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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No. 139 OF 1986.  
~~ExAxxNox~~

DATE OF DECISION 20.11.1987.

SHRI P.G. NAWANI, Petitioner

S. TRIPATHY. Advocate for the Petitioner(s)

Versus

STATE OF GUJARAT & ORS. Respondent

SANDEEP SHAH FOR ANIL DAVE on behalf Advocate for the Respondent(s)  
of Resp. No.1, and J.D. AJMERA  
appearing for Union of India.

CORAM :

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Yes.*

Shri P.G.Nawani, IPS (Retd.)  
Flat No. 46, Sawapanlok Society,  
Chinoy Bagh, Behind Law College,  
Opp. Gujarat Nursery,  
Ellisbridge, Ahmedabad 380006.

..... Petitioner.

(Advocate : S. Tripathy.)

Versus.

1. State of Gujarat,  
Notice to be served through  
the Chief Secretary to the  
Government of Gujarat,  
General Administration Deptt.  
Sachivalaya, Gandhinagar.

2. Union of India,  
Notice to be served through  
the Secretary to Government,  
Ministry of Home Affairs,  
New Delhi.

..... Respondents.

(Advocates: Sandeep Shah for Anil Dave  
on behalf of Res.No.1, and J.D.Ajmera  
appearing for Union of India.)

J U D G M E N T

O.A. NO. 139 OF 1986.

Date : 20.11.1987.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

In this application under section 19 of the Administrative Tribunals Act, 1985, filed on 10.4.1986, the petitioner, Shri P.G. Nawani, I.P.S. (Member of the Indian Police Service, 1952 retired since 29.2.1985) claims that he is entitled to claim medical reimbursement to the tune of Rs. 2,29,681/- (as per Annexure 'F') or in the alternative a sum of Rs.1,78,170/- (as per Annexure 'C'). In this regard he has challenged the validity of the order contained in memo dated 6.3.1985 (Annex. 'L') issued by the Home Department, Government of Gujarat. The said order reads as under :-

contd..... 3/-

With reference to letter dated 16.10.83 of Shri P.G.Nawani in connection with the above subject for incurring expense of amount of Rs.1,06,357/- for medical treatment taken abroad and Rs.10,078/- for his self going and returning air ticket, sanction is granted for reimbursement of 50% i.e. Rs. 58,217.50 ps. (Rupees fiftyeight thousand two hundred seventeen and fifty paise only) subject to the condition that Shri Nawani's annual income for concerned financial year is between Rs.60,000/- to Rs. 1 lakh.

Shri Nawani will have to send copy of the income tax return for his annual income for the concerned year to the Accountant General.

These orders are issued with the approval of the Health and Family Welfare Department and Finance Department.

By order and in the name of the Governor of Gujarat.

2. According to him, the provisions contained under Rule 14 of All India Services (Medical Attendance) Rules, 1954 clearly permit the State Government to give "reimbursement of the cost of the medical treatment in suitable deserving case without any limit even though not authorised by this rules". It is alleged that the decision contained in the impugned order of the Respondents is arbitrary and motivated one. The petitioner therefore prayed that the Respondents State of Gujarat be directed to sanction entire claim of medical reimbursement and after deducting the payment of Rs. 58,217.50 ps. (received by cheque dated 5.9.1985 from the 'Pay and Accounts Officer'), the balance amount may be paid to him with interest at the rate of 18% from 16.10.83 till the date of realisation.

3. The Respondents No.1 - State of Gujarat, in their counter (dated 10.11.86 at the stage of admission), filed by Shri M.P.Rao, Under Secretary, resisted the petitioner's claim in the application. It was contended inter-alia that ordinarily the Government Officer is not permitted to go abroad for taking treatment but only in exceptional circumstances he is reimbursed medical expenses incurred abroad. According to them, before 11th March, 1985 there was no specific policy pertaining to reimbursement of medical expenses incurred abroad and Respondent No. 1 Government had to consider the

