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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1618 of 1987

Dr. Hayat Ahmad Qidwai Petitioner

Versus

Union of India & others Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

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

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This writ petition has been received on transfer from the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow under Section 29 of the Administrative Tribunals Act XIII of 1985. The petitioner was working as a Scientific Officer in the Department of Atomic Energy, Government of India, New Delhi. In response to an advertisement inviting applications from Indian Nationals for the award of National Post-Doctoral Fellowship for studying abroad in 1977, ³¹ The petitioner sent his application. The expenditure in this case was to be borne by the Ministry of Education, Government of India. The petitioner was ultimately selected for Post-Doctoral Fellowship and the Ministry of Education advised him by their letter of 5.8.1977 of the same. On receipt of this intimation he applied for grant of one year's leave to carry out the proposed studies in the United States of America. The petitioner was required to execute a bond with the Government of India and had to agree and abide by the terms and conditions of the ^{same} award. Accordingly the petitioner executed two bonds, one in favour of the Department and other with the Ministry of Education.

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In the bond executed with the Department, which is placed as Annexure 'VII' to the writ petition, the petitioner was bound to pay the Government on demand the amount on account of his having been placed on deputation for training connected with Post-Doctoral Research for the period from 1.10.1977 to 30.9.1979 at the cost of the Government of India in terms of Ministry of Finance Office Memorandum dated 24.11.1961 together with interest thereon from the date of demand on Government rates enforced at the time ³² ~~of~~ ^{for} the Government loans. In the event of his resigning or retiring ³³ ~~him~~ from service without returning to duty after expiry or termination of the four years or in the event of his removal or dismissal from service, he was required forthwith to return the Government on demand the sum on account of his having been placed on deputation together with interest thereon from the date of demand at the Government rates and upon his making such refund the written obligation shall be void and of no effect, otherwise it would have remained in full force and virtue. In the bond ³⁴ ~~which~~ ^{when} he signed with the Education Department he was bound to pay to the Government on demand a sum of Rs.20,000/- or the actual amount spent in connection with his studies which ever is greater. The conditions of this bond were that if he failed to avail of the passage to and from the country where he was to receive the training ³⁵ ~~when~~ ^{with} the same has been arranged by the Government on the existence of his nomination to the said Scholarship or if he fails to conform to or observe the rules and conditions of the Scholarship and conform to the instruction regarding training, etc. or if he accepted any honourarium or money from any foreign agencies or any other source without prior written consent of the Govern-

ment and failed to intimate to the Government the amount and other particulars of any such honorarium received during the training or studies abroad and refused to hand over or surrender to the Government the whole or part of such honourarium or return³⁴ to India without completing course or got adverse reports regarding his progress or on completion of the training failed to return to India or failed to report to the Government within two weeks of his arrival or failed to return³⁴ to India after the expiry of the period of scholarship or failed to refund the Government any over payment or contracted a marriage during the period of his stay ³⁴ at abroad or settled in any country other than India at any time within five years of the expiry of the scholarship he was required to refund to the Government on demand the passage and all other money paid to him or expended on his account by the Government in respect of the said studies, tuition fee, travelling expenses, etc. not exceeding a sum of Rs.20,000/- or the ³⁴ actual Government amount spent in connection with his studies whichever is greater along with interest thereon. When he made this payment the written obligation shall become void and will have no effect, otherwise it was to have full force and virtue.

In September, 1979 the petitioner was communicated the different types of leave that had been granted to him for a period of one year. He was not granted any study leave though he had made request for the same. On his representation he was assured that since he was being placed on deputation abroad for the purposes of further studies, he need not bother about the type of leave that had been sanctioned to him. He/ ^{started his} studies from 12.10.1977. on 22.8.1978 the petitioner requested for extention of his extra-ordinary leave ³⁴ for one year with effect from

12.10.1978 but he was intimated in November, 1978 that before the extension of leave could be granted he had to execute a fresh bond to serve the Government for a total period of five years. He was also required to furnish the sureties of two permanent Government Officers of a high status in his favour. It was mentioned in the letter that the grant of extension of leave will be issued after these formalities are completed. In the new bond the petitioner was required to pay a sum of Rs.20000/- or double the ^{3/-} ~~Government~~ amount spent in connection with his studies, leave salary, etc. Since the petitioner had already executed two bonds he felt that there was no reason for execution of a fresh bond and that too with different conditions. In July, 1979 he was informed to execute the bond otherwise he will be taken up for his continued absence without proper authority after 12.10.79. In September, 1979 the petitioner replied stating that the Department was not justified in asking him to execute a fresh bond in view of the fact that he had already executed one bond before his departure ^{3/- each} with the Ministry of Education and with the Department. He further ~~xx~~ requested extension of his leave from 12.10.1979 for one year. He also indicated his readiness to execute a bond again with the Department if it was made ^{3/-} out properly and was undistorted. He was advised in November, 1979 about the extension of his ~~leave~~ ^{3/- stay} upto September, 1980 subject to the condition that the extension of his stay will not cost the Government of India financially. It was also mentioned that no further extension will be entertained. In July, 1980 the petitioner again requested the Government to extend his study leave by another two years with effect from 12.10.1980 and thereafter since the petitioner was aggrieved by receiving no deputation allowance or leave

