

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

Commercial Complex(BDA),
Indiranagar,
Bangalore- 560 038.

Dated: **10 MAR 1988**

APPLICATION NO 116 /BB (F)

W.P.No. _____

APPLICANT

Vs

RESPONDENTS

Shri M.R. Seshan

The Secy, Central Board of Direct Taxes,
New Delhi & another

To


1. Shri M.R. Seshan
82, 'Maruthi'
Muneswara Block
G.E.F. Post
Bangalore - 560 026
2. Shri M.S. Anandaramu
Advocate
128, Cubbonpet Main Road
Bangalore - 560 002
3. The Secretary
Central Board of Direct Taxes
North Block
New Delhi - 110 001
4. The Chief Commissioner of Income Tax
Karnataka
Central Revenue Building
Queen's Road
Bangalore - 560 001
5. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/

~~INTERIM ORDER~~ passed by this Tribunal in the above said application
on 4-3-88.

Encl: as above.


SECTION OFFICER
(JUDICIAL)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE.

Dated the 4th day of March, 1988.

BEFORE

THE HON'BLE MEMBER(A) SHRI L. H. A. REGO

APPLICATION NO. 116 OF 1988 (F)

Shri M.R.Seshan
S/o Late M.V.Rama Sastrigal,
51 years, working as Income Tax Officer,
HQ. I, Office of the Chief Commissioner
of Income Tax, Karnataka,
Bangalore and residing at No.82,
"Maruthi", Muneshwara Block,
G.E.F. Post, BANGALORE-560 026 Applicant.
(Shri M.S.Anandaramu, Advocate for the applicant)

-vs.-

1. The Union of India
represented by its Secretary,
Central Board of Direct Taxes
North Block, Central Secretariat,
NEW DELHI.
2. The Chief Commissioner of
Income Tax,
Karnataka, Central Revenue Buildings,
Queens Road, Bangalore-560 001. Respondents.

(Shri M.Vasudev Rao, Addl.Standing Counsel for the
Central Government, for respondents)

This application coming on for hearing,
the Hon'ble Member(A), made the following:

Ad

O r d e r



ORDER

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the prayer is, that the respondents(R) be directed to fix the pay of the applicant, on par with one Shri K.S. Sathya Dharma, who is junior to him and to grant him all consequential benefit.

2. Concisely, the background to this case is as follows: The applicant and Shri Sathya Dharma entered service in the Income Tax Department, at Bangalore, as Stenotypists/LDCs on 28-11-1957 and 16-9-1960 respectively, in the then pay scale of Rs.60-3-81-EB-4-125-5-130, with Special Pay of Rs.20/- per mensem. The following comparative statement of relevant service particulars of both, brings out the case into sharp relief like a kaleidoscope, to help determine the questions arising in this application:

S.No.	Particulars	M.R.Seshan (applicant)		K.S.Sathya Dharma	
		Date	Pay p.m. (Rs.)	Date	Pay p.m. (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)
i)	Appointment as Steno- typist/Lower Division Clerk(LDC) in the pay scale of Rs.60-3-81- EB-4-125-5-130.	28-11-1957	60.25 + 20/- Spl. Pay (SP)	16 19.9.1960	110 + 20 SP

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(1)	(2)	(3)	(4)	(5)	(6)
ii)	Pay on account of advance increment granted for passing the Departmental Examination.	18.10.1960	122/- +20 SP	18.11.1962	125/- + 20 SP
iii)	Pay on earning annual increment. ..	28.11.1963	135/- +20SP	19.9.1963	125/- +20SP
(iv)	Pay on promotion as Upper Division Clerk(UDC) in the pay scale of Rs.130-5-160-8-200-EB-8-256-EB-8-280-10-300.	6.2.1964	160/-	13.3.1965 18.3.1964	150/-
(v)	Pay on earning annual increment.	6.2.1967	184/-	18.3.1967	168/-
(vi)	Pay on passing the Depttl.Examination for Income Tax - Inspectors(ITIs).	1-10-1967	200/-	18-3-1970	200/-
(vii)	Pay on earning annual increment.	6-2-1972	240/-	18.3.1972	224/-
viii)	Revised pay fixed in the post of UDC according to the recommendations of the III Central Pay Commission(III CPC) in the pay scale of Rs.330-10-380-EB-12-500-EB-15-560.	1-1-1973	452/-	1-1-1973	440/-
(ix)	Pay on earning increment.	1.2.1976	500/-	1.3.1976	438/-
(x)	Pay on promotion as Head Clerk(HC) in the pay scale of Rs.425-15-500-EB-15-560-20-700.	16.2.1976	530/-	-	-