said question when the applicant had made his claims for reimbursement of medical expenses incurred by him out of India and after due deliberations and careful considerations the policy was laid down which is reflected in Resolution dated 11th March, 1985. It was further submitted that while issuing letter dated 6th March, 1985 the policy reflected in Government Resolution dated 11th March, 1985 had been practically finalised. The Respondent No.1 in their further reply dated 29th September, 1987, contended that the petitioner had taken treatment in foreign country. In the matter of reimbursement of medical expenses incurred in foreign country are not reimbursable in accordance with the provisions of rules 2(1) and 14(1) of the All India Services (Medical Attendance) Rules, 1954, but the Government has taken a liberal and very sympathetic view to help the petitioner by applying the guidelines of the Government of India which were issued on 1.11.1983 i.e. much later after the incident of taking the treatment abroad by the applicant i.e. from 6.8.1983 to 17.9.1987.

4. Mr. S.Tripathy, the learned counsel for the petitioner was heard at a considerable length. Mr. Sandeep Shah appeared for Anil Dave on behalf of the Respondent No.1. The Respondent No.2 has not filed any reply however Mr. J.D.Ajmera appearing for Union of India adopted the arguments advanced by Shri Sandeep Shah opposing the application. The documents and the materials placed on record are also perused and carefully considered.

5. Before dealing with the contentions of the parties, before me, it would be convenient for better appreciation of the contentions, to state a few facts relating to the case which I notice from the record. The petitioner Shri P.G.Nawani, holding the position in Gujarat State in the rank of Special Inspector of Police and Director of Police Training, Gujarat State, while on casual leave had a sudden pain in his chest and consequently got admitted as an indoor patient



in "Jaslok Hospital" on 11.7.1983 where he was in the charge of Dr. J. Daulat Ram (Thoracic and Cardiovascular Surgeon). He referred for urgent investigations for his cardiac conditions among the other tests, his coronary angiography was carried out on 14th July, 1983. Apprehending his serious condition from these investigations, all preparations, for urgent surgical investigation were kept ready, to which the petitioner patient consented. However in view of the serious type of complication involved in his case an operation of Aortic Coronary Bypass (4 grafts) was postponed and provisionally fixed for 19th July 1983, to which also the petitioner had consented. After further consultation and discussions it was decided that in view of the serious nature and extent of the block in the coronary arteries it would be unsafe to operate on him. In the opinion (dated 21.7.1983) of Dr. J. Daulat Ram, it was found mandatory that he (the petitioner) should be sent immediately abroad either to U.K. or U.S.A for aortic coronary bypass surgery in the interest of the safety of the patient. In his opinion any undue delay, in this case, was likely to entail risk to his life. The matter was submitted to the Superintendent, St. George's Hospital (who is Civil Surgeon for Bombay City for Government servants and competent authority and authorised medical attendant) who certified that the disease from which the petitioner was suffering was of such a nature that the facilities for treatment were not available in India. He also referred the case to the Director of Health Services, State of Maharashtra, Bombay, who also certified that the treatment of the case was necessary in the country abroad. The petitioner apprised the Additional Chief Secretary, to the Government of Gujarat, Home Department, stating all the facts and forwarding the certificates under his letter dated 31.7.83 and requested for permission for going abroad for surgical and medical treatment. He also informed the Secretary to Government, Home Department that the Jaslok Hospital has arranged his admission in "Hill Side Hospital", at

London on 6th August, 1983 where he took the required treatment and stayed for 8 days in the Hospital and in order to economise he hired a small apartment near the Hospital, where he stayed about 34 days. The petitioner under his letter dated 16.10.1983(Annex.'C') explained all the circumstances in detail and submitted a total claim of Rs. 1,78,170/- which included cash allowance for attendant (i.e. the wife of the petitioner Mrs. Vasanti Nawani). The Respondent No.1, seems to have considered the following items of expenditure as referred to in column B of para 10 of the petitioner's letter dated 16th October, 1983 in addition to Rs. 10,078/- being the air freight and foreign travel tax (total Rs.1,16,435/-). The said items of expenses are as under :-

