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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 420 OF 2012

Cuttack this the 29th day of October, 2015

Biswabasu Das...Applicant(s)

-VERSUS-

Union of India & Ors...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *yes*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? *yes*

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(R.C.MISRA)
MEMBER(A)

all
(A.K.PATNAIK)
MEMBER(J)

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CUTTACK BENCH, CUTTACK

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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Sri Biswabasu Das
Aged about 53 years,
S/o-Sri Satyabadi Das
Vill-Arangabad,
PO-Rajapur,
P.S-Bari,
Dist-Jajpur
Presently working as Audience Research Officer,
All India Radio,
Cuttack

....Applicant

By the Advocate(s)-Mr.B.Dash

-VERSUS-

Union of India represented through,

1. The Secretary to Govt. of India
Ministry of Information & Broadcasting,
Sastri Bhawan,
New-Delhi
2. Director General,
All India Radio,
Akashvani Bhawan,
Sansad Marg,
New Delhi
3. Director,
Audience Research Unit
Office of Director General
All India Radio,
Doordarsan Kendra,
Doordarsan Bhawan
Copernicous Marg,
New-Delhi

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4. Station Director,
All India Radio, Cuttack
AT/PO/Dist-Cuttack

...Respondents

By the Advocate(s)-Mr.P.R.J.Dash

ORDER

R.C.MISRA, MEMBER(A):

Applicant at present is working as Audience Research Officer (in short ARO) in the All India Radio, Cuttack. He has invoked the jurisdiction of this Tribunal under Section 19 of the A.T.Act, 1985, being aggrieved by the speaking order dated 30.4.2012(A/9) passed by the office of the Director General, Prasar Bharati (Broadcasting Corporation of India), All India Radio (Res.no.2) in compliance of the orders passed by CAT, Jabalpur Bench in O.A.No.879 of 2009, by virtue of which his prayer for grant of in situ promotion with effect from 9.11.2004 in the grade of Deputy Director carrying the Pay Band-3 with GP Rs.6600/- (5th CPC scale Rs.8000-13500/-) has been turned down.

2. Fact² in issue for deciding this O.A. are that applicant, on being selected through the UPSC was appointed as Audience Research Officer as a direct recruit and joined as such with effect from 9.11.1992 under the respondent-organization. The post of ARO, according to applicant is a Class-I post carrying the scale of Rs.8000-13500/- with effect from 1.1.1996. According to Recruitment Rules, the next promotion of ARO is to the grade of Deputy Director. There being 54 posts of AROs against the



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eight posts of Deputy Director, promotional avenue is very scanty. To overcome this situation, Government of India, introduced the ACP Scheme in August, 1999 for the Central Government Civilian Employees applicable to Group-B, C and D and employees appointed against isolated posts in Group-A, which have no promotional avenues. The Scheme ^{e R}proscribed two promotions on completion of 12 and 24 years' service in a particular grade. However, ACP Scheme being made applicable to group-A officers who are recruited against isolated posts, the proposal regarding grant of benefit under the ACP Scheme was approved by the DOP&T.

3. One S.C.Panda, on completion of 12 years' service as ARO on 11.05.2000 requested the authorities for grant of in situ promotion and his request having not been acceded to, he moved the CAT, Chandigarh Bench in O.A. No.463/PB/2002. Vide order dated 19.12.2002 CAT, Chandigarh Bench allowed the claim of the applicant, Shri Panda in O.A.No.463/PB/2002. Similar view was also taken by the CAT, Chandigarh Bench in O.A.No.470/PB/2005 filed by one K.K.Bhaskar and the Tribunal, vide order dated 31.5.2005 granted the benefit of in situ promotion in the grade of Deputy Director, carrying the scale of Rs.10000-15200/- in favour of ^Pthe Shri Bhaskar and the order was complied with by the respondents. In the above premises, applicant preferred representations dated 2.3.2005 and 13.11.2009 to the respondent-authorities for grant of in