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(1)	(2)	(3)	(4)	(5)	(6)
(xi)	Pay on promotion as ITI in the pay scale of Rs.425-15-500-EB-15-560-20-700-EB-25-800.	25-8-1976	560/-	-	-
xii)	Pay on earning advance increment for passing Deptl. Examination of Income Tax Officers (ITOs) ...	14-7-1977	600/-	-	-
xiii)	Pay on promotion as Tax Assistant (TA) in the pay scale of Rs.380-12-440-EB-15-560-20-640, a cadre in between UDC and HC. ..	-	-	15-5-1978	545/-
xiv)	Pay on promotion as HC. ..	<u>vide S.No.(x) supra.</u>		²⁶ 22.6.1979	600/-
xv)	Pay on promotion as ITI ..	<u>vide S.No.(xi) supra.</u>		¹⁰ 16.8.1979	640/-
xvi)	Pay on earning annual increment.	1.8.1981	700/-	1-8-1981	680/-
xvii)	Pay on earning advance increment for Deptl.Exam. of ITOs.	<u>vide SNo.(vi) supra.</u>		16.6.1981	700/-
xviii)	Pay on earning increment.	1.8.1985	825/-	1.8.1985	875/-
(xix)	Pay fixed in the post of ITI according to the recommendations of the III CPC.	1.1.1986	2420/-	1.1.1986	2540/-

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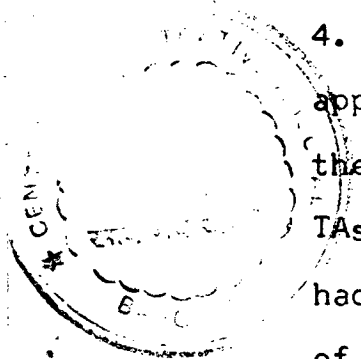
(1)	(2)	(3)	(4)	(5)	(6)
<hr/>					
(xx)	Pay on promotion as ITO, in the pay scale of Rs.2000-60-2300-EB-75-3200-100-3500.	..	20.11.1986	2600/-	-
xxi)	The latest position in regard to pay.	..	1.11.1987 (Date of increment)	2675/- as ITO	1.8.1987 (Date of increment) as ITI.

3. Under their Official Memorandum (OM), dated 31.3.1978, the Union Ministry of Finance, Department of Revenue, created certain posts of Tax Assistants (TAs) intermediate between the cadre of UDCs and HCs, so as to help relieve stagnation in the cadre of UDCs and provide incentive to the staff, as a measure of improving efficiency. These posts were created after the applicant was promoted as HC on 16.2.1976.

4. Shri Satya Dharma, who was junior to the applicant and was promoted as UDC on 18-3-1964, secured the benefit of promotion in this intermediate cadre of TAs on 15-5-1978. The applicant and Shri Sathya Dharma had to traverse the following posts of promotion from that of Stenotypists to that of ITI:

- A. Applicant: UDC → HC → ITI
- B. Sathya Dharma: UDC → TA → HC → ITI

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5. At each stage of promotion, they were conferred the benefit of Fundamental Rule (FR) 22-C in regard to fixation of their pay. While Shri Sathya Dharma had this benefit at 4 stages in all, the applicant had the advantage of only 3 stages and this made all the difference in the matter of fixation of their pay under FR ²²22-C.

6. Besides, the Special Pay of Rs.25/- p.m. sanctioned ^{4 for} UDCs working in the Internal Audit Party, was enhanced to Rs.35/- p.m. by the Union Ministry of Finance in June 1977. The applicant could not avail of this benefit, as he was promoted as HC earlier on 16-2-1976.

7. The applicant alleges, that Shri Sathya Dharma had the added advantage of enhancement of Special Pay as above, in the post of UDC, besides 4 stages of pay fixation under F.R. ²²22-C on promotion, the cumulative effect of which was, though he was junior to the applicant, his pay came to be fixed higher, resulting in an anomaly, arising out of direct application of the provisions of F.R. 22-C.