(i)	Hillside Hospital 22, Corfton Road, Ealing, London W5 2HT for medical treatment, operation etc. Invoice No. 032 for £ 6469/- Receipt of paid fully on 30.8.83 (Encl.9 in original)	£ 6469.00 (Rs.100269/-)
(ii)	Paid to Dr B Logan for Anaesthesia & Professional Services. Receipt dt.22.8.83 (Encl.10 in original)	£ 375.00 (Rs. 5812/-)
(iii)	Prescribed medicines brought from D.L.Lewis Ltd., Chemists, Ealing, London's receipt dt. 17.9.83 (Encl.11 in original)	£ 17.95 (Rs. 276/-)
		<u>£ 6861.95 (Rs.106357/-)</u>

As per the impugned order the Government granted for reimbursement of 50% of the aforesaid expenditure i.e.Rs.58,217.50ps.

6. Before taking the decision in this regard Respondent No. 1, State of Gujarat had referred the matter to the Director of Health & Medical Services & Medical Association of Gujarat State, Ahmedabad, who reported to the State of Gujarat under his letter dated 25.10.83 (Annexure'E') as under :-

- (i) The treatment was necessary.
- (ii) It was required to be taken abroad as the same was not available in India (vide reference from Director of Health Services, Govt. of Maharashtra and Superintendent, St. George Hospital, Bombay)
- (iii) The amount charged for service rendered is reasonable for U.K. viz. A/B/C.

In the meantime, the petitioner under his letter dated 10.10.84 sent a revised bill for reimbursement to the tune of Rs.2,29,681/- (Annexure 'F'). After several representations the decision contained in the impugned order was conveyed to the petitioner who accepted the cheque in the sum of Rs. 58,270.50 ps. under protest.

7. The fact that the petitioner is governed by the All India Services (Medical Attendance) Rules, 1954 is not in dispute. The Government of India (under GI.MHA letter No. 7/8/63-AIS(III), dated 3rd October, 1963) have held that the scheduled of fee prescribed in the Central Services (Medical Attendance) Rules, 1954 is also applicable to All India Services Officers serving in connection with the affairs of the Union under rule 2(a) of the All India Services (Conditions of Service- Residuary Matters) Rules, 1960. So far as the All India Services Officers serving in connection with the affairs of the States are concerned, it is for the State Government to prescribe under rule 2(d) read with rule 2(a) of the A.I.S. (Medical Attendance) Rules, 1954, fees for medical attendance and treatment to be rendered by the authorised medical attendants to such officers. The Government of India (under GI MHA letter No. 7/14/63-AIS(III), dated 12.5.1964) have held that Rules 3,4 & 7 provide for free medical treatment and attendants to the members of the services and the members of their families without restriction. The provisions contained under Rules Officers of AIS (Medical Attendants) Rules, 1954 permit All India Services Officers and others of their families to get medical attendants or treatment outside the State for all diseases. The intention in amending the said rule was that the facilities for

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such treatment should, as far as possible to restrict the cases of such malignant diseases like Tuberculosis, Cancer and Polio. Under G.I. M.H.A, letter No. 7/7/60-AIS(III), dated 3.6.1960, it is directed that the State Government may bring this fact to the notice of their medical authorities so that they might bear in mind while attending medical treatment of the hospital or outside the State. It was further indicated that the State Government may however, at their discretion permit officers in deserving cases to have treatment outside their state of other diseases where medical authorities are of opinion that there is immediate danger to life and that treatment outside the State is absolutely necessary.

8. It is generally conceded that the Government of India under the relevant rules is not liable to reimburse the expenses over treatment taken abroad by the Central employees. According to the orders (GI; DDP & AR letter No. 11023/5/78-AIS(III) dated 8th March 1979) issued by the Government of India vide decision No.3 below Rule 14 of the All India Services (Medical Attendance) Rules, 1954, the State Governments can under rule 14 of the Rules permit reimbursement of the cost of medical treatment and attendance taken abroad in a suitable and deserving case, even though it is outside the scope of the rules as laid down in sub-rule 1(2). In such cases however, the Government of India do not, as a matter of principle, accept any liability, though in very special cases, they make payment equivalent to what proper treatment would have cost in India itself. The question of reimbursement of expenses over treatment abroad for Central Government employees has been further considered and it has now been decided that the guidelines as in the annexure to the Department of personnel and AR letter No. 11023/7/83-AIS(III) dated 7th November, 1983 reproduced below should be adopted in dealing with the cases relating to the request for medical treatment abroad.

