, Salaries and allowances, provident funds, pensions, gratuities, leave of absence and other conditions of service of Officers and other employees appointed and posted [Section 45C(a)];
- (ii) The powers, duties and functions of officers and other employees appointed and posted [Section 45C(b)];
- (iii) The qualifications of candidates for appointment to the posts and the manner of selection for the appointments [Section 45C(c)];
- (iv) Transfer or postings of the officers and other employees posted [Section 45C(d)];
- (v) The procedure to be followed in imposing any penalty, suspension pending departmental inquiries before the imposition of such penalty and the authority by whom such suspension or penalty may be ordered; and the officer or authority to whom an appeal or revision shall lie [Sec 45C(e)];
- (vi) Any other matter which is incidental to or necessary for the purpose of regulating the appointment and condition of service of persons appointed to services and posts [Section 45C(f)];
- (vii) Any other matter for which, in the opinion of the Central Government. Provisions are to be made by rules.

30. As may be seen from the above, the Parliament has conferred executive powers in respect of each and every aspect of "Services" including "Vigilance" in general through the rule making powers of the aforesaid section 45C of the Act 1991 upon the Central Government. Further, specific powers have been conferred upon the Hon'ble Lt. Governor, acting in his sole discretion, in matters where recommendations are made by

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

in clause 7(a) of Article 239AA of the Constitution. Further, any such law made by the Parliament shall not be deemed to be an amendment to the Constitution in terms of clause 7(b) of Article 239AA of the Constitution. Therefore, acting under this provision, the Parliament has introduced Part-IV in the Act 1991 by virtue of Amendment Act 2023, which empowers the Lt. Governor to act in his sole discretion in services matters.

33. Further, the executive power remains co-extensive with the legislative power. Under Article 239AA(3)(c), if any provision of law made by Legislative Assembly with respect to any matter is repugnant to any law made by Parliament with respect to that matter whether passed before or after a law made by Legislative Assembly or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of repugnancy, be void.

34. Therefore, it is clear that since for service, including vigilance, matters, the law has already been made by the Parliament (i.e. the Act 1991, as amended through Amendment Act 2023), hence the Legislative Assembly of Delhi now is not competent to make any law which is repugnant to the law made by the Parliament i.e. Act 1991 with respect to service, including vigilance, matters.

35. The Hon'ble Supreme Court also in its 2023 judgment of Constitutional Bench has laid down that *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*. Accordingly, the Hon'ble Minister (Service / Vigilance) is not empowered to issue such directions, as contained in paras 3 and 4 above.

36. Ultimately under Article 239 of Constitution of India, every Union Territory shall be administered by the Hon'ble President acting to such extent as he thinks fit, though an Administrator to be appointed by him and for NCT of Delhi such Administrator is Hon'ble Lt. Governor. Therefore, the Hon'ble Minister (Service / Vigilance), with due respect, appears to have misinterpreted the law of land. The Constitution of India and the provisions of Act are to be read as a whole and not in selective bits and pieces.

37. Accordingly, it is clear that while the Council of Ministers of GNCTD does have executive Powers in respect of all areas of legislative competence of the Assembly of NCTD, including the Entry 41 of List II, their powers shall stand curtailed to the extent that executive powers have been conferred upon the Central Government and the Hon'ble Lt. Governor under Article 239AA(4) and various provisions of the Act 1991 (as amended by the Amendment Act 2023). In view of the powers conferred upon the Central Government, especially under section 45C of the Act 1991, which are all encompassing for the matter of services matters there is no executive space left for the Council of Ministers of GNCTD in respect of any aspect of service matter, including transfers / postings and vigilance matters, and any direction issued by the Hon'ble Minister in respect of any service related matter would be an exercise of non-existent executive powers and therefore such directions are *void ab initio* being not in accordance with law.

38. As the directions issued by Hon'ble Minister vide her note dated 16.08.2023 as well as 19.08.2023 are in material departure from the provisions of the Article 239AA(4) of the Constitution as well as provisions of the Act 1991 and rules made thereunder, therefore, instead of giving effect to such material departure, the undersigned as Chief Secretary is duty bound to bring the same personally to the notice of Hon'ble Minister (Service / Vigilance), Hon'ble Chief Minister and Hon'ble Lt.

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 11th 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

234/L

OFFICE OF THE MINISTER
EDUCATION, HIGHER EDUCATION, I.T.E. FINANCE, PLANNING,
REVENUE, SERVICES, VIGILANCE, TOURISM, POWER, ACL,
PWD, WCD AND INFORMATION & PUBLICITY
GOVERNMENT OF NCT OF DELHI
ROOM NO. A-608, 6TH LEVEL,
DELHI SECRETARIAT, 1ST ESTATE, NEW DELHI

The GNCTD Amendment Act, 2023 states that the National Capital Civil Services Authority (NCCSA) as per Section 45H(1) shall have the responsibility to recommend the transfers and postings of all Group A officers and officers of the DANCS serving in the affairs of the Government of the National Capital Territory of Delhi. And as per Section 45H(2), NCCSA 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 Group A officers and officers of the DANCS serving in the affairs of the Government of the National Capital Territory of Delhi.

To ensure smooth functioning of the NCCSA and its coordination with the various departments of the Government of NCT of Delhi, it is hereby directed that:

1. All proposals for transfers and postings under Section 45H(1) will be put up to NCCSA with the approval of Minister Services. After obtaining the approval of Minister Services, Secretary Services shall send the proposals to the Member Secretary of the NCCSA for putting up before the NCCSA.
2. All proposals for vigilance and non-vigilance related matters under Section 45H(2) will be put up to NCCSA with the approval of Minister Vigilance. After obtaining the approval of Minister Vigilance, Secretary Vigilance shall send the proposals to the Member Secretary of the NCCSA for putting up before the NCCSA.