8. The applicant further alleges, that he had passed the prescribed Departmental Examinations at various stages earlier than Shri Sathya Dharma and was discharging his duties with diligence and efficiency and therefore, it was unjust and discriminatory, to fix his pay lower than that of Shri Sathya Dharma, who was his junior.

9. He states, that he submitted a written representation to R-1 on 14-7-1987, but the same was turned down on 17-10-1987 and this was communicated to him by R-2 on 26-10-1987 (Annexure-B). Aggrieved, he has come to this Tribunal through his present application for redress.

10. Shri M.S. Ananda Ramu, learned Counsel for the applicant, appearing on behalf of his Senior Shri K. Subba Rao, more or less reiterated the contentions urged in the application. He pleaded, that it was unfair that his client should have been denied the benefit of the enhanced Special Pay of Rs. 35/- per mensem, in the post of UDC in the Internal Audit Party and of the additional avenue of promotion as Tax Assistant, while fixing his pay under F.R. 22-C. This treatment to his client he stressed, was invidious and unjust and had caused him considerable pecuniary loss as compared to Shri Sathya Dharma, who was junior to him. He relied on 1983 SCC (L&S) 145 (D.S. NAKARA & ORS. v. UNION OF INDIA) to support his contention, that the above enhanced Special Pay of Rs. 35/- per mensem, could not be denied to his client, by fixing the date arbitrarily for grant of this benefit, as this was unprincipled and unreasonable. He, therefore, urged, that the pay of his client, be brought on par with Shri Sathya Dharma and that he be given arrears of salary as a consequential benefit.



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11. Shri M.V.Rao, learned Additional Central Government Standing Counsel, appearing for the respondents, contended at the very threshold, that the application, which really sought to enforce a claim arising prior to 1-11-1982, was not maintainable according to Section 21 of the Administrative Tribunals Act, 1985, as ruled by the Principal Bench of the Tribunal in ATR 1986(AT) 203 (V.K.MEHRA v. SECRETARY MINISTRY OF INFORMATION AND BROADCASTING, NEW DELHI) and therefore urged, that the application be rejected on this ground alone.

12. He also contended, that the application was barred by limitation, according to the provisions of Section 21 ibid. He averred, that the representation of the application^{was} was finally rejected by the Central Board of Direct Taxes, New Delhi, as far back as on 21-9-1981. Yet the applicant chose to make repeated representations for reconsideration of his request and one such was made by him to the above Board as late as on 14-7-1987 and the Board in reply, confirming its earlier decision, rejected this representation on 17-10-1987.

Relying on the decision of this Bench in Appeal No.46 of 1987 (DR. KSHAMA KAPOOR v. UNION OF INDIA) and in Applications Nos.1724 and 1874 of 1986 (A.L.SOLKHAN & ANR. -v.- CHIEF COMMISSIONER OF INCOME TAX, BANGALORE), Shri Rao asserted, that once the representation was disposed of by the competent authority, mere repetition of representations thereafter, was of no avail to the applicant, in

surmounting the bar of limitation and therefore he urged, that the application be rejected straightaway, on grounds of limitation and non-maintainability, without examining the merits of the case.

13. Shri Anand Ramu countered the plea of limitation and non-maintainability of the application raised by Shri Rao, on the grounds, that grievance of his client in regard to fixation of his pay was a recurring one, year after year and therefore he had a legitimate "continuing cause of action" for redress.

14. There is force and reason in this submission of Shri Anand Ramu, that cause of action is a continuing process and not a bygone issue. I am persuaded to accept the same and therefore reject the preliminary objection raised by Shri Rao, referred to earlier.

15. I have examined carefully the pleadings of both sides and the material placed before me. The crucial question that needs to be resolved in this case is, whether the anomaly in the fixation of pay between the applicant and Shri Sathya Dharma, his junior, is as a direct result of the application of F.R. 22-C. The Union Ministry of Finance have, under their O.M. dated 4-2-1966, laid down conditions under which such an anomaly should be rectified. This O.M. reads thus:

"(10)(a) As a result of application of F.R. 22-C.-- In order to remove the anomaly of a Government servant

promoted

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promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of F.R.22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under F.R. 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay."