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salary and by the belligerent attitude adopted by the Senior Administrative and Accounts Officer in threatening him to take disciplinary action ^{if he did not sign the bond} he tendered his resignation on November 10, 1980 to be effective after the expiry of one month from the date of receipt of the letter. The letter was received by the Department on 17.11.1980. By a letter dated 12.12.1980 the petitioner was intimated that his resignation has not been accepted. When he wanted to know about the reasons for non-acceptance, he received ~~no~~ ^{no} reply. ^{According to him} ~~and since~~ the refusal was issued by the Under Secretary to the Government of India, who was not competent to refuse the acceptance. The President of India ^{was his} ~~being the~~ appointing authority. ^{According to him,} the relationship of master and servant came to an end on 27.12.1980. However, inspite of his resignation, on 14.9.81 a charge-sheet was issued to him for remaining absent unauthorisedly from October, 1978. The petitioner was required to submit his written statement within 10 days of the receipt of the charge-sheet. The charge-sheet was issued by respondent no.1, who is a subordinate authority to the appointing authority and since he had tendered his resignation which, according to him, had already become effective with effect from 17.12.1980, he states that he could not be taken up departmentally. However, the petitioner submitted his reply on 1.10.1981. In the reply he had mentioned that he was placed on deputation for two years, i.e. upto 30.9.1979 and thereafter his stay was extended by the Government of India upto September, 1980. Therefore, he could not be said to be on unauthorised absence from 12.10.1978. The petitioner made a query regarding refund of the actual amount of money spent by the Government on him and he was advised that 11,675.59

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dollars and Rs.8,731.05 P. have been spent by the Ministry of Education on the petitioner's account. The petitioner was required to return the entire money with interest at the rate of 8 per cent per annum from 1.10.1979. This payment was to be made at the rate of 500 U.S. Dollars every month without default. ³⁴ ~~thus~~ The petitioner was permitted by the Government to pay the amount in instalments and in pursuance thereof the petitioner has said that he has paid 11,000 U.S. Dollars and Rs.8,032/- till the date of his filing of this petition. He was again asked to indicate his willingness whether he desires to be heard in order to enable the Department to complete the disciplinary proceedings against him. The petitioner intimated his willingness on 30.7.1983. In November, 1983 the petitioner issued a notice to the respondents for dropping the disciplinary proceedings against him and to accept his resignation within two months. He also sent another letter on 3.12.1983 asking for the balance amount which remains to be paid, so that the same could be cleared. Later on, he informed that ~~the~~ he could not personally appear in December, 1983 in connection with the disciplinary case and he advised the respondents of the same. He was given a final opportunity of personal hearing on any date before 31.3.1984 failing which he was told that the departmental proceedings will be proceeded with further. The petitioner has further said that since he has paid the amount spent by the Government of India and all the obligations of the bond executed by him have been discharged, in the circumstances there was no obligation on the petitioner to serve the Department and he had an absolute right to resign from the service and since the bond has been complied with there is no reason for the Government to refuse to accept

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his resignation. Also the charge-sheet should be nonest and a void document. He has, therefore, prayed for issue of a direction quashing the charge-sheet served on him and commanding the respondents not to proceed further with the disciplinary case against him and accept his resignation with effect from 17.12.1980.

