

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 561 of 1986

Y.S. Chaudhary & others

....

Applicants.

Versus

Union of India & others

....

Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

This is an application filed under Section 19 of the Administrative Tribunals Act XIII of 1985.

2. The applicants are working as Inspector of Works (IOW) in Grades II & III in the Northern Railway. They have challenged the orders dated 24.3.1986 and 14.10.1986 issued by the Chief Personnel Officer (CPO), Northern Railway, New Delhi and the Divisional Personnel Officer (DPO), Northern Railway, Allahabad in regard to assignment of seniority to certain other IOWs on the basis of examination held in 1973. The applicants were directly recruited as IOW Gr.III, ^{first} ~~one~~ in 1980, the second in 1982 and the third in 1984 and after completing their training they were appointed as IOWs in the Northern Railway in Allahabad Division. They have said in their application that in 1973 there were 8 vacancies for the post of IOWs. These posts are selection posts and appointment to them could be made either through a departmental promotion or through direct recruits. According to the applicants the direct recruitment quota for these posts was 75% and only 25% was meant for departmental promotion. On the basis of vacancies formula 3X was to be followed in calling the persons for the selection. Thus for 8 vacancies 24 persons should have been called but the authorities called about 46 persons in violation of the rules. There were certain

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other serious irregularities in the written examination which was held on 18.3.1973 and no viva-voce was held after written examination as such the alleged examination was irregular and bad on all counts. The controversy regarding examination continued over certain period and it was in 1977 the Divisional Superintendent (DS) cancelled the examination on 3.11.1977 and ordered a fresh examination to be held for filling up the post of IOWs Gr.III. Certain persons were aggrieved by the order of DS and filed a writ petition in the High Court of Judicature at Allahabad but the said petition was dismissed on 8.3.1983. In accordance with DS's orders a fresh selection was held in 1977-78 and on 10.3.1980 the result was published. It declared 6 persons successful and two other persons were also selected, thus a total of 8 persons were selected in this examination. On the publication of the result of 1977-78 examination those who had appeared in 1973 examination, which had been subsequently cancelled, obtained certain orders from the Divisional Railway Manager (DRM), Allahabad on 21.5.1982 for the preparation of a notional panel of 18 persons on the basis of 1973 examination and they were placed senior to those selected in 1977-78 examination. Thus DRM reviewed the orders of DS by his order dated 21.5.1982. Some of the aggrieved persons filed a writ petition against this order but it was dismissed on the grounds that they should have exhausted departmental remedies before coming to the court. The representations made by these persons were not disposed of by the General Manager (GM) when they filed another writ petition in 1983 which is still pending. ^{Interim} ~~in~~ orders were also issued by the High Court regarding operation of the impugned order of 21.5.1982. Subsequently on 15.3.1985 GM set aside the order of DRM dated 21.5.1982 and the Sr.DPO also passed an order dated 4.12.1985 in pursuance of GM's order but this order was withdrawn the very next day and those persons who were brought on the panel by DRM's order of 21.5.1982 continued to work as IOWs in spite of GM's orders of 15.3.1985. Thereafter another order was issued by the Headquarter (HQ) office by CPO and the Chief Engineer