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situ promotion in his favour as he had completed 12 years' service as ARO on 9.11.2004, inter alia, on the ground that similarly placed AROs have already been granted this benefit of in situ promotion. Since there was no response to his representations, applicant approached CAT, Jabalpur Bench in O.A.No.879 of 2009. The said O.A. was disposed of by an order dated 19.12.2011 with a direction to respondent nos. 2 and 3 therein to pass a reasoned and speaking order for granting him in situ promotion with effect from the date applicant had completed 12 years' service. Complying to the above direction, respondent-authorities rejected the prayer of the applicant by indicating therein that the Ministry has taken the firm decision for extending in situ promotion to those AROs who had completed 12 years of service in the grade and whose juniors had already been extended in situ promotion in consultation with the DOP&T/Ministry of Law and Ministry of Finance, to remove the anomalous situation where juniors had been granted in situ promotion and in the rest of the cases MACP would be extended and in terms of the aforesaid decision, applicant has already been granted the 1st financial upgradation under MACP Scheme vide Directorate General, All India Radio, Order dated 27.09.2010 in the Pay Band-3 with GP Rs.6600 with effect from 01.09.2008.



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4. Since the above decision of the respondents stood prejudicial to his interest, applicant has moved this Tribunal in this O.A. in which he has sought for the following relief.

- i) The Original Application may be allowed.
- ii) The impugned order passed under Annexure-A/9 may be quashed/set aside.
- iii) The respondents may be directed to grant in situ promotion to the applicant w.e.f. 09.11.2004 and to release all the consequential benefits within a time to be stipulated by the Tribunal
- iv) And such other order(s)/direction(s) may be issued in giving complete relief to the applicant.

5. In support of his claim, applicant has contended that in terms of length of service/seniority applicant ought to have been granted in situ promotion with effect from 9.11.2004 when he had completed 12 years' service as ARO. His next contention is that similarly circumstanced incumbents having been granted the benefit of in situ promotion, non-extension of the same benefit in his favour is discriminatory.

6. One Deep Kumar, who had approached the Tribunal, was granted the benefit of in situ promotion during pendency of the O.A. However, it has been submitted that orders passed by CAT, Principal Bench, New Delhi in the matter of grant of in situ promotion on completion of 12 years' service as ARO was the subject matter of challenge before the Hon'ble High court of Delhi in WPC No.5644 of 2008. The Hon'ble High Court directed that it should be ensured that the decision which has an effect



in rem should be implemented uniformly to other similarly circumstanced persons to prevent multiplicity of litigation. It has been pointed out that Chandigarh Bench of the Tribunal while deciding a similar matter quashed the decision of the respondents in not granting in situ promotion in Rs.10000 to Rs.15200 on completion of 12 years' service. According to applicant, Hon'ble High Court of Punjab & Haryana as well as Hon'ble High Court of Delhi having confirmed the decisions taken by various Benches of the Tribunal, rejection of request of the applicant for grant of in situ promotion does not stand to judicial scrutiny.

7. Applicant has brought to the notice of the Tribunal that one B.Ramesh Babu of Tamil Nadu, who is junior to him, has been granted the benefit of in situ promotion on completion of 12 years' service as ARO with effect from 8.2.2005 and in the face of it, applicant's claim cannot be ^{brushed &} ~~thrust~~ aside.

8. With these submissions, applicant has prayed for the relief as referred to above.

9. Resisting the claim of the applicant, respondents have filed a detailed counter. It has been submitted that as per Para-13 of MACP Scheme as notified by the DOP&T vide OM dated 19.5.2008, financial upgradation under MACPS and in situ promotion cannot run concurrently. It is their contention^Q that the Ministry has taken a firm decision for extending in situ promotion to those AROs, who had completed 12 years' service

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in the grade and whose juniors had already been extended promotion, in consultation with the DOP&T/Ministry of Law & Justice and Ministry of Finance to remove anomalous situation where juniors had been granted in situ promotion. In rest of the cases, it was decided to consider other eligible AROs for MACPS. As the applicant has been granted 1st financial upgradation under the MACPS in PB-3 with GP Rs.6600 with effect from 1.9.2008, he is not entitled to in situ promotion.