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16. The details of pay furnished in para-2 supra reveal, that as compared to the applicant, Shri Sathya Dharma, his junior, had the advantage of an extra stage of pay fixation under F.R. 22-C when he was promoted to the cadre of Tax Assistant (TA), newly created on 31-3-1978, as an intermediate cadre between that of UDC and HC, in order to prevent stagnation in the cadre of UDCs. The applicant could not ^{derive} ~~denied~~ this benefit, as this intermediate cadre of TA, was created when he was already promoted as HC. Shri Sathya Dharma had the dual advantage of step-up in his pay, on account of this additional stage of TA, for pay fixation under F.R. 22-C on promotion and of enhancement in Special Pay from Rs.25/- to Rs.35/- per mensem, in June 1977, in the post of UDC in the Internal Audit Party. The applicant can have no claim to these benefits with retrospective effect, as these developments took place at a time relevant to the circumstances then existing.

17. A glance at the kaleidoscope of service particulars, inclusive of pay in para 2 supra reveals, that Shri Sathya Dharma, for the first time drew higher pay than the applicant on 16-6-1981 and that pay was Rs.700/- per mensem. The applicant attained that stage of pay on 1-8-1981 i.e., about a month and a half later, More than one factor was attributive to this increase in pay in respect of Shri Sathya Dharma. In fact, it was a combination of factors such as his promotion in the additional (intermediate) stage of TA



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on 15-5-1978, which gave this rise in pay a propulsion and the enhancement of Special Pay from Rs.25/- to Rs.35/- per mensem, in the post of UDC in the Internal Audit Party. From 16-6-1981 onwards, the rise in pay of Shri Sathya Dharma is perceptible and became somewhat marked, after 1-1-1986, when the pay of the applicant and Shri Sathya Dharma, came to be revised according to the recommendations of the IV CPC, even though the applicant was further promoted to the post of ITO and Shri Sathya-Dharma continues in the post of ITI. As on 1-11-1987, however, the applicant and Shri Sathya Dharma seem to be on an even keel, having attained the stage of pay of Rs.2,675/- per mensem. But the applicant already being in the grade of ITO, in the higher scale of pay, is soon bound to overtake Shri Sathya Dharma in the race, who is yet to secure promotion as ITO.

18. The anomaly in the fixation of pay of the applicant vis-a-vis Shri Sathya Dharma, from 16-6-1981 onwards, cannot in the light of the above analysis, be said to be wholly and directly as a result of the application of the provisions of F.R. 22-C, as other factors too have come into play. Consequently, the pre-requisites stipulated in O.M. dated 4-2-1966 of the Union Ministry of Finance referred to above, for rectification of anomaly in pay fixation under F.R. 22-C, cannot be said to have been strictly fulfilled. The case of the applicant is therefore not governed squarely by the instructions in the said O.M. dated 4-2-1966.

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19. The present case is also not identical in facts and circumstances with Applications Nos. 1396 and 1926 of 1986 and 564, 565 and 892 of 1987 as claimed by the applicant, for grant of relief.

20. In the result, the application fails and is dismissed, with no order however, as to costs.



sd/-
(L.H.A. REGO) 4-2-988
MEMBER(A)

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AP *thy* 10/3/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

kms:

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Registered

Commercial Complex (BOA)
Indiranagar
Bangalore - 560 038

Dated : 24 JUN 1988

REVIEW APPLICATION NO. 48 / 88
IN APPLICATION NO. 116/88(F)
D.P. NO.

Applicant(s)

Shri M.R. Seshan
To

Respondent(s)

V/s The Secretary, Central Board of Direct Taxes,
New Delhi & another

1. Shri M.R. Seshan
82, 'Maruthi'
Muneswara Block
G.E.F. Post
Bangalore - 560 026

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/~~INTERIM ORDER~~
passed by this Tribunal in the above said ^{Review} application(s) on 20-6-88.

Issued
K. N. Seshan
24.6.88
Encl : As above

R. V. Seshan
DEPUTY REGISTRAR
(JUDICIAL)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated the 20th day of June, 1988.

Present

THE HON'BLE MR. L.H.A. REGO .. MEMBER(A)

REVIEW APPLICATION NO.48 OF 1988

M.R.Seshan S/o M.V.Ramasastrigal
52 years, Income-tax Officer .. Applicant
Bangalore.

(Applicant in person)

..-vs.-

1. The Union of India
represented by its Secretary
Central Board of Direct Taxes
North Block, New Delhi.
2. The Chief Commissioner
of Income-tax, Karnataka,
Central Revenue Building,
Queen's Road, Bangalore-1. .. Respondents.