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(CE) dated 24.3.1986 directing Sr.DPO to screen the persons who were kept in the notional panel by DRM by his order of 21.5.1982. The petitioners represented against this to the Railway Board but their case has not been decided. Some of the petitioners also filed an application being Registration (O.A.) No.262 of 1986 against this impugned order of 24.3.1986 before this Tribunal which was disposed of on 28.8.1986 as being premature as six months had not expired from the date of moving the representation. The Railway Board had not taken any decision but a viva-voce test was held on 16.10.1986 by an order dated 14.10.1986 passed by Sr.DPO. This order, according to the applicants, is bad in law and Sr.DPO or DRM had no jurisdiction to issue such order. According to the applicants since GM had by his letter of 15.3.1985 cancelled and withdrawn the earlier order dated 21.5.1982 passed by DRM upholding the orders of DS dated 11.11.1977 and the results of the examination held in 1977-78, so the examination held in the year 1973 did not exist any more and, therefore, the order dated 24.3.1986 and the subsequent order dated 14.10.1986 modifying GM's order dated 15.3.1985 by which screening of the candidates, who appeared in the selection in 1973 and assigning them seniority as a special case by placing them below those who were empanelled in 1977-78 examination was as a matter of fact an attempt to modify the order of GM. These persons were not selected in accordance with the rules and law and, therefore, they cannot be placed senior to the applicants. The applicants have further said that even continuing these persons on ad hoc basis for such a long time, i.e. over a period of about 9 years, was against the rules of ad hoc promotions and in this process the applicants have suffered because their seniority has been lowered ~~lower~~ and they have been brought below certain persons, who actually were never selected. They have, therefore, prayed for setting aside the order dated 24.3.1986 passed by respondent no.3 and the order dated 14.10.86 passed by respondent no.4 and for the issue of a direction to the

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respondents to place their name in the seniority list immediately after 1977-78 panel which was declared in 1980 and to to give any credit to the old candidates who had appeared in 1973 examination which had been cancelled not treating them as senior to the applicants

3. The answering respondents have challenged the application on the grounds that the number of vacancies was not calculated in the 1973 examination and the mention of the same in para 6(c) of the application that there were vacancies is wrong. According to them the formula for calling persons were 4X at that time and, therefore, for 13 posts 46 persons who had applied were called for the selection. They have also said that viva-voce test was held but no supplementary viva-voce could be held. According to them on grounds of certain irregularities in the selection the entire proceedings were cancelled by DS but this was due to insufficient information in this respect. The orders issued on 21.5.1982 by DRM which met with the grievance of the petitioners, who had filed a writ petition in the High Court which was ultimately dismissed on the ground that they got the redressal of the grievance. According to the respondents there was no manipulation in the selections held in 1973 and the dispute is between the 1973 examination batch and the 1977-78 examination batch and though the orders dated 21.5.1982 issued by DRM were cancelled on 15.3.1985 but that was in connection with some reference of seniority of a person, Manohar Singh, the petitioners were not involved in that case. 18 persons, who had qualified in the 1973 examination were reverted but they were continued on ad hoc basis and the Sr.DPO was not aware of the development ^{3 that had} taken place at the HQ level in regard to discussion of the matter as the Permanent Negotiating Machinery (PNM). On 5.11.1985 the decision taken on 15.3.1985 was modified and the matter was further discussed with the two recognised Unions jointly and subsequently a decision was taken to screen the persons who had qualified in the 1973 examination and the same was conveyed on

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24.3.1986. Thus the order dated 14.10.1986 issued by DRM was not passed with mala fide intentions. According to the respondents both the orders had been issued by the General Manager and respondents 2 and 3 are fully empowered to review the orders. It is not a case that DRM is modifying the order of the General Manager. Both the orders are from HQ Office and in accordance with the provisions of the Indian Railway Establishment Manual and in accordance with law. It is also within the powers of the Heads of the Department to waive the written test in a particular selection. According to them the contention of the applicants that no benefit could be given to the candidates of the 1973 examination is not tenable in law and is also not according to Railway Rules. The administration has also taken the recognised Unions into confidence and discussed the matter with them before arriving at the solution to the dispute.

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4. The answering interveners in their reply to the application have said that in 1973 the 4X formula was to be used and there were 12 vacancies. Therefore, 48 persons had to be called. The 1973 examination was cancelled by DS as a consequence of manipulation of those who were not successful in the examination. There were no irregularities and the relevant rules had been followed. The only fact was that some answer books could not be located but it should have no bearing on the validity of the selection because the mark-sheets were available on the basis of which those who had qualified in the written test were called for the interview. So the cancellation of the selection was wrong and no opportunity was given to the successful candidates of being heard before the same was cancelled. They filed a petition before the Allahabad High Court challenging the second selection, but this petition was ultimately withdrawn. The order dated 15.3.1985 was issued by HQ Office in pursuance of an informal meeting with NRMU. In this meeting the correct facts had not been put up and the answering interveners were also not given any opportunity to represent their case. The