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Guidelines to be adopted in dealing with cases relating to Medical Treatment abroad.

- "(i) As a rule, reimbursement of cost of medical treatment incurred abroad should not be allowed.
- (ii) In exceptional cases necessitating treatment of a kind yet to be widely established in the country where Government servants on medical advice choose to go on their own for treatment abroad, reimbursement could be authorised by the Director General of Health Services but should be limited to the expenditure that would have been incurred had such treatment been received in India in a Government Hospital or in a private hospital or nursing home specially recognized and accepted by the Director General of Health Services. The question of reimbursement of air passage in such cases should not arise at all.
- (iii) Foreign exchange may be released to Government servants for purpose of treatment abroad to the same extent as is permissible to private citizens.
- (iv) Hospitals and clinics indicated in paragraph 3 below have facilities for specialist treatment for which requests are generally received for treatment abroad and in respect of which treatment facilities in ordinary Government hospitals are still inadequate. The services provided by these hospitals may be availed by eligible Government servants. In such cases reimbursement should be allowed subject to D.G.H.S. being satisfied about the reasonableness of the claim.
- (v) Pending cases of reimbursement claims may be dealt with on the basis of the guidelines indicated in (i) to (iv) above.

NOTE :- Only those cases which may have been brought up for consideration on or after 9th February 1982 and not finally decided by that date would be deemed to be pending cases to qualify for such consideration.

2. The following ailments have been identified by the D.G.H.S. as being such for which facilities for treatment in India are not yet widely established.

- (i) Cadaver Kidney Transplant.
- (ii) Old operated by-pass surgery cases (in which the initial operation was done abroad) needing revascularization.
- (iii) Bone Marrow transplant.
- (iv) Operative correction for high myopia cases.
- (v) Complex cyanotic-Heart-Lesion and newly born infant suffering from heart diseases.

2.1. To consider cases of the above type, a Medical Board should be constituted at the State level by the State Director of Health Services. The Board should make specific recommendations and also give reasons for recommending treatment abroad. It should also certify that the treatment is not available in India. The certificate should be endorsed by the Director of Health Services, and sent to the Director General of Health Services, New Delhi, for his approval.

2.2. For purposes of reimbursement, as envisaged in these guidelines, the schedule of charges as applicable for private ward treatment at the All India Institute of Medical Sciences, New Delhi, in force from time to time should be adopted.

3. The following Institutions have been identified as having facilities for specialist treatment :-

(a) Bye-pass coronary surgery :

- (i) Southern Railways Headquarters Hospitals, Perambur, Madras.
- (ii) Christian Medical College and Hospital, Vellore.
- (iii) K.E.M. Hospital, Bombay.
- (iv) Jaslok Hospital, Bombay.
- (v) Bombay Hospital, Bombay.
- (vi) Kasturba Hospital, Bhopal.
- (vii) Sree Chitra Tirunal Institute of Medical Sciences and Technology, Trivandrum.

(b) Kidney Transplant :

- (i) Christian Medical College & Hospital, Vellore.
- (ii) All India Institute of Medical Science, New Delhi.
- (iii) Post Graduate Institute, Chandigarh.
- (iv) Jaslok Hospital, Bombay.

(c) Blood Cancer:

- (i) Tata Memorial Hospital, Bombay.
- (ii) Cancer Institute, Adayar, Madras.

(d) Complicated heart surgery cases :

- (i) Southern Railway Hospital, Perambur, Madras.
- (ii) Christian Medical College & Hospital, Vellore.
- (iii) K.E.M. Hospital, Bombay.
- (iv) All India Institute of Medical Science, New Delhi.
- (v) Bombay Hospital, Bombay.
- (vi) G.B. Pant Hospital, Delhi.
- (vii) Shree Chitra Tirunal Institute of Medical Science and Technology, Trivandrum.
- (viii) Post Graduate Institute, Chandigarh.
- (ix) S.S.SK.M. Hospital, Calcutta.
- (x) Samaritan Hospital, Alwaye (Kerala)
- (xi) Kasturba Hospital, Bhopal (BHEL)
- (xii) N.M.Wadia Institute of Cardiology, Pune."