This review application coming on for admission,
this day, Hon'ble Mr. L.H.A.Reg, Member(A), made the
following:



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O r d e r

ORDER

In this Review Application filed under Sec.22(3)(f) of the Administrative Tribunals Act, 1985, the applicant prays that this Tribunal, review and reconsider its Order dated 4-3-1988, made in the original Application No.116 of 1988 and grant him ~~the~~ consequential relief.

2. The review-applicant appeared in person and pleaded his case for admission.

3. The service particulars of the review-applicant vis-a-vis Sri K.S.Sathya Dharma (who is said to be his junior) with reference to whom, he prays that his salary be fixed on par, have been narrated in adequate detail, in the original Application No.116 of 1988, in so far as they are relevant to the questions urged in this Review Application, and therefore, there is no need to reiterate the same herein.

4. The review-applicant alleges, that certain facts and figures, in regard to the pay drawn by him, vis-a-vis Sri K.S.Sathya Dharma, his junior, at the respective stages of their career advancement, have not been correctly depicted, in the aforesaid Order dated 4-3-1988 of the Tribunal, in the original Application No.116 of 1988.



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He contends, that his claim for fixation of his pay, on par with Sri K.S.Sathya Dharma has been rejected, mainly on the ground, that the pre-requisites stipulated in Office Memorandum dated 4-2-1966, of the Union Ministry of Finance, for rectification of the anomaly in pay fixation, under Fundamental Rules 22-C, cannot be said to have been strictly fulfilled. Further, he alleges, that the contents of this Memorandum have not been correctly appreciated.

5. In his present Review Application, he has furnished copies of a series of Office Memoranda and other communications issued by the Union Ministries of Finance, and Home Affairs and others, (Annexures A3 to A6) to substantiate his case. These relate to a period as far back as from 1975 to 1983. The review-applicant could not explain to me satisfactorily, as to why these documents now relied upon by him, could not be produced earlier, at the time of hearing of the original application. It is seen that he has been able to secure these documents barely within less than a period of four weeks from the date of pronouncement of the Order dated 4-3-1988, in the original application. It is apparent therefrom, that the review-applicant did not exercise due care and diligence, to obtain the copies

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of



of these documents and produce the same along with his original application, to rely thereon, in support of his case. These documents produced now belatedly, as an after-thought, cannot therefore constitute a ground for review of the Order made by this Tribunal, on 4-3-1988, on his original application, and come to his succour.

6. This apart, it is noticed that the various dates indicated by him, as regards the service particulars of Sri K.S.Sathya Dharma, in his present review application, are discrepant, from those stated by him earlier in his original application. The relevant service particulars of the applicant, vis-a-vis Sri K.S.Sathya Dharma, were juxtaposed in my Order dated 4-3-1988 in the original application, on the basis of the details furnished by the respondents, to which their learned Counsel had broadly referred, in the course of the hearing of that application. If there was any error therein, as now alleged by the by the applicant, it was neither controverted by him nor his counsel then. In these circumstances, I have no reason to believe, that the above service details furnished by the respondents suffer, from an apparent or patent grave error and/or inaccuracy, as now alleged, belatedly, by the review-applicant. Besides, even if it is assumed, that certain errors have inadvertently crept in, in the service particulars



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particulars chronicled, in my aforesaid Order dated 4-3-1988, as alleged by the review-applicant, their effect would not be such as to militate against the criteria and/or principles, on which that Order was based.

7. It needs to be appreciated that a review cannot be taken recourse to, as a matter of routine, merely, with the object of correcting an allegedly erroneous view taken earlier, but only with a genuine object to rectify a patent grave error or a grave error apparent of fact and/or law, on the face of the record. The scope of a review application is thus limited, unless there is patent grave error on the face of the record or a material issue or fact in the original application, has been overlooked ^{or} not duly considered. Such is not the case in this review-application, as all material facts and issues in the original application have been duly noticed and examined by me, only whereafter, the said application has been disposed of, by my Order dated 4-3-1988. In fact, the tenor of the review-application reveals that the applicant desires that evidence be reappraised and the case re-examined on merits, by way of an appeal. Such a course is impermissible as this Tribunal, cannot substitute itself as a forum of appeal against its own judgment.

Sd/-



8. In view of the foregoing, this review application is ex facie bereft of merit and therefore, I reject the same in limine, without notice to the respondents. No order as to costs.



Sd/-
(L.H.A. REGO) Dec. 6. 1988
MEMBER (A).

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DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

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