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Sr.DPO issued an order on 4.12.1985 and pended the same on 5.12.1985 as a result of the answering interveners having filed a writ petition in the High Court against the order dated 15.3.1985 in which the operation of the said order was stayed. The answering interveners had also approached HQ Office for a review of the order dated 15.3.1985. In consequence of all these a meeting was held in HQ Office between the Unions and the administration and it was decided that paras 2 & 3 of the letter of 15.3.1985 should be withdrawn and the interest of the interveners would be decided at a further meeting with the two recognised Unions. According to them the order dated 11.11.1977 cancelling the selection held in 1973 issued by DS was wholly arbitrary and illegal. The administration, as a matter of fact, had in the counter affidavit filed in Writ Petition No.6776 of 1982 and Writ Petition No.3862 of 1983 said that the selections held in the year 1973 were valid and, therefore, the promotions made as a result of the same should be valid in the eye of law. There has been no manipulation in obtaining the orders dated 24.3.1986. This order was passed by HQ office after discussing the matter with the concerned Unions and after considering all the relevant facts and circumstances and is also ~~in~~ conformity with the Railway Board's letter dated 28.8.1974 and various other decisions of the Hon'ble Supreme Court. According to them since the panel on the basis of selections of 1973 was not declared due to administrative lapses, ~~though~~ ³ In 1977 the answering interveners were granted promotion on ad hoc basis in the light of their position in the said test and the cancellation by DSs was entirely a mis-representation of facts. The dispute, therefore, is between two groups consisting of the successful candidates of 1973 selection and the successful candidates of the 1977-78 selection and the applicants are not in the picture. It is not a case where the subordinates had taken a contrary decision to the one taken by the General Manager. It was as a result of representations that the whole matter developed and

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due to continuation of the dispute the promotions and appointments have been ad hoc since 1977 and their reversion now to their original post would amount to grave injustice. The answering interveners' claim³ that they are entitled to regularisation from the date of their initial ad hoc promotion in the post of IOW Gr.III as amended vide GM's orders of 24.3.1986.

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5. In the rejoinder affidavit the applicants have reiterated that there were only 8 vacancies in the year 1973 and have said that if it is taken that the vacancies were not calculated that will itself go to show that the selection suffered from lacuna. According to them it is incorrect to say that there were 13 posts and the selection of 1973 was in accordance with the provisions of the rules etc. ~~and that is why it was cancelled~~³. The cancellation was done after a thorough examination of the irregularities by DPO, Allahabad vide his report dated 3.11.1977. They have further claimed that they will be directly effected by the dispute between the candidates of 1973 and 1978 examinations as their seniority will be adversely affected and no benefit could be given to any person who is alleged to have passed the 1973 examination which was cancelled because of the irregularities. They have further reiterated that the order of 15.3.1985 was passed by GM and became final. The viva voce test in response to the impugned order was held on 17.10.1986 and not on 16.10.1986 as alleged. The result was also declared on the same day which shows the mala fide intention of the respondents who want that the applicants should not get any relief. The order of GM dated 15.3.1985 was still in existence and it has not been ~~superseded~~³. If the screening has been done on 17.10.1986 the interveners would be entitled to be selected for the post of IOW Gr.III only from this date and they should be given seniority from this date and not retrospectively and the applicants would become automatically senior to them. Since GM's order dated 15.3.1985 was still in existence the impugned order of 24.3.1986 issued by CPO

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and the Chief Engineer is without jurisdiction.