10. In the counter, Respondents have raised a question of limitation. According to them, against a cause of action that arose in the year 2004, applicant has approached this Tribunal in the year 2012 and therefore, the O.A. is hit by laches and limitation.

11. According to respondents, there is no such policy decision taken by the Ministry of Information & Broadcasting for grant of in situ promotion to AROs on completion of 12 years regular service. However, it has been submitted that AROs, who are senior to the applicant have been granted the benefit of in situ promotion based on various orders of the Courts and in consultation with DOP&T/Ministry of Finance and Ministry of Law & Justice. It has been asserted that no junior to the applicant has been granted the said benefit. It is the case of the respondents that though B.Ramesh Babu was appointed as ARO with effect from 8.2.1993, yet he has been placed senior to the applicant on the basis of ranking given by

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the UPSC. According to respondents, S/Shri Nageswar Rao and M.P.Menna, who are seniors to the applicant, have not so far been given the benefit of in situ promotion.

12. Respondents have made it clear that earlier in situ promotion was being granted because of stagnation in the cadre of ARO Group-A non-isolation posts and non-application of ACPs to the cadre. But now, after the introduction of MACPS, the situation has changed and the earlier position does not come to play and therefore, the case of the applicant cannot be compared with the earlier cases.

13. As a measure of additional submissions, respondents have reiterated their plea of limitation. It has been added that unless vires of the decision of OM dated 19.5.2009 issued by the DOP&T is challenged and quashed, quashing of impugned A/9 dated 30.4.2012 is of no avail. Since the applicant has not established that any of his juniors has been granted in situ² promotion, the claim laid by him is unfounded.

14. With the above submissions, respondents have prayed that the O.A. lacks merit and is liable to be dismissed.

15. Applicant has filed a rejoinder to the counter which more or less contains the same averments as in the O.A. Applicant also has not answered the plea of limitation and other legal points as raised by the respondents as additional submissions in the counter. However, the only point that he has urged is that MACP Scheme issued vide OM dated 19.5.2009 has nothing to



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do with the grant of in situ promotion to the applicant in the year 2004.

16. We have perused the pleadings of the parties and heard the arguments advanced by the learned counsels at a considerable length. We have also gone through the written notes of submissions filed by the parties and the documents appended thereto.

17. From the above recital of facts, the mooted^e points for determination are as under.

- i) Whether in situ promotion could be granted only in a case where juniors have been so granted.
- ii) Whether on completion of 12 years' service as ARO an officer is entitled to in situ promotion.
- iii) Whether any provision of MACP Scheme stands in the way for grant of the benefit of in situ promotion.

18. In order to answer the above points in issue, we would, at the outset, like to look into the decisions of CAT, Chandigarh Bench in O.A.No.463/PB/2002 decided on 19.12.2002 in the matter of S.C.Panda vs. Union of India.

19. In that matter, applicant, Shri Panda had approached the CAT, Chandigarh Bench assailing the orders dated 14^e 5.2001/25.10.2000, whereby his request for grant of in situ promotion to the next higher grade had been rejected. The ground urged by Shri Panda was that although the benefit of in situ promotion had been granted to the similarly placed 10



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persons who were stagnating as because there were 54 AROs against eight promotional posts of Deputy Directors, the same benefit was denied to him and therefore, he had been discriminated against. The case made out by Shri Panda therein was that the respondent-authorities in consultation with the Finance Department allowed in situ promotion to the next higher grade to those 10 persons till regular vacancies were available taking the plea that there was a stagnation in the service. It was made clear by the respondents while granting in situ promotion to those 10 officials that that was one time exception made by the Finance Department. Having considered the matter, CAT, Chandigarh Bench allowed the O.A. filed by Shri Panda vide order dated 19.12.2002, in the following terms.