9. It is further borne out that the State Governments have been requested to consider adopting the same policy in respect of the members of All India Services working in connection with the affairs of the State, as well as the State Government employees. The Government of India have held (under GI. MHA letter No. 7/10/63-AIS (111) dated September, 1963) that executive instructions giving general additional concessions in the matter of medical treatment

and attendance to the members of the All India Service outside the scope of the All India Services (Medical Attendances) Rules, 1954, can be issued by the State Government not under rule 14(ii) of the said rules but under the residuary powers resting with the State Governments in respect of the officers serving in connection with the affairs of the State. Admittedly, the State Government had not formulated any rules or guidelines in this regard. The Government of Gujarat for the first time adopted the policy and laid down guidelines regarding reimbursement of medical expenses incurred abroad under Resolution dated 11th March 1985 (Annexure 'A' appended with the Respondents reply dated 10.11.86), which reads as under :-

RESOLUTION :

By the Memorandum No.11023/7/83-AIS(III) Government of India, Ministry of Home Affairs, Department of Personnel & Administrative Reforms, New Delhi had issued detailed guidelines regarding reimbursement of medical expenses incurred abroad by Central Government employees. The question of adopting the Govt. of India guidelines in this regard with suitable modifications has been under the consideration of the Government. After careful consideration Government is pleased to order that-

- (1) As a rule treatment abroad shall not be reimbursible.
- (2) In cases where no treatment is available at all for the ailment in India or where the treatment available is considered risky and still to be developed fully, reimbursement of medical expenses incurred abroad may be given subject to the following conditions :-
  - i) Prior permission of the Director, Health Medical Services & Medical Education should be obtained before availing of treatment abroad. However, in case of an emergency post facto approval of the Director should be obtained provided it is certified by the Consultant/Specialist that such treatment abroad was necessary in the interest of the patient.
  - ii) Foreign Exchange required for treatment abroad should have been obtained through the Reserve Bank of India under the Foreign Exchange Rules.
  - iii) Reimbursement shall be limited to the hospital expenses and airfare for the patient only. Airfare shall not be paid for the attendant.
- (3) Airfare and Hospital expenses shall be reimbursible as per the schedule below :-
  - (a) 90% in the case of Govt. servants whose annual income is less than 30,000/- rupees.
  - (b) 75% in the case of Govt. servants whose annual

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income is between Rs.30,000/- and Rs.60,000/-

- (c) 50% in the case of whose annual income is between Rs.60,000/- and Rs.1.00 lakh.
- (d) Nil in the case of those whose annual income is more than Rs. 1.00 lakh.
- (4) The annual income of the Government servant shall also include the combined income of the Govt. servant, his or her spouse by way of salaries or any other income including income from agriculture.
- (5) Copies of income tax returns of the Govt. servant, his or her spouse as the case shall be treated as proof of income.

These rules apply to all employees of the Government of Gujarat who are eligible for reimbursement of medical expenses under Govt. Resolution, Health & Industries Department No. MAG-1058-5949/0 dated 8th October 1964 as amended from time to time and to the members of the All India Services allotted to the Gujarat Cadre.

This issues with the concurrence of the Finance Department and General Administration Department in file No. IPS-1083/6328-B P.I. of the Home Department.

By order and in the name of the Governor of Gujarat.