6. We have heard the learned counsel for the applicants the Government respondents and the interveners. On behalf of the applicants it was submitted that there was no quota for promotees and that the provisions of the Indian Railway Establishment Manual have been violated in the selections done in 1973 and, therefore, they were cancelled. The 1985 orders were issued by GM while the 1986 impugned orders was issued by CPO and CE who are lower in rank and who could not supersede GM's order. According to the learned counsel for the applicants the 1973 examination lay completely buried and, therefore, it could not be revived. A promotion on ad hoc basis also does not give any right for seniority and in any case seniority cannot be given prior to the date of screening which was 17.10.1986. He has relied on the case reported in AIR 1987 S.C. 424 (Ashok Gulati's case) and the case reported in ATR 1987 (1) CAT 12 (S.Raj Gopalan's case). The learned counsel for the interveners contended that a proper selection was held in 1973 and persons were called for the interview which also took place but due to papers having got misplaced and due to merger of the two grades and the Railway Board's ban on promotion issued in 1974 the selections held due to the 1973 examination could not be finalised. There were representations against the 1977-78 selection and some of the persons who were selected in 1973 refused to appear. They were, however, promoted ad hoc on the basis of 1973 selection. The 1977-78 selections were held after DS had cancelled the 1973 selection but in 1982 the matter was reviewed and a notional panel was prepared for the 1973 selections. The persons of the 1973 selection were first placed senior but subsequently they were placed below those who were selected in 1977-78. The matter in regard to the 1973 selections was represented by the recognised Unions in PNM meetings and decisions taken in the PNM meeting resulted in the orders issued in 1985 and 1986. According to ~~them~~ ^{3/} if it is taken that these were not valid decisions then DRM's order of 21.5.1982 should survive

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and since the interveners were regularly selected and they were made to work on ad hoc basis they were working not de hors rules they are entitled to get their seniority and regularisation from the date of their promotion. They are not incompetent or unqualified persons. They however, have no grievance against those who were empanelled in 1977-78. The learned counsel for the Government-respondents referred to paras 33 and 43 of the counter affidavit and said that the 21.5.1982 orders of DRM were also issued after due consultation with the Unions at the Divisional level. We have gone through the application and the documents filed along with it carefully.

7. The main issue that arises for adjudication is whether a selection which is cancelled can be revived subsequently ?

3) 8. On 11.11.1977 DS, Allahabad approved a recommendation put up to him by the Divisional Superintending Engineer (DSE) in respect of a selection held in 1973 not to proceed with that selection and calling a fresh selection on the basis of vacancies then existing. The background of this recommendation was that in 1973 exact number of vacancies were not worked out and on the merger of the two grades Board directed that selections already in process should be stayed and panels should not be operated. By this time interview of 19 candidates who had qualified in written test had been held and the balance were left to be interviewed. Board orders were, however, withdrawn in August, 1974. By this time some papers of this selection got misplaced and the controversy continued upto August, 1976. The selection papers were ultimately found out. It was also discovered then that the selection was held for 14 vacancies which was not correct. The vacancies actually came to 8 only. Originally certain workcharged posts were also taken into consideration inclusion of which was not considered correct. Certain persons had also not appeared in the 1973 selection.

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9. It is obvious that those who had appeared and passed in the written test were aggrieved by this decision and different forces started working ^{3/}pulling each other in opposite directions - there was a lobby which wanted the selections to be scrapped, there was another lobby, which included those who had failed in the 1973 written tests, wanting holding of fresh selections. On DS's decision the matter got agitated upto HQ level. Giving reference of an item discussed in PNM meeting held with URMU with the General Manager the Northern Railway HQ conveyed the decision on 15.3.1985 that the 1977 selection held after DS's approval on DSE's recommendations on 11.11.1977 ^{3/ was proper} and the 1973 selection was held as cancelled. The matter seems to have been followed up by the rival Union NRMU and some meeting was held on 5.11.1985. It was, therefore, decided to hold a joint meeting with both URMU & NRMU on this subject where the matter had to thrashed out and the decision taken. It is thus clear that the 15.3.1985 order which was issued after a meeting with URMU had not become final and the final decision was to come only after the joint meeting. This decision was conveyed by HQ office on 14.10.1986 permitting screening of all those who appeared in 1973 selection which was earlier cancelled. After screening those persons were to be placed below the panel declared ^{3/ for} ^{3/} in 1977-78 ^{3/} selections.

