

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::::GUWAHATI-5.

O.A.No. 111 of 1997

DATE OF DECISION..11-1-1999.....

Mrs.Nibedita Sarma

(PETITIONER(S))

Mr.B.K.Sharma, Mr.S. Sarma

ADVOCATE FOR THE
PETITIONER(S)

^{VERSUS}
The Council of Scientific & Industrial Research(CSIR)
represented by its Director General
Rafi Marg, New Delhi.

RESPONDENT(S)

Mr.A.Deb Roy , Sr.C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR.JUSTICE D.N.BARUAH, VICE-CHAIRMAN
THE HON'BLE MR.G.L.SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 111 of 1997.

Date of Order : This the 11th Day of January, 1999.

Justice Shri D.N.Baruah, Vice-Chairman.

Shri G.L.Sanglyine, Administrative Member.

Mrs Nibedita Sarma
resident of Bye lane No.5,
Zoo Narengi Road,
Guwahati-781621.

... . Applicant

By Advocate S/Shri B.K.Sharma, S.Sarma.

- Versus -

1. The Council of Scientific & Industrial Research(CSIR)
represented by its Director General,
Rafi Marg, New Delhi.
2. The Regional Research Laboratory,
(Council of Scientific & Industrial Research),
Jorhat, represented by its Director.
3. The Director General,
Council of Scientific & Industrial Research,
Rafi Marg, New Delhi.
4. The Director,
Regional Research Laboratory,
Jorhat.
5. The Union of India
represented by the Secretary to the
Government of India,
Ministry of Science and Technology,
New Delhi.
6. Dr. C.N.Saikia,
Scientist-II,
Regional Research Laboratory,
Jorhat (INQUIRING AUTHORITY). . . . Respondents.

By Shri A.Deb Roy, Sr.C.G.S.C.

O R D E R

BARUAH J.(V.C)

The applicant is an employee in Regional Research Laboratory, Jorhat under the Council of Scientific and Industrial Research. In the year 1979 she fell ill and therefore applied for Medical Leave initially for a period of 15 days. Thereafter, she applied for extension of leave from time to time. According to the applicant she submitted leave applications supported by medical certificates. In this way she remained absent till January 1986 and on 16th

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January 1986 the authority removed the applicant from service for unauthorised absence. However, no enquiry was held before her removal.

2. Being aggrieved she moved this Tribunal by filing Original Application No.176 of 1990. The said Original Application was heard and disposed of by this Tribunal by an order dated 23.2.1991, setting aside the order of removal. However liberty was granted to the respondents for holding fresh enquiry. The Tribunal also directed to complete the enquiry within a period of 90 days. Pursuant to the said order of this Tribunal, the respondents initiated disciplinary proceedings by serving the Article of Charges alongwith the statement of imputations as per the provisions of Rule 14 of CCS (CCA) Rules 1966. The applicant was asked to show cause as to why penal actions should not be taken against her. The applicant duly replied to the show cause by Annexure-5 letter dated 14.8.1991 denying the allegations made against her. The authority not being satisfied with the reply decided to proceed with the enquiry and for that purpose Dr S.K.Roy, Senior Controller of Administration, NML, Jamshedpur was appointed Enquiry Officer by ~~Annexure-2~~ order dated 9.9.1991. By Annexure-4 order dated 11.11.1991, the charge was amended quoting appropriate Rule. This memorandum was forwarded to the Enquiry Officer. Shri Ashok Kr. Sarma was appointed Presenting Officer. Some evidence was recorded. At that time the applicant was defended by Shri J.Baruah, a local Advocate of Jorhat. However, proceedings did not come to an end within the specified time granted by this Tribunal. Considering unreasonable delay in completing the disciplinary proceedings, the applicant submitted Misc.Petition No.65/91 stating inter alia that after the judgment of the Tribunal no steps had been taken

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to complete the enquiry as per the direction given by this Tribunal. As the disciplinary proceeding was not likely to be completed within the period prescribed the respondents filed a Misc.Petition No.149/91. Before any final order could be passed on the M.Ps the respondents had filed yet another Misc.Petition No.12/92 with a prayer for extension of time. By order dated 4.2.92 both the Misc.petitions were rejected. The Tribunal also quashed the disciplinary proceeding as the respondents could not complete the disciplinary proceeding within the stipulated period. Against the order passed by this Tribunal on 4.2.92 the respondents approached the apex Court by filing S.L.P (Civil No.477-478/94). The above civil appeal was disposed of by the apex Court by a common order dated 26.2.1996 allowing the respondents to complete the disciplinary proceeding within two months from the date of the order i.e. 26.2.1996. The relevant portion of the order of the apex Court is quoted below :

"Having regard to the facts and circumstances of these cases, we are of the view that the appellants may be permitted to complete the disciplinary proceedings that have been initiated against the respondent within a period of two months from the date of this order. It is, therefore, directed that the respondent shall appear before the Inquiry Officer entrusted with the inquiry at Jorhat on March 8, 1996 at 11.00 a.m."