"The O.A. is, therefore, allowed and the respondent-department is directed to give in situ promotion to the applicant to the post of Deputy Director, even if there is no vacancy, as has been done in case of ten other officers. Not only the applicant, but similarly placed other persons, who have not approached this Tribunal should also be given the benefit from the date when they completed 12 years in their present post".

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20. In O.A.No. 40/PB/2005 before the CAT Chandigarh Bench, applicant K.K.Bhaskar had put forth a complaint that respondents did not grant the benefit of in situ promotion in the scale of Rs.1000-152000 with effect from 6.6.2004, when he completed 12 years' service as ARO. Relying on the earlier





decision in S.C.Panda case (supra), the Tribunal vide order dated 31.5.2005 held and decided as under.

"After hearing learned counsel for the parties and going through the record, it is found that the facts of the present case are almost identical to the case of S.C.Panda who had preferred O.A. 463/PB/2002 which was decided by this court on 19.12.2002. In the said case, the court had found that order dated 2.6.2000 was not based on any rational consideration, therefore, have given directions to give in situ promotion to the said applicant to the post of Deputy Director, even if there is no vacancy as has been done in the case of 10 other officers on 2.6.2000. The court has gone further while giving directions that not only the applicant but similarly placed other persons, who have not approached this Tribunal, should also be given the benefit from the date when they completed 12 years in their present post.

In view of this, we find it appropriate at this stage while giving direction to Respondents no.2 and 3 to pass appropriate, reasoned and speaking order on the representation of the applicant which is pending before them in the light of the decision as given by this court in aforesaid OA which has further been upheld by Hon'ble High Court while considering this for grant of in situ promotion when it fell due as per law".

21. Respondent-Department, in compliance of the above directions have granted the benefit of in situ promotion to K.K.Bhaskar with effect from 6.6.2004. In the fitness of things, we would like to extract hereunder the tenor of the speaking order, which is impugned and challenged in this O.A.

Subject: Grant of In-situ promotion in the grade of Deputy Director (AR).



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Whereas you had filed an Original Application No.879/2009 before the Hon'ble Central Administrative Tribunal, Jabalpur Bench for grant of in-situ promotion in the grade of Deputy Director (Audience Research) in the Pay Band-3 of Rs.15600-39100 with Grade Pay of Rs.6600/- (5th Central Pay Commission pay Scale Rs.10,000-15200).

And whereas the Hon'ble Central Administrative Tribunal, Jabalpur Bench vide their judgment dated.19.12.2011 has disposed of the OA with the direction to pass appropriate reasoned and speaking order, considering the case of the Applicant for granting him benefit of in-situ promotion with effect from the date he completed 12 years of services with all consequential benefits.

As per Para-13 of Modified Assured Career Progression Scheme as notified by Department of Personnel & Training Office Memorandum No.35034/3/3008-Estt.(D) dated 19th May 2009, financial upgradations under Modified ACP Scheme and in-situ promotion Scheme cannot run concurrently.

It may be mentioned here that the Ministry had taken the firm decision for extending in-situ promotion to those AROs who had completed 12 years of service in the grade and whose juniors had already been extended in-situ promotion in consultation with DoPT/M/o Law and MoF to remove the anomalous situation where juniors had been granted in-situ promotion. In rest of the cases, it was decided to consider other eligible AROs for MACPS. It is observed that the applicant Shri Biswabasu Das, Audience Research Officer, in the light of above cited decision, was granted 1st financial upgradation under Modified ACP Scheme vide Directorate General, All India Radio Order No.34/2010/AR dated.27.09.2010 in the Pay Band-3 of Rs.15,600-39100/- with Grade Pay of Rs.6600/- w.e.f. 1.9.2008. As such in view of above cited decision of the Ministry and the stipulations of said Modified ACP Scheme he is not entitled to in-situ promotion.