10. It is the applicants' case that HQ office letter of 14.10.1986 could not supersede the earlier letter of 14.3.1985 because the 15.3.1985 letter had been issued after PNM meeting held by URMU with the General Manager while the letter of 14.10.86 has been issued by CPO and CEG. Therefore, this letter cannot supersede the earlier letter which had approved the action of DS regarding cancellation of 1973 selections. PNM is meant to maintain ^{3/}contact between labour and administration and ^{3/ resolves} ^{3/}disputes and differences which may arise between them. The machinery has ^{3/}different levels. At the Railway level the recognised unions have ^{3/ later} ~~access~~ to the Divisional Officers and ~~later~~ to the officers at HQ including the

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the General Manager. At the Railway HQ level the General Manager or the officer incharge of staff, i.e. CPO normally meets the Unions. All disciplinary matters and subjects like promotions, transfer etc. of individual members of the staff which do not involve any general principle are excluded from the scope of discussions. The decision taken at the various levels are naturally on behalf of DRM or the General Manager or the Railway Board depending on which where the meeting is held. Therefore, the mention that PNM meeting held with the General Manager or an informal meeting on which decision is taken in HQ level as in the case of the letter of 14.10.1986 will not come under dispute on the basis of wordings given in the subject matter of the letter. All these meetings where decisions ^{31/} were ~~are~~ taken, the decisions ^{31/} were ~~are~~ taken as if they have been at the GM's level when the meeting is held in HQ. Therefore, it cannot be said that the letter of 14.10.1986 superseded the letter of 15.3.1985 and the supersession could not be made because the authority was incompetent.

11. Any subsequent order which cancels a previous order and which effects the persons adversely must be done after giving opportunity to the concerned employees. The 1973 selection proceedings which were cancelled by DS in 1977 on a ^{31/} report ~~report~~ submitted by the departmental officers were cancelled without giving opportunity to the persons who had appeared in that selection to put in their case. The report which was put up on 3.11.1977 by DPO to DS had summarised the his history of the 1973 selections. It said that the exact number of vacancies to be filled by rank ^{31/} ~~rank~~ ^{was} had not been worked out except the sketchy note given by DSE and without working out the existing vacancies the tests ^{31/} were held. DS had nominated the selection board and out of 46 candidates who were called to appear only 25 appeared on 19.3.1973. Another supplementary test was ordered for 16.9.1973 and those who had appeared in the test on 19.3.1973 were called for interview on

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17.9.1973. There was also certain objections by the Unions about holding of the written test for promotion as AIOWs. ³⁴ Some ~~one~~ ~~more~~ persons also went to the court against the said selection. It was decided that on 7.11.1973 supplementary written test be held and interview should also be held the same day. There was objection by the Unions against certain persons who were not working on the Division being called for the selection. As a result only 19 persons could be interviewed on 7.11.1973. In the meantime the third Pay Commission's recommendations came into operation and the two grades of AIOWs were ³⁴ merged and instructions were issued that the selections already in process should be stayed and the pannels already formed should not be operated. On receipt of these directives the selection was pended. Ultimately the post of AIOW was declared a selection post and in May, 1975 HQ office decided that the post will be continued to be Divisional controlled post. At this stage it was examined whether pended selection should be completed or not. By this time some papers were also misplaced but they were found out but the written answer books were not available. With the ³⁴ merger of the two grades and before the calculation of vacancies it was found that the selection planned originally in 1973 ³⁴ ~~was~~ for 14 vacancies, was not correct. Therefore, it was suggested that the written test already held may be cancelled and fresh selections be made. The vacancies were worked again and the total came to only 8. A mention was made that work charge post are not filled by regular selections because these posts are continued from year to year but these were taken into consideration while arriving at the total of 14 and, therefore, there should be only selection for 8 posts. In the selection of 1973 15 of the persons who were originally called had not appeared in the written test and 5 years have already elapsed and the selection had not reached a finality. Orders were, therefore, solicited by DPO whether the

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selection may be continued or a fresh selection be held on the basis of 8 vacancies or the remaining 15 persons may be called for a supplementary test and the selection be completed. It was also mentioned that if decision was taken to complete that selection those who had failed in the written test held in 1973 would also claim for being considered now because 5 years have elapsed. It was under these circumstances that a recommendation was made by DSE to hold a fresh selection and DRM approved the cancellation of the earlier selection and for initiating the fresh one.