Thereafter several orders had been issued by Dr A.K.Ghosh, Director of Regional Research Laboratory, Jorhat. By Annexure-2 order dated 28.2.1996 Dr C.N.Saikia was appointed Enquiry Officer in place of Sri S.K.Roy. The reason for appointing a new Inquiry Officer was assigned as under :

"Whereas Shri S.K.Roy because of stay orders from CAT, Guwahati Bench, could not proceed further and is not available, it is necessary to appoint another officer as Inquiry Authority to inquire into the charges against Mrs Nibedita Sarmah (Baruah)."

82

By Annexure-3 order one Sri Jayaram, Section Officer, C.S.I.R, Madras was appointed Presenting Officer. As per the order of the Supreme Court the Director proposed to hold the enquiry against the applicant under Rule 14 of the CCS (CCA) Rules 1965. Alongwith Annexure-4 order once again the charges were issued and served. The next date was fixed on 14.3.1996 for evidence. Accordingly on that day two witnesses were examined. After examining the witnesses on behalf of the disciplinary authority the proceeding was closed and on 4.4.1996 the report was forwarded to the disciplinary authority and on 25.4.1996 by Annexure-9 order the applicant was found guilty and she was removed from service. The disciplinary authority in Annexure-9 order dated 25.4.1996 observed as follows :-

"NOW, THEREFORE, after considering the records of Inquiry and the facts and circumstances of the case, the undersigned has come to the conclusion that Smt. Nibedita Sarmah is not a fit person to be retained in Council (CSIR) Service and hence ends of justice require that the penalty of removal from service which shall not be a disqualification or future employment under Rule-11(viii) of CCS(CCA) Rules, 1965. The Penalty of removal from service under the above stated rules is accordingly hereby imposed on Smt. Nibedita Sarmah with immediate effect."

A representation was submitted against the enquiry report not alleging that the enquiry was conducted properly and it was completed most hurriedly without giving any opportunity to the applicant to adduce evidence in support of her contention as envisaged under Rule 14 of the CCS(CCA) Rules. This was duly received by the Director. However, nothing was done. On the other hand by Annexure-9 order the applicant was removed from the service. The applicant had submitted an appeal dated 17.5.1996 against the order dated 25.4.1996. It has not been disposed of. Hence the present application.

3. In due course the respondents have entered appearance. In spite of repeated extension of time the respondents.

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failed to file any written statement. On 14-8-1997 the former Sr.C.G.S.C. Mr.S.Ali prayed for further extension of time. The Tribunal declined to grant further extension of time as several adjournments had already been granted. Thereafter, also no attempt was made to file the written statement. Records have also not been produced today before us.

4. We have heard both sides. Mr.B.K.Sharma, assisted by Mr.S. Sharma, learned counsel appearing on behalf of the applicant has challenged the impugned order on various grounds, namely, (a) respondents were totally negligent in disposing of the enquiry proceeding, (b) the disciplinary proceeding could not be completed by the Enquiry Officer even after granting several extension of time by the Tribunal, ultimately the order of removal was set aside, (c) they also in most perfunctory manner conducted the enquiry even when the Apex Court granted 2 months time to dispose of the disciplinary proceeding as per direction, (d) that the enquiry was conducted with unnecessary haste and that to without affording reasonable opportunity to the applicant to produce defence evidence, (e) the Enquiry Officer most unreasonably rejected the prayer of the applicant to engage a defence counsel in support of her case in complete violation of the mandatory provision of Rule 14 of the CCS(CCA) Rules 1965, (f) the charges on the basis of which the applicant was removed was vague, indefinite and misleading.

5. Mr.A.Deb Roy has however, strenuously argued in favour of the impugned action of the respondents. His submission is that the enquiry was conducted in strict compliance of the provisions of Rule 14 of the CCS(CCA) Rules.

6. On the submissions of the learned counsel for the parties it is now to be seen whether the impugned order can sustain in law.

