

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No. 505/2011, 506/2011 & 68/2012

Jodhpur, May the 15th, 2014.

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)

OA No. 505/2011

Janki Lal S/o Shri Hajari Aged 40 years, Ex. Part Time Gardner, Head Post Office, Chittorgarh, Resident of 40, Paota Gate, Chittorgarh.

Applicant

OA No. 506/2011

Kana Ram S/o Shri Mangilal Aged 42 years, Ex. Part Time Waterman, Head Post Office, Chittorgarh, Resident of Near Noble School, Dadhich Nager, Chittorgarh.

Applicant

[Through Advocate Mr. Vijay Mehta]

Versus

1. Union of India through the Secretary, Ministry of Communication (Department of Post), Sanchar Bhawan, New Delhi.
2. Head Post Master, Head Post Office, Chittorgarh.
3. Superintendent of Post Offices, Chittorgarh.

Respondents in both OAs

[Through Advocate Mr Aditya Singhi proxy counsel on behalf of Ms K. Parveen, counsel for the respondents]

OA No. 68/2012

Nena Ram S/o Shri Khanga Ji, aged 40 years Part-time Waterman, Head Post Office, Jalore, resident of 8, Shastri Nagar, Jalore.

..... Applicant

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[Through Mr. Vijay Mehta, Advocate]

Versus

1. Union of India through the Secretary, Ministry of Communication (Department of Post), Sanchar Bhawan, New Delhi.
2. Superintendent of Post Offices, Sirohi.
3. Head Post Master, Head Post Office, Jalore.

.....Respondents

[Through Advocate Mr Aditya Singhi proxy counsel on behalf of Ms K. Parveen, counsel for the respondents]

ORDER (oral)

These three OAs bearing Nos. 505 & 506 of 2011 and 68 of 2012 are being decided by this common order for the reason that the reliefs and the facts of these OAs are identical and the relief sought is also common. Earlier OA Nos. 505/2011 & 506/2011 of Janki Lal & Kana Ram were decided by a common order dated 01.01.2013 and OA No. 68/2012 of Nena Ram was decided by a separate order dated 01.01.2013. By these two separate orders all these three OAs were decided in favour of the applicants by allowing following reliefs:

In OA No. 505/2011 and 506/2011

- (i) ***The order dated 29.10.2012 of the Division Bench would apply to the instant case of the applicants.***
- (ii) ***For any future relief the applicants are directed to approach the Hon'ble High Court at its Jaipur Bench which is seized with the matter at the present juncture of time.***

OA No. 68/2012

- (i) ***That the impugned order dated 3.2.2012 is hereby quashed as being bad under the law.***

- (ii) The respondents are being directed to regularize the services of the applicants as per the terms laid down in the scheme at Annex.A/5 within a period of six months.**
- (iii) The termination order at Annex.A/1 in OA no. 68/2012 is also being quashed as bad under the law. The applicant will be taken back on service and will mark attendance till regularization of his services take place.**
- (iv) There shall be no order as to costs.**

2. Earlier the OA No. 78/2010 was filed by Shri Nena Ram against termination of his services by the respondent-department and the same was decided vide the order dated 28.11.2011. Subsequent to that decision the services of Shri Nena Ram were terminated vide Annex. A/1 and A/2 and he challenged the legality of order Annex. A/1 and A/2 in OA No.68/2012 and that was decided, as stated earlier, vide order dated 01.01.2013. In the case of S/Shri Janki Lal & Kana Ram, there are verbal orders of termination and those orders were challenged by filing separate OAs No. 505/2011 and 506/2011 and the same were decided by common order dated 01.01.2013.

3. Against all three OAs, 3 writ petitions were filed by the respondents i.e. Union of India & Ors. before the Division Bench of the Hon'ble Rajasthan High Court and OA Nos. 505 & 506 of 2011 are remanded back by the Hon'ble High Court while deciding the D.B.C.W.P. No. 5635/2013 & 5636/2013 vide order dated 10.07.2013 and OA No. 68/2012 is remanded back by the Hon'ble High Court while deciding DBCWP No. 5107/2013 vide order dated 27.08.2013 for adjudication of matter on merits afresh.