As regards the judgment of the Hon'ble CAT, Jaipur Bench in OA No.542/2009 filed by Shri Shiv Kalyan Meena, ARO, it may be observed that the same has been challenged before the Hon'ble High Court of Rajasthan, Jaipur Bench which is pending adjudication, as such the order in OA No.542/2009 has not yet reached to finality. Shri Biswabasu Das is informed accordingly".



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22. We have given our anxious considerations to the points in issue with the materials available on record. Indisputably, applicant is a direct recruit through the UPSC to the post of ARO, ^{and} having joined service on 9.11.1992 had completed 12 years in that grade with effect from 9.11.2004. It is also not in dispute that for in situ promotion, no right or privilege would be conferred for regular appointment or seniority in the grade of Deputy Director and persons who are granted in situ promotion would be given ^{the} ~~designation~~ and scale of pay of the post of Deputy Director, but will continue to perform the same duties as they were doing at the relevant point of time till they get adjusted against regular vacancies in the Deputy Director grade. Apart from the above, a striking feature which emerges ^{is} and conspicuous from the pleadings of the parties is that AROs ^{who} ~~who~~ had been bestowed with in situ promotion ^{is} ~~was~~ on account of stagnation in that particular grade only. It is thus, clear that incumbents of AROs, who have been granted in situ promotion ^{are} ~~is~~ over and above, the sanctioned strength of eight posts in the grade of Deputy Director. Having regard to the above, it is undoubtedly more glaring that the AROs who have been granted in situ promotion by the respondents either on their spontaneity or by virtue of various orders of the Tribunals are all based on the condition of having fulfilled 12 years' service in the grade of ARO.



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23. In this context, it is the emphatic case of the respondents that the Ministry has taken a firm decision for extending in situ promotion to those AROs who had completed 12 years' service in the grade and whose junior had also been extended in situ promotion in consultation with DOPT/Ministry of Law & Justice and Ministry of Finance to remove the anomalous situation where juniors had been granted in situ promotion and in so far as rest of the cases are concerned, it was decided to consider other eligible AROs for MACPS. This proposition of the respondents rests upon the sand wall for the following reasons.

- i) There is no such decision emanating from the Ministry to grant in situ promotion to AROs on completion of 12 years' service only in cases where juniors have been so granted has been adduced by the respondent-authorities before the Tribunal.
- ii) Not a single instance has been given where due to junior having been granted the benefit of in situ promotion, to remove the anomaly, his senior has been granted in situ promotion.
- iii) If the criterion for completion of 12 years' service is mandatory for grant of in situ promotion to ARO, what is the reasonable nexus of making a provision to grant such benefit only to ARO whose juniors have been so granted ? Does it not create a discrimination ?
- iv) If at all plea of the respondents that as per the decision, rest of the eligible cases would be considered for grant of MACP is accepted, should the applicant not stagnate in the grade of ARO for a period of about 16 years, i.e., from 1992 to 2008 ?



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24. Respondents in the counter have not made all these points clear and specific.

25. Coming to the decision of CAT, Chandigarh Bench in O.A.No.463/PB/2002 (S.C.Panda v.s. UOI), as indicated above, this decision has been upheld by the Hon'ble High Court of Punjab & Haryana at Chandigarh and consequently, Shri Panda has been conferred with the in situ promotion only on completion of 12 years as ARO and not by the fact that any of his juniors had been granted that benefit. At the cost of repetition, it is mentioned that in the O.A. filed by Shri Panda, CAT, Chandigarh Bench had categorically directed that not only the applicant but similarly placed other persons who have not approached the Tribunal should also be given the benefit from the date when they completed 12 years in their present post. This order having been confirmed by the Hon'ble High Court of Punjab & Haryana at Chandigarh, the decision of the respondents in denying the benefit to person similarly circumstanced as that of the applicant militates ^{against} ~~to~~ the orders of CAT, Chandigarh Bench as confirmed by the Hon'ble High Court of Punjab & Haryana at Chandigarh and hence, is contumacious. Therefore, the benefit of grant of in situ promotion being personal to the employee concerned, the applicability of seniority is out of place.