12. The sequence of events in reaching ²¹ the cancellation of 1973 examination would indicate that irrelevant matters were taken into consideration in arriving at the conclusion. If decision was taken by DSE to hold a selection for 14 posts 8 of which have been found to be regular promotional posts and the balance 6 for the work-charged ²¹ posts where also the posts have to be manned we do not think that the earlier decision should have been branded as wrong. Secondly the plea put forward that those who had failed in the written test in 1973 would have a claim now, was also irrelevant because ²¹ ~~what~~ ^{what} should have been completed was the selection of 1973 and only those persons who ²¹ ~~were~~ ^{who} eligible at that time were to be considered if that selection was required to be completed. Moreover, before cancelling these selections the persons who were concerned, i.e. who had appeared in the written test and those who had qualified and were also interviewed ²¹ ~~and~~ ^{who} ~~were~~ ^{going to be} adversely effected and ²¹ ~~and~~ ^{who} should have been given a chance to put up their case before the selection was cancelled. However, this process started with the concerned staff running to the shelter of the Unions and the Unions taking up the matter at HQ level resulting in the approval of the cancellation, the approval of the restoration made by DRM in 1985 and further decision to complete the 1973 selection and to arrange to put those who qualified in the panel of 1973 ²¹ ~~and~~ ^{below} those who were selected in 1977-78. All these points to

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the way a very simple matter of bringing to completion ³¹ of the 1973 selection was dealt with. The question is whether a selection which was cancelled by DS could be revived subsequently. A perusal of the narration above would indicate that the cancellation itself was not based on sound reasons and when it created a problem, ³¹ the matter was taken up at a higher level and in the first meeting the order issued by DRM on 21.5.1982 ^{31 after} ~~after~~ due consultation with the Unions at the Divisional level were set aside as a result of PNM meeting on 14.3.1985 but on further consideration of the matter the same were revived on 14.10.1986 with certain minor modifications. If an order could be cancelled by HQ office we see no reason why it could not be revived also if the forum that was taken these decisions was the same and it was so in this case. Government ^{21 not} will have any lawful authority to prejudicially effect the rights of a Government servant retrospectively by a mere executive fiat otherwise than by his consent. The hopes ^{31 and} ~~on~~ the rights ^{that 31} had already accrued to those who were called for the selection and who processed themselves through upto the interview and who were waiting for the finalisation of the selection. Thus the benefit that they may have enjoyed could not be taken away by another order and if this order was subsequently ^{31 revived} ~~cancelled~~ by the authorities who chose to cancel them we find nothing wrong in the same. As a matter of fact it is ^{31 correcting} ~~creating~~ a wrong through ^{31 a 31} ~~an~~ unlawful action. We may also point out that the power to open an administrative decision can be exercised to redress any injustice and for good reasons. It should not be exercised arbitrarily and contrary to law. When the background is not depending purely on policy but certain objective facts have got to be considered then it was incumbent on the authority to have acted judicially. In the case of Amarjit Singh v. State of Punjab (1975 (1) SLR 171) the Hon'ble Supreme Court had observed that an administrative order can be revised if found to have issued on miss-interpretation, etc.

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13. We, therefore, do not find any substance in this application and reject the request for the reliefs sought for. It would be for the respondents to fix the seniority of the applicants in accordance with the relevant rules and no direction in this regard can be given at this stage.

14. In the result the application is dismissed with costs on parties.

[Signature]

MEMBER (J).

[Signature]

MEMBER (A).

Dated: May 20th, 1988.

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