5. In OA No. 505/2011, the applicant was appointed as part-time Gardener in the year 1992 in Head Post Office Chittorgarh and he has been discharging his duties. According to the applicant, his attendance was recorded from the month of August, 2009 to January, 2010 in the staff attendance register. The applicant was being paid salary for four hours according to the rate of the salary of Group-D employees and was also paid DA every month. The applicant has filed affidavits of the Postmaster under whose tenure the applicant was working as Ann.A/1, A/2 and A/3 so as to establish that he was working from the year 1992. The applicant has stated that perusal of Ann.A/6 shall reveal that in view of revised duties assigned to the Multi Tasking Staff there is need to streamline the work entrusted to the casual labourers engaged in the Department of Posts, no casual labourers shall be engaged w.e.f. 1.12.2010. Thus, it is clear that this order prohibits to engage new casual labour but does not prohibits to continue the already engaged casual labour. The letter dated 6.7.2011 passed by the respondents for not to take work from the casual labourers in the Head Office is misinterpretation of Ann.A/6. The applicant also submitted that provisions have been made by the Department of Posts to appoint casual labour as permanent employees. Order dated 16.12.2010 (Ann.A/8) provides that 25% permanent posts shall be filled in by giving appointment to the casual labour but the services of the applicant have been terminated to deprive him from being appointed as permanent employee.

6. By way of reply, the respondents submit that Department of Posts having a vast network in urban and remote areas in the country no full time employee is justified for basic needs of cleaning, sweeping, drinking water supply etc. as per establishment norms. Therefore, the Department of Posts has decided to grant sweeping/gardening and water allowances on pro-rata basis as per establishments norms prescribed by the Directorate to the in-charge of Post offices by paying this amount to individual on daily basis. On the acceptance of recommendations of the 6th Pay Commission the Group D employees were re-designated as Multi Tasking Staff and their duties have also since been revised. The Ministry of Communication and IT, Department of Posts (PC Cell) vide its OM dated 24.9.2010 revised the duties for Multi Tasking Staff (Group C) in the Secretariat as well as in the attached subordinate offices, post offices/RMS Offices, Speed Post Centers etc. to include watch and ward, caretaker duties, opening and closing of room, general cleanliness and upkeep of Section/unit offices including dusting of furniture, cleaning of building etc all being performed by a single person to economize in manpower. The Department Post (PC Cell) vide its order dated 19.11.2010 directed all the Chief PMGs that since duties of waterman, watch and ward, gardening, cleaning etc. are now part of duties assigned to Multi Tasking staff, the existing practice of engaging casual labourer as waterman, for gardening, watch and ward or any other miscellaneous category of work shall be dispensed with w.e.f. December, 2010. As a result this drawl of water allowances and gardening allowance was discontinued and the services of such labourers have been dispensed with. As per DG P&T

letter dated 30.10.1956, only two and half hrs part time contingent paid gardener is justified and the applicant was being engaged by Postmaster, Chittorgarh HO for time to time to work as part time contingent paid gardener. Vide instruction of DG Posts dated 19.11.2010 the work of Waterman has been assigned to the Multi Tasking Staff and services casual labourers engaged on sanctioned allowance have been discontinued. The respondents further stated that there is no sanctioned post of Waterman in the Chittorgarh HO, therefore, there is no question of appointing such a person. The respondents have refuted the contention that the applicant was appointed as Part time Gardener since 1992. They have also refuted the contention in the affidavit of the Post Masters stating that these Post Masters have not issued any appointment orders to the applicant and simply giving an affidavit after retirement will not serve. The respondents have cited a judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and others Vs. Uma Devi and others delivered on 10.4.2006 in Civil Appeal No.3595-3612 of 1999 wherein it is held that "When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the

theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post." They have further stated that the disengagement of part time contingent paid staff does not come within the purview of retrenchment. Moreover, there is no order of appointment in the case of the applicant; as such question of termination will not arise.

7. In OA No.506/2011, the applicant was working as part-time Waterman from 1987 in the Head Post Office, Chittorgarh, without there being any written order of engagement. According to the applicant, the engagement was made by one Shri Kalu Ram Jeengar, Post Master in Head Post Office, Chittorgarh. The applicant submits that he has marked attendance in the register of staff of Head Post Office from the month of August, 2009 to January, 2010. He was being paid salary of a Group D employee for four hours and money paid receipts in Form ACG 17 was obtained from him in token of receipt of salary. He used to work for 4 hours in the Head Post Office and one and half hours in the office of Superintendent of Post Offices. The applicant has also filed affidavits of the Postmaster under which the applicant had worked as Ann. A/1, A/2 and A/3 to establish the he had been working form the year 1987. However, the applicant was not allowed to perform his duties by respondent No.2

from 6.7.2011. The applicant has stated that perusal of Ann.A/6 shall reveal that in view of revised duties assigned to the Multi Tasking Staff there is need to streamline the work entrusted to the casual labourers engaged in the Department of Posts, no casual labourers shall be engaged w.e.f. 1.12.2010. Thus, it is clear that this order prohibits to engage new casual labour but does not prohibits to continue the already engaged casual labour. The letter dated 6.7.2011 passed by the respondents for not to take work from the casual labourers in the Head Office is misinterpretation of Ann.A/6. The applicant also submitted that provisions have been made by the Department of Posts to appoint casual labour as permanent employees. Order dated 16.12.2010 (Ann.A/8) provides that 25% permanent posts shall be filled in by giving appointment to the casual labour but the services of the applicant have been terminated to deprive his from being appointed as permanent employee.