(Atishi)

Minister (Services/Vigilance)
16.08.2023

Chief Secretary/Chief Vigilance Officer

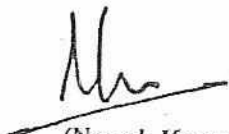
No. Minister (Services/Vigilance)/2023/657

Dated: 16.08.2023

Copy to

1. Special Secretary to Hon'ble Chief Minister
2. Principal Secretary Home/Member Secretary, NCCSA
3. Principal Secretary, Services
4. Secretary Vigilance

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)

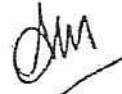
Copy to:

- (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.

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WCD, PWD, INFORMATION & PUBLICITY, TOURISM & ACL
GOVERNMENT OF NCT OF DELHI
A-608, 6TH 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

GOVT. OF NCT OF DELHI
DEPARTMENT OF SOCIAL WELFARE
7TH FLOOR, MSO BUILDING, I.P. ESTATE, NEW DELHI-110002
(ADMINISTRATION BRANCH)

F.No.43 (2)/80-DSW/Estt./Vol.-III/ 6795-6814

Dated:- 20 JUL 2023

ORDER

The Competent Authority is pleased to order of transfer the salary in respect of the following officials with effect from 01.07.2023 onwards:-

Sl. No.	Name of the Official & Designation	Place of posting	Present place of salary purpose	New place of salary purpose w.e.f. 01.07.2023 onwards
1.	Sh. Praveen Kumar, Sr. Assistant	HWH/Nav Rachna Home, Sector-03, Dwarka	DDO/HOO, Poor House, Kingsway Camp, DSW	DDO/HOO, HWH/Nav Rachna Home, Sector-03, Dwarka with effect from 01.07.2023 onwards against the vacant post of Sr. Asstt.
2.	Sh. Kumar Gandharva, Sr. Assistant	State Election Commission for election duty	DDO, DSW (HQ)	DDO/HOO, HLTB, Tahirpur, DSW with effect from 01.07.2023 onwards against the vacant post of Sr. Asstt.
3.	Ms. Divya, Sr. Assistant	Admn. Branch, DSW (HQ)	DDO/HOO, GLNS, Delhi Gate	DDO, DSW (HQ) with effect from 01.07.2023 onwards against the vacant post of Sr. Asstt.
4.	Sh. Dhanpal Singh, Sr. Assistant	Asha Kiran Home, DSW	DDO/HOO, NPS, Sector-4, DSW, Rohini	DDO/HOO, HMRP (Ch.), Asha Kiran Home, DSW with effect from 01.07.2023 onwards against the vacant post of Sr. Asstt.
5.	Sh. Sunil Kumar, Jr. Assistant	Admn. Branch, DSW (HQ)	DDO/HOO, GLNS, Delhi Gate	DDO, DSW (HQ) with effect from 01.07.2023 onwards against the vacant post of Jr. Asstt.
6.	Ms. Rekha Negi, Jr. Assistant	HWH/Nav Rachna Home, Sector-03, Dwarka	DDO/HOO, HMRP (Adult), Asha Kiran, DSW	DDO/HOO, HWH/Nav Rachna Home, Sector-03, Dwarka with effect from 01.07.2023 onwards against the vacant post of Jr. Asstt.

This issues with the approval of the Director (SW).

Section Officer (Admn.)

Dated:-

20 JUL 2023

F.No.43 (2)/80-DSW/Estt./Vol.-III/ 6795-6814

Copy for information & necessary action to:-

1. PS to Secretary (SW), 7th Floor, MSO Building, I.P. Estate, New Delhi-110002.
2. PA to Director (SW), 7th Floor, MSO Building, I.P. Estate, New Delhi-110002.
3. Dy. Director (Admn. / Vigilance Branch), DSW (HQ).
4. DDO/HOO, HWH/Nav Rachna Home, Sector-03, Department of Social Welfare, Dwarka.
5. DDO/HOO, Poor House, Kingsway Camp, Department of Social Welfare.
6. DDO/HOO, HMRP (Adult), Asha Kiran, DSW, Rohini, Delhi.
7. DDO/HOO, HMRP (Ch.), Asha Kiran Home, DSW, Avantika, Rohini, Delhi.
8. DDO, Department of Social Welfare (HQ), 7th Floor, MSO Building, I.P. Estate, New Delhi-110002.
9. DDO/HOO, HLTB, DSW, Tahirpur, Delhi.
10. DDO/HOO, GLNS, Delhi Gate with the request to send the service books (completed in all respect) till 30.06.2023 & personal files in respect of Ms. Divya, Sr. Assistant & Sh. Sunil Kumar, Jr. Assistant to the Admn. Branch, DSW (HQ).
11. DDO/HOO, NPS, Sector-4, DSW, Rohini, Delhi.
12. Asstt. Programmer (IT Cell) with the request to upload the order on the website of the Department.
13. Official(s) concerned.
14. Guard file.

Section Officer (Admn.)

No.F.10(87)/S-IV/CS Office Matters/1391-1394

Dated: 25-08-202

To

(24) THE SECRETARY,
DEPARTMENT OF SOCIAL WELFARE,
GLNS COMPLEX, DELHI GATE,
DELHI-110002

From,
Services-IV Branch,
Services Department,
5th Level, B-Wing,
Delhi Secretariat,
New Delhi