26. The contention of the respondents that until and unless the vires of decision of DOP&T dated 19.5.2009 ~~dated~~



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30.4.2012 is challenged and quashed, the quashing of impugned order A/9 dated 30.4.2012 is of no use has no bearing on grant of in situ promotion, inasmuch as by virtue of the said OM, MACP Scheme was introduced by the Government of India with effect from 1.9.2008 whereas in situ promotion was in vogue even prior to coming into force of the ACP Scheme in the year 1999. Therefore, this plea of the respondents in this effect is farfetched.

26. Next, coming to the point of limitation as urged by the applicant, we would like to note that admittedly, applicant had preferred a representation in the year 2005 ventilating his grievance. However, he slept over the matter when he further made a representation in the year 2009 and having received no response, he moved the CAT, Jabalpur Bench in O.A.No.879 of 2009. According to respondents, since the cause of action arose in the year 2004, the present O.A. filed before this Tribunal in the year 2012 is barred by limitation.

27. Of course, applicant has not refuted the plea of limitation as raised by the respondents. However, we have considered the same. In situ promotion was an ongoing process in the respondent-organization until Government of India issued O.M. dated 19.5.2009 introducing MACP Scheme and with the grant of MACP, in situ promotion ceased to operate in the Department. No doubt, applicant has approached this Tribunal after much delay of the date when a cause of action for grant of



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in situ promotion arose in his favour. However, as indicated above, despite there being a direction issued by the CAT, Chandigarh Bench in S.C.Panda case, as confirmed ^{by} the Hon'ble High Court of Punjab & Haryana at Chandigarh to grant the benefit of in situ promotion in favour of all similarly situated persons on completion of 12 years who have not approached the Tribunal, the respondents did not act accordingly. It is a case where substantial injustice has been meted out to the applicant thereby infringing his right to in situ promotion. Besides, grant of in situ promotion, even at a belated stage will not unsettle any position already settled long back. It is also an admitted position that by grant of in situ promotion no right is accrued to claim seniority and promotion and the incumbent ARO is to discharge the same duties and responsibilities as before. These being the circumstances, in our considered view, strict principles of limitation will not attract to the case in hand.

28. Having regard to the above, we answer the point in issue (i) in the negative and in favour of the applicant. Accordingly, we answer the point in issue (ii) that on completion of 12 years' service as ARO, an officer is entitled to in situ promotion. So far as point in issue no.(iii) is concerned, we answer that provision of MACP Scheme would not stand in the way for grant of the benefit of in situ promotion.

29. Though the scheme of in situ promotion is not produced by any of the parties before the Tribunal, yet, from the decision

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in this matter by CAT, Chandigarh Bench as upheld by the Hon'ble High Court of Punjab & Haryana at Chandigarh, there is no iota of doubt in our mind that an ARO is eligible to be conferred with in situ promotion on attainment of 12 years' service in that grade and therefore, the speaking order dated 30.4.2012(A/9) is out and out in repugnance of the point already settled by the CAT, Chandigarh Bench.

30. For the reasons discussed above, we quash and set aside the impugned speaking order dated 30.04.2012(A/9) and direct the respondents to grant in situ promotion in favour of the applicant with effect from 9.11.2004 by granting him the financial benefits as due and admissible. This exercise shall be completed within a period of 120 (one hundred and twenty) days from the date of receipt of this order.

31. In the result, the O.A. stands allowed, leaving the parties to bear their respective costs.

(R.C.MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)

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