2. In their reply to the petition the respondents have said that the petitioner made a request for extention of his leave by one year beyond 12.10.1978. He was asked to execute a fresh bond giving an undertaking to serve the Government for a period of 5 years after his return to India before the leave could be sanctioned, but he did not respond and in 1979 he again applied for leave for a further period of one year with effect from 12.10.79. Thus the formalities which were required by the answering respondents were not completed so there was no question of extending the leave. Since wilful absence from duty after expiry of the leave renders ^{or liability for} disciplinary action against the Government servant and the petitioner was wilfully absent from duty from 12.10.1979 and as such disciplinary action was taken against him under the rules. The petitioner thereafter tendered his resignation in November, 1980. The resignation has not yet been accepted. As far as the grant of leave was concerned, according to Rule 50 of the Central Civil Services (Leave) Rules, 1972 study leave is not ordinarily granted to a Government servant, who has rendered less than 5 years' service. The petitioner joined the Department in 1977 and he had not completed 5 years' of service at the time of his application for leave. Hence study leave could not be granted to him. Since it was decided to spare him the Department granted him leave as available and admissible. The

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petitioner's allegation that all these ³⁴ ~~were~~ ^{was} done to harass him is not supported because if the Department wanted to harass him he would not have been allowed to proceed to U.S.A. The petitioner was supposed to complete his research work with a period of two years. Originally he took leave for one year and bond was executed only for four years. However, since he wanted extension this ³⁴ ~~insisted~~ ^{required} obtaining fresh bond where he was supposed to serve the Department for five years. Had he given the bond considering the period of scholarship being two years the revision would not have been necessary. ³⁴ ~~repeated~~ The requests of the petitioner for extension of leave gave the respondents a doubt about his integrity and honesty specially in the background of a copy of the Geological Society of America Membership wherein his address was shown as Qidwai, Ministry of Petrol and Minerals, P.O. 551 Muscat, Oman. The Department did not take action on this and instead preferred to ³⁴ ~~wait for the~~ wait ^{for the} execution of the bond. Thus no belligerent attitude was taken by the Department towards the petitioner. The petitioner's stay in U.S.A. ³⁴ ~~has~~ ^{has} to be covered by grant of leave and, therefore, any extension of stay ~~by~~ of the petitioner, unless the leave was granted, became unauthorised beyond the period for which leave was granted. The Ministry had agreed to the extension ³⁴ ~~upto~~ ^{of stay} upto September, 1980 subject to certain conditions which were not communicated by the Consulate General of India to the petitioner. The extension was in connection with the completion of his research work and not leave. The petitioner also did not submit any progress report on the work

he had done from year to year. His request for extension of his leave by another two years with effect from 12.10.1980 was on the grounds of family reason. He gave his address of India in this Application. He failed to give anything about his completion of his research work in U.S.A. and had made no reference about his research work or the report or any information concerning his scholarship abroad. The letter asking for extension of leave was also posted from Faizabad, which shows that the petitioner was no more in U.S.A. ^{34 doing} ~~during~~ research work and that he was no more interested in resuming duties and was only misusing the facilities extended by the Ministry of Education. There was no question of paying any deputation allowance to him. He was also told that disciplinary action would be taken in the event of his failure to report for duty on expiry of two years. Thus his resignation which is alleged to have arisen consequent to the issue of the notice for disciplinary proceedings is not a truth and deserves no cognizance. Resignation submitted by any Government servant has to be accepted by the competent authority before it becomes effective and he is also required to give three months' notice. He was communicated the decision that his resignation has not been accepted. The decision not to accept was of the competent authority and, therefore, there can be no situation where the relationship of master and servant can come to an end on 17.12.1980. Since the Government of India has convinced that the resignation by the petitioner cannot be accepted as he has followed deceitful method towards the Government by way of his above acts, in addition to misuse of Passport and non-completion of his research work ³⁴ taking up employment in Muscat where he joined in 1979. He can be

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charged for contravention ^{or of} but not only leave rules but also the above acts and the Government could have resorted to extradition of the petitioner to India. The petitioner has not ceased to be an employee of the Department and, therefore, the question of non-applicability of charge-sheet in view of his resignation letter does not arise. The Consulate General communicated to him only ^{34 Sanction for} the extension of stay. It was not sanction of leave which was conveyed to him. From what has happened it would be seen that he has only misquided the Government of his intentions and diverted the facilities given to him for his own gains. In terms of the bond the amount mentioned is due to be refunded by him with interest at the rate of 8 per cent per annum from 1.10.1979. The department has already given him an opportunity for personal hearing and he has not availed of the same and thus has shown generosity by giving him extension of time to meet the Secretary, Department of Atomic Energy the case is initiated. His contention that he has returned the amount and, therefore, he has no obligation to serve ~~is~~ ^{of expenditure} incorrect. Although the bond provides for refund/in the event of violation of the bond agreement, it does not mean that he has no obligation to the Government which sponsored him abroad. There is no doubt that the petitioner has a right to resign but equally the Government has a right not to accept the resignation if there are convincing reasons. Thus there was no arbitrary or illegal or mala fide action on the part of the respondents. The petitioner has also not exhausted his departmental channel before approaching the High Court/Tribunal. He could have appealed to the President of India.