8. The respondents in the reply have submitted that Department of Posts having a vast network in urban and remote areas in the country no full time employee is justified for basic needs of cleaning, sweeping, drinking water supply etc. as per establishment norms. It was, hence, decided to grant pro-rata allowances on daily basis to the individuals who perform the afore-mentioned duties. On the acceptance of recommendations of the 6th Pay Commission the Group D employees were re-designated as Multi Tasking Staff and their duties have also since been revised. The Ministry of Communication and IT, Department of Posts (PC Cell) vide its OM dated 24.9.2010 revised the duties for Multi Tasking Staff (Group C) in

the Secretariat as well as in the attached subordinate offices, post offices/RMS Offices, Speed Post Centers etc. to include watch and ward, caretaker duties, opening and closing of room, general cleanliness and upkeep of Section/unit offices including dusting of furniture, cleaning of building etc all being performed by a single person to economize in manpower. The Department Post (PC Cell) vide its order dated 19.11.2010 directed all the Chief PMGs that since duties of waterman, watch and ward, gardening, cleaning etc. are now part of duties assigned to Multi Tasking staff, the existing practice of engaging casual labourer as waterman, for gardening, watch and ward or any other miscellaneous category of work shall be dispensed with w.e.f. December, 2010. As a result this drawl of water allowances and gardening allowance was discontinued and the services of such labourers have been dispensed with. As per DG P&T letter dated 30.10.1956 a waterman should be provided per 100 employees and Chittorgarh HO is having less than 100 employees. Thus, a part time Waterman is justified and the applicant was being engaged as such. Vide instruction of DG Posts dated 19.11.2010 the work of Waterman has been assigned to the Multi Tasking Staff and services casual labourers engaged on sanctioned allowance have been discontinued. The respondents have further submitted that that there is no sanctioned post of Waterman in the Chittorgarh HO as such there is no question of appointing such a person. The respondents have refuted the contention that the applicant was appointed as Part time Waterman since 1987. They have also refuted the contention in the affidavit of the Post Masters stating that these Post Masters have not issued any appointment orders to the

applicant and simply giving an affidavit after retirement will not serve. They have cited a judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and others Vs. Uma Devi and others delivered on 10.4.2006 in Civil Appeal No.3595-3612 of 1999 it is held that "When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post." It is to be deduced from above that those who have been employed on daily wages or temporary or on contractual basis cannot claim that they have a right to be absorbed in service, since regular appointments could only be made in respect of persons who were appointed in a manner consistent with the requirement of Articles 14 and 16 of the Constitution. They have further stated that the disengagement of part time contingent

paid staff does not come within the purview of retrenchment. Moreover, there is no order of appointment in the case of the applicant; as such question of termination will not arise.

9. The applicants filed rejoinder refuting the contentions of the respondents in their reply statement and reiterated the stand taken in the OAs. The applicants submit that Uma Devi's case referred to by the respondents is not applicable to the facts of his case as their OAs do not pertain to regularization and giving permanent status to him and their prayer is to quash the termination.

10. In OA No.68/2012, the applicant was engaged in the year 1986 as part-time Waterman in Head Post Office, Jalore by verbal orders. According to the applicant he has been discharging his duties continuously since his appointment and his attendance during this period was marked in the attendance register of the staff of Head Post Office. Payment of salary every month since his engagement was made to the applicant by signing a receipt/voucher prepared under note Below Rule 6(b) of Appendix II to P&T Financial Handbook. However, his services were terminated by verbal orders of respondent No.3 and the applicant has challenged the termination by filing OA No.78/2010 before this Tribunal and the Tribunal vide order dated 28.11.2011 while quashing the termination directed the respondents to take the applicant back in service on 1.12.2011. The applicant was reinstated on 21.12.2011. The has produced of Department of Posts order dated 17.5.1989, which says that part time casual labour and contingent paid staff are casual labour for all purposes and for

purpose of recruitment to Group-D employees, such part-time and contingent paid employees should be given priority. Applicant submits that he has worked for 240 days during a year and was entitled to temporary status. However, the representation of the applicant for regularization was rejected vide order dated 3.2.2012 and the respondents terminated his services again vide order dated 21.2.2012 .