10. Now turning to the impugned order dated 6.3.1985 the decision contained therein is taken by the Government prior to the aforesaid Resolution. Therefore, the action taken by the authorities sounds prima-facie arbitrary and not supported by any rules or regulation or guidelines. When the guidelines and the policy as indicated in the aforesaid resolution were not formulated with regard to the decision contained in the impugned order dated 6.3.1985, the claim of the petitioner which was pending at the relevant time was required to be decided on the basis of the existing instructions issued by the Government of India from time to time. Admittedly the Government of Gujarat Defendant No.1 while passing the impugned order did consider that the case of the petitioner who claimed reimbursement of expenses incurred for medical treatment taken abroad was of exceptional nature which required special attention and that it was a fit case for consideration and found him fit to be reimbursed. However in doing so, the expenses of amount of Rs. 1,06,357/- for medical treatment taken abroad, Rs. 10,078/- for his self going and

contd..... 12/-



returning air ticket, were sanctioned and granted for reimbursement but to extent of 50% only i.e. Rs. 58,217.50 ps. As per the instructions contained in GI; MHA file No. 8/82-AIS(III) dated 29.8.62 the Government can grant in individual, deserving and suitable cases any concession within or outside the framework of the rules. It is further observed that accordingly the State Government can under this rule, permit reimbursement of the cost of medical treatment and attendance taken abroad in a suitable and deserving case, even though it is outside however, the Government of India do not, as a matter of principle, accept any liability, though, in very special cases, they make payment equivalent to what proper treatment would have cost in India itself. Now as stated earlier in absence of any policy regarding reimbursement of medical expenses incurred abroad at the date of the impugned order i.e. 6.3.1985, the aforesaid instructions ought to have been weighed considerably with the Respondent No. 1.

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11. The petitioner had solicited information from the authorities of the Jaslok Hospital and Research Centre, Bombay under his letter dated 15.3.1985 regarding the cost which the petitioner would have been incurred in case of operation of Aortic Coronary Bypass (4 grafts) would have been performed at Jaslok Hospital, Bombay. In response to the said letter, Dr. J. Daulat Rao, Honorary Surgeon of Jaslok Hospital, Bombay, has forwarded the schedule of charges of Jaslok Hospital and the cost has been estimated at Rs. 80,000/-. The said schedule of charges reads as under :-

BREAK-UP OF HOSPITAL CHARGES FOR AORTO CORONARY BY-PASS OPERATION.

Daily rate - 'A' Class Rs.400/-(400 x 21)	Rs. 8,400.00
Surgeon's charges.	Rs. 6,000.00
Anaesthetist's charges	Rs. 2,000.00
Operation Theatre charges.	Rs. 3,500.00
Cardiac Catheterization and Angiography.	Rs. 6,000.00
Heart Lung machine, operation etc.	Rs. 1,000.00
X-Ray.	Rs. 3,000.00
Drugs and Stores items including Oxygen.	Rs. 10,000.00
Pathology and Blood Bank.	Rs. 7,100.00
Physiotherapy, Ultrasound, Nuclear Medicine and Pulmonary Function Test.	Rs. 3,000.00
Total.	Rs. 50,000.00
Plus surcharge @ 20%.	Rs. 10,000.00
Grand Total	Rs. 60,000.00

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If the stay is extended upto six weeks then the expenses will go upto Rs.75,000/- and if admitted in Suite Class for six weeks the charges will be Rs. 80,000/-.

12. Now under the Government instructions as discussed above, it was quite legitimate for the petitioner to claim Rs.80,000/- towards the medical expenses incurred by him and in addition a sum of Rs.10,078/- for self going and returning air ticket, which the Respondent No.1 has conceded reasonable for being sanctioned. The action of the Government of Gujarat, Respondent No.1 in so far as, in sanctioning reimbursement of 50% only i.e. Rs. 58,217.50 ps. can not be sustained. It is therefore directed that the Respondent No.1 will work out the quantum of medical expenses for reimbursement on the basis of Rs.80,000/- which is considered as the cost of medical treatment in India as estimated by the Jaslok Hospital authority and the air freight incurred by the petitioner and pay the balance after deducting a sum of Rs. 58,217.50 ps. The Respondent No.1 shall work out the amount of reimbursement as indicated above and pay the balance to the petitioner within three months from the date of this order at the rate of 12% per annum from the date of the application i.e., 10.4.86 till the date of realisation, failing which the interest will run at the rate of 18% per annum.

With the observations and directions indicated above, this application stands disposed of, with no order as to costs.

  
( P.M. JOSHI )  
JUDICIAL MEMBER.

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