3. We have heard the learned counsel for the parties. At the Bar a letter dated 10.1.1985 from the Ministry of Education & Culture, Department of Education, addressed to the petitioner at his Faizabad address was submitted by the learned counsel for the petitioner wherein ^{it was mentioned} ~~he~~ ^{claimed} that the entire amount due for violation of the bond towards principal along with the interest on the money which had to be refunded by the petitioner has been received by the Government. ^{and} ~~and~~ Therefore, he stood relieved from the bond executed by him with the Government of India. It was further contended by the learned counsel for the petitioner that since the second bond before the extention of leave had different condition where the amount to be refunded was made twice the Government ^{expenditure} ~~spent~~ and two sureties had to sign the bond the signing of the bond was not accepted by the petitioner and since his case was lingered on he sent his resignation which has not been accepted and even though the leave was sanctioned the period has been taken as absent ^{or} ~~and~~ ^{or} ~~and~~ therefore it was a fit case for quashing of the charge-sheet and for issue of a mandamus for accepting the resignation and for not proceeding with the disciplinary case. Nothing else was pressed before us.

4. The petitioner tendered his resignation on 10.11.1980. In his resignation he had given a notice of one month. In his letter of resignation the petitioner had said that he was sanctioned leave for one year, he had applied for extension of leave in 1978 for one year as the fellowship was to last for two years. In 1979 he again applied for extension for another one year and then in 1980 for two years. Since none of his applications had been disposed off by the department so far it had

31/ become difficult for him to continue to serve the department. On the other hand the respondents, on receipt of his first application, wanted him to sign a fresh bond to cover a total period of five years. The petitioner did not sign the bond as it contained some new conditions and kept on corresponding. No leave was sanctioned by his employing department but he continued to get extension of time from the Ministry of Education. The submissions made before us were that since the petitioner has discharged his obligations regarding the bond and tendered his resignation, the charge-sheet served on him is nonest and a void document. The petitioner was a confirmed employee and as averred by the respondents he had to give three months' notice and not one month.

5. In the case of Raj Kumar v. Union of India (A.I.R. 1969 S.C. 180) the Hon'ble Supreme Court had made the following observations in para 5 of its judgment :-

"5.Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. But where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary, it³¹ withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus paenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that

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will not be open
to the public servant to

resignation has not been accepted."

6. Similarly in the case of Union of India v. Gopal Chandra Misra and others (A.I.R. 1978 S.C. 694) in para 51 of the judgment the Hon'ble Supreme Court had observed thus :-

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"51. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it comes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority."

7. The respondents have averred that the decision not to accept the resignation was taken by the competent authority. So if the resignation had not been accepted the relationship of master and servant does not come to an end, and it was naught without its acceptance. The arrangement for resignation on one side and the acceptance on the other have to be consummated before they become effective. In para 89 in the case of Gopal Chandra Misra's case the Hon'ble Supreme Court observed thus :-

"89. Another important angle of vision from which the point in issue can be approached is this. Once it is conceded that the resignation becomes complete without the necessity of the President accepting the same, the very concept

of withdrawal of the resignation arises only if the resignation has to be accepted by an employer, because so long as a resignation is not accepted it remains an incomplete document and totally ineffective. In such circumstances, it is always open to the resigner to withdraw his resignation which has not reached the stage of completion. Such are the cases of resignation given by persons who are governed by usual master and servant relationship....."

³¹ This is in the background that a person may come up later to withdraw his resignation. ✓

32/ 8. Thus the resignation does not become effective until it is accepted by the competent authority. In the petitioner's case he was required to sign a bond with the Government. The bond had specific conditions and for the breach of any of those conditions the signatory was bound to pay either ³¹Rs.20,000/- or the actual expenditure whichever was more to the Government of India along with interest and upon such refund having been made the written obligation shall be void and of no effect. ³¹ Some of the condition of the bond ³¹laid down that if the bounded person resigned or retired from service without returning to duty after the expiry of the term or failed to return to India after expiry of the period of scholarship or refused to serve the Government or settles in any country other than India at any time within five years of expiry of the Scholarship he had to refund the money. He has refunded the money that was asked for by the Government. In the face of this situation the submitting of a resignation was an empty formality and as a matter of fact if he did not resign, he could still settle abroad or choose not to join back his post with the Department where he had hardly had any stakes because of the very short span of service, of less than five years, rendered by him.