11. The respondents filed reply to the OA opposing the prayer of the applicant. Their preliminary objection is that case falls within the provisions of Industrial Disputes Act of 1947 and, hence, the Industrial Tribunal shall have jurisdiction to entertain such matters. On merit they submit that there is no sanctioned post of Waterman at Head Post Office, Jalore and only contingent paid employees are engaged for duties of sweeper, waterman, gardener, Farash on temporary basis and their services can be terminated at any time without any notice. The respondents have refuted the contention of the applicant that he has marked attendance with the regular departmental employees. On the basis of the orders of this Tribunal the applicant was taken back and he attended duty on 21.12.2011. Regarding the direction of the Tribunal to consider regularization of the applicant, respondents state that it is not possible under the Rules to regularize his services as there is no provision to regularize the services of part time contingent paid employees. In the Department of Posts letter dated 17.5.1989 it was stipulated that the Group-D posts (now re-designated as Multi Tasking Staff) to be filled up either by NTC(Non Test Category) Group D or that of EDA of the Division in

as much as the casual labourers had been assigned third priority in the matter of recruitment. Since there is no Group-D post unfilled, the casual labourers part-time or full time cannot be regularized. The Scheme dated 12.4.1991 mentioned by the applicant for granting temporary status was meant for such of the casual labourers who were full time casual labourers as on 29.1.1989 but before 11.9.1993. The respondents state that the applicant was not a full time casual labour working for eight hours a day and the applicant cannot be held entitled either for conferring temporary status of full time casual labourer or regularization of his services on the basis of scheme introduced vide order dated 12.4.1991. The respondents have also referred to a case decided by the Jaipur Bench in OA 225/2010 exactly similar to this case, in which the Tribunal held that applicant was not entitled as a matter of right for regularization of his services in view of the ratio laid down by the Hon'ble Supreme Court in the case of Secretary State of Karnataka Vs. Uma Devi. Since the duties of waterman, watch and ward, gardener, cleaning etc. were transferred to Multi Tasking Staff and orders were issued accordingly the services of the applicant was terminated as per departmental orders and the action of the respondents is not arbitrary or illegal, therefore, the respondents pray for dismissal of this OA.

12. In rejoinder, the averment that the Industrial Tribunal has jurisdiction to entertain this case has been denied by the applicant stating that this Tribunal itself held that cases involving industrial Disputes Act are maintainable in this Tribunal. The applicant was not paid daily, whereas he was paid monthly, which is evident from the

records of the department itself. The applicant has also reiterated most of the contentions in the OA in his rejoinder.

13. Heard both the parties. Counsel for the applicant contended that in all three OAs it has been averred that Shri Janki Lal was engaged in the year 1992 as part time Gardener and his services were terminated by verbal order on 06.08.2011, Shri Kana Ram was engaged in the year 1987 as part time Waterman and his services were terminated by verbal order dated 06.07.2011 and Shri Nena Ram was engaged in the year 1986 as part time Waterman and his services were terminated vide written order dated 21.02.2012 (Annex. A/1 in OA No. 68/2012) and the respondent-department has admitted this factual position that the applicants had been working as Waterman & Gardener and other similar capacities as part time casual labour and this fact has nowhere been denied by the respondent and they rather admitted the same. Although it has been averred in the reply that workload does not justify appointment of full time Gardener or Waterman and in reply to the Janki Lal case it has been averred that he was engaged for two to three hours. Counsel for the applicant contended that he has filed several receipts in each case for the monthly payment of remuneration by the respondent-department. He further contended that on the basis of those receipts it can very well be said that the applicants have been appointed on the monthly remuneration basis because they have been paid for the entire month. He further contended that he has also filed copy of the attendance register. He further contended

that the applicants viz. Shri Janki Lal, Kana Ram and Nena Ram were serving the respondent-department from the year 1992, 1987 & 1986 respectively, therefore, terminating the services of the applicants by written or oral order without giving an opportunity of hearing cannot be said to be legal orders which requires to be set aside.

14. Per contra, counsel for the respondents contended that in view of the reply in para 4.6 and 4.8 in the case of Janki Lal and Kana Ram, the applicants were only contingent part time worker and their services can be dispensed with at any time and as per D.G. Posts, New Delhi letter dated 19.11.2010, the duties of such type of work has been entrusted to multi task staff and Hon'ble Supreme Court of India in the similar type of case in Secretary State of Karnataka and Others vs Uma Devi and Others in its valuable judgment delivered on 10.04.2006 held that "When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where

they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post." Counsel for the respondents further contended that when no work is left for the part time contingent worker after coming into force order dated 19.11.2010, there is no question of engaging the applicant as part time or contingent Gardener or Waterman or Safaiwala. Counsel for the respondents further contended that even in the light of judgment passed in Secretary State of Karnataka & Ors Vs Uma Devi & Ors by the Hon'ble Apex Court, the applicants are not entitled to get any benefit because they are contingent and part time workers and these workers are not entitled to any benefit of regularization or continuous service and their services were terminated in view of the OM dated 19.11.2010 coming into force from 01.12.2010 the practice for engaging daily casual labour has been discontinued and this work has been allotted to the MTS Group 'C'.

15. Counsel for the applicant in reply to the argument advanced by the counsel for the respondents contended that the term contingent employee is totally unknown to Industrial Law. To deny the benefits available to regular employees, certain employees are termed as contingent workers. Once an employee has completed 240 days work, he is deemed to be a permanent employee. The term contingent employee was not included in Standing Orders. In support of his argument he relied upon the judgment passed by Hon'ble Apex Court in Mineral Exploration Corporation Employees'

Union v. Miner Exploration Corporation Limited & Anr reported in JT 2006 (7) SC 151.

16. Considered the rival contentions of both the parties. From the averments made by both the parties it is clear that the applicants were engaged from the year 1992, 1986 & 1987 respectively and services of Janki Lal & Kana Ram were terminated by verbal order dated 06.08.2011 & 06.07.2011 respectively and services of Shri Nena Ram were terminated vide order dated 21.02.2012. It is also clear from the record that no show cause notice or opportunity of hearing was provided to the applicants before terminating their services. I have perused the OM dated 19.11.2010 which provides for the review of instructions on engagement of casual labours. Although vide another O.M. dated 24.09.2010 in supersession of OM dated 27.03.2009 and 19.04.2010 certain duties were assigned to MTS Group 'C' which are of the nature of the duty of Group 'D' contingent workers and it further refers that the additional duties assigned to such MTS Group 'C' are only illustrative and not exhaustive but order does not refer that what would be the fate of the earlier employees engaged in the year 1992, 1986 & 1987 because, the letter issued by the Deptt. of Posts, Lr. No. 65-24/88-SPB I, dated 17.05.1989 Annex. A/4 clause (iii) reads as under:

"(iii) Casual labourers (full-time or part-time. For purpose of computation of eligible service, half of the service rendered as part-time casual labourer should be taken into account. That is, if a part-time casual labourer has served for 480 days in a period of 2 years he will be treated, for purposes of recruitment,

to have completed one year of service as full-time casual labourer.")

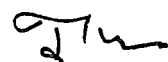
The respondent-department issued OM dated 19.11.2010 without formulating any scheme for the earlier part time or full time casual labours or without deciding or referring any scheme to the extent what would be the fate of those employees who were engaged 20-22 years back in the respondent-department on monthly basis remuneration and in support of the averments the respondent-department failed to produce any documents before this Tribunal. The Article 39 of the Constitution of India stipulates that the policy of the State shall be formulated in accordance with the directive principles, and also that the citizens, men and women equally, have the right to an adequate means to livelihood, that the health and strength of workers are not abused, and the citizens are not forced by economic necessity to enter avocations unsuited to their strength. If the applicants were working with the respondents for more than 18 years as averred by them and proved by the documentary evidences then by virtue of that alone, he acquires right to be considered for continued employment, unless other significant matters do not interdict it. The Articles 41, 42 and 43 of the Constitution of India are also significant in the present matrix.

17. It is very surprising that the departmental authorities terminated the services of the applicants by the written or oral order even without providing any opportunity of hearing which is one of the most important right of the applicants seems to be accrued in favour of

the applicants. The contentions raised by counsel for the respondents does not carry any force because in the Uma Devi's case judgment it has been held that the State to frame a one time policy for the regularization of the temporary or adhoc persons and in the present circumstances in the present cases it cannot be said that the applicants were part time or contingent workers because they are being paid at the rate of monthly rate of remuneration. It has been evident from the receipts filed by the applicants and further, it could not be denied by the respondent-department by producing relevant documents.

18. In view of the discussions made, I am of the considered view that the oral orders passed in the case of Janki Lal, Kana Ram and written order passed in case of Nena Ram cannot be said to be legal orders in the eyes of law and therefore, they are set aside and respondents are directed to take them back on duty and as they were not in employment from the date of the termination, therefore, they are not entitled to get any pay/remuneration for that period but the respondents are directed to take them on duty within 7 days from the date of receipt of the order.

19. In terms of above direction, OA is disposed of with no order as to costs.



(JUSTICE K.C.JOSHI)
Judicial Member

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