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9. Normally it is necessary for a resignation to be accepted to give adequate time to the employer to make alternative arrangements so that work being done by the resignor does not suffer. There was no such situation here. The petitioner was already away from the scene of activity and he had gone out for at least a minimum period of two years. The post occupied by him could not have been kept vacant for such a long period. On reading the Bond, its conditions and the fact that it became void and of no effect the moment the money was refunded in full, together with the necessity of a resignation being accepted ~~in full~~ before it became effective, it would be clear that the end of the relationship of master and servant in such situations has no meaning at all. If a person, who has gone abroad on a Scholarship, refunds the value of Scholarship he can very well stay abroad because he has no stake in the service on which he was employed. The bond conditions evidently are not stringent enough to avoid such situations getting created and do not act as a deterrent for the bounded person. In this background it can only be said that the petitioner has to be deemed to have resigned. On his part he had been asking for extension of leave but the respondents brought in new conditions in the fresh bond which they wanted the petitioner to sign.

10. The respondents have said that they had come to know from a publication of the Geological Society of America that the petitioner was working in Muscat. In this background they doubted the integrity and honesty of the petitioner. The petitioner has not denied this averment in his rejoinder. The respondents have further said that in this way the petitioner has followed

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decietful method towards the Government, misused the passport and not completed the research work for which he was awarded the fellowship. There is lot of weight in these submissions but we do not find any condition that had been imposed to prevent such a situation happening. It was for the respondents to have devised a foreproof bond. They sadly failed in this respect.

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11. Leave can not be claimed as of right. It is purely at the discretion of the granting authority. F.R. 67 provides so. In exigencies of service it may be refused. The respondents waited for the receipt of the executed Bond for the processing of sanction of leave requested by the petitioner but he did not execute the bond on the plea that he had already signed one bond and the fresh bond was imposing some extra conditions. The respondents knew the duration of the fellowship. The period was at least two years. They should have foreseen the duration of two years and got a bond executed to cover the whole period. It is not understood why they had a bond signed only to cover a period of one year ? This exercise and specially the necessity of having two sureties was taken by the petitioner as deliberate harassment. It was difficult for the petitioner to get the sureties sitting in America. A reasonable approach was lacking on the part of the respondents. In the new bond the imposition of the condition of Rs.20,000/- or twice the actual expenditure (compared to Rs.20,000/- and actual expenditure of the first bond) whichever is more is also not understood unless the condition was introduced due to typographical error. Only the period could be extended to five years. We do not think that the respondents acted prudently and fairly in this regard. In any case even if

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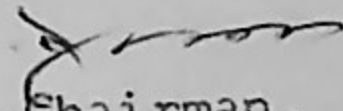
the bond would have been for the period of five years it could not have prevented the petitioner from the action that he has chosen to take now. Refusal to grant him leave was an unilateral decision and has only theoretical value. Such a misconduct could have been visualised and must have formed a part of the conditions. Also refusal of extention for at least one year was an incorrect action specially in the background, that the Scholarship was for two years and could be extended as the Ministry of Education had done by extending the period upto 1980.

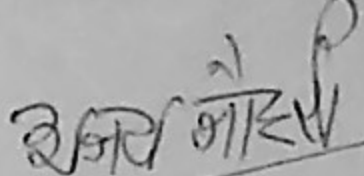
12. In connection with the disciplinary case the petitioner had sought personal interview with the Secretary, Department of Atomic Energy and he was granted the same, but he changed his posture in November, 1983 and pressed for the acceptance of his resignation. He has paid the amount due to breach of the bond. Though the return of the money for breach of the bond does not sever his connection with the department where he is employed, as it can only happen if his resignation is accepted and overstayal of leave is a misconduct for which an employee can be taken up, yet all these have no locus standi in the present case. Refusal of leave, when a person is ²⁴/₂₄ abroad on a fellowship, has no meaning and the disciplinary action seems to be uncalled for in the circumstances of the case. It is an exercise which is abinitio of no consequence. Resignation normally forfeits all the privileges of the job from which it is made. The petitioner does not gain anything out of it. The petitioner could have had opportunity to vindicate his position in the departmental enquiry but then it will be waste of time and money. The decision appears to have been taken without weighing all the pros and cons of

persuing with their action further. Notwithstanding the averment made by the respondents that the petitioner is suspected to have taken up a job in Muscat and is no more in U.S.A. where he was sent for the research work on scholarship, we do not find that any case is made out to deny relief to the petitioner.

13. Under the circumstances we feel that justice will be met if the matter in regard to disciplinary action and acceptance of resignation be given a quietus. The petitioner should be deemed to have resigned. The petition is disposed of accordingly. We make no order as to costs.

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Vice-Chairman.


Member (A).

Dated: January 19, 1988.

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