7. The applicant was removed from service on the ground of his absence from duty unauthorisedly. The initial removal from service was without holding any enquiry which was set aside by this Tribunal in Original Application No.176/90 by order dated 23-2-1991. Thereafter, the disciplinary proceeding was initiated by serving article of charges and the statements of imputations. The applicant having realised that there had been inordinate delay in disposing of the Disciplinary Proceeding, moved a Misc.Petition (M.P.65/91) for direction of early disposal. This Tribunal accordingly passed order directing the Respondents to dispose of the Disciplinary Proceeding within 90 days. However, the disciplinary proceeding could not be completed within the time allowed by the Tribunal. The respondents sought for extension of time, which was granted on several occasions. Ultimately this Tribunal declined to grant any further extension of time and in consequence whereof the disciplinary proceeding was quashed. Being aggrieved, the respondents approached the Apex Court by filing two (Civil Appeals No. 477-478/94) and the said Civil Appeals were disposed of by a common order dated 26-2-1996 with direction to complete the disciplinary proceedings within two months from the date of the order. The Apex Court also directed the applicant to appear before the Enquiry Officer on 8-3-1996. Accordingly, the applicant appeared before the Enquiry Officer. The respondents fixed the next date on 14-3-1996 and on 14-8-1996 evidence of two witnesses were recorded. Thereafter the next date was fixed for sending the report. The report was accordingly sent and the Disciplinary Authority decided to remove the applicant. The contention of Mr. Sharma is that the disciplinary proceeding was vitiated for non-compliance of the provisions of Rule 14 of CCS(CCA) Rules. The relevant provision of Rule 14 is extracted below:

"(8)(a) The Government servant may take the assistance of any other Government servant posted in any office either at his

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headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits;

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits.

NOTE - The Government servant shall not take the assistance of any other Government servant who has (three) pending disciplinary cases on hand in which he has to give assistance.

(b) The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf."

The contention of Mr Sharma is that the Enquiry Officer totally ignored the provisions of Rule 14 while refusing the applicant to get the assistance of an Advocate which was earlier granted. In this connection Mr Sharma has drawn our attention to instruction Nos. 20 and 21 of the Swamy's Compilation of CCS(CCA) Rules. We quote the said instructions below :-

"(20) Conditions for engaging retired Government servants as defence assistants - Reference is invited to O.M.No.11012/18/90-Estt.(A), dated the 13th February, 1991 (not printed) and to say that the matter regarding restrictions on accused Government servants for engaging retired Government employees to present their case in departmental disciplinary proceedings has been reviewed in the light of the demand of the staff side in the National Council of JCM for putting a ceiling on the number of cases a retired Government servant can take up as a defence assistant and in supersession of earlier orders on the subject, it has been decided in terms of Rule 14(8)(b) of CCS(CCA) Rules, 1965, that assistance of retired Government servants may be taken subject to the following conditions :-

(i) The retired Government servant concerned should have retired from service under Central Government.

(ii) If the retired Government servant is also a legal practitioner, the restrictions on engaging a legal practitioner by a delinquent Government servant to present the case on his behalf, contained in Rule 14(8) of the CCS(CCA) Rules, 1965 would apply.

(iii) The retired Government servant concerned should not have, in any manner, been associated with the case at investigation stage or otherwise in his official capacity.

(iv) The retired Government servant concerned should not act as defence assistant in more than five cases at a time. The retired Government servant should satisfy the inquiring officer that he does not have more than five cases at hand including the case in question.

(21) Permission to engage a legal practitioner for the defence. - Rule 14(8) (a) of the CCS (CCA) Rules 1965, provides inter alia, that delinquent Government servant against whom disciplinary proceedings have been instituted as for imposition of a major penalty may not engage a legal practitioner to present the case on his behalf before the Inquiring Authority unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner, or the Disciplinary Authority, having regard to the circumstances of the case, so permits. It is clarified that, when on behalf of the Disciplinary Authority, the case is being presented by a Prosecuting Officer of the Central Bureau of Investigation or a Government Law Officer (such as Legal Adviser, Junior Legal Adviser), there are evidently good and sufficient circumstances for the Disciplinary Authority to exercise his discretion in favour of the delinquent officer and allow him to be represented by a legal practitioner. Any exercise of discretion to the contrary in such cases is likely to be held by the court as arbitrary and prejudicial to the defence of the delinquent Government servant."

From a reading of these instructions it appears that the rule does not debar the Disciplinary Authority to permit a charged employee to engage a legal practitioner for his/her defence.

But, that has to be decided by the Disciplinary Authority

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after proper application of mind. From the materials before us we find that this exercise was never done in the present case as will be evident from Annexure-7. On the other hand the Inquiry Officer rejected the prayer of the applicant for assistance of a legal practitioner as quoted above. Instruction 22 further indicates as follows:

"(22) Assistance of legal practitioner to be decided on merits of each case. The assistance of a legal practitioner should not be refused to the officer concerned if the Presenting Officer is a legal practitioner. The rule however, vests discretion in the Disciplinary Authority to permit assistance of a legal practitioner having regard to the circumstances, that such assistance is justified. No orders exist laying down guidelines to the Disciplinary Authority as to in what circumstances such justification may be said to exist. The matter has been carefully considered and after taking into account the judgments delivered by some High Courts on this point it has been decided that the Disciplinary Authority should bear, in each case, such circumstances in mind, as the status of the Presenting Officer, his experience in this type of job and the volume and nature of documentary evidence produced in the case before taking a decision as to whether or not the services of a legal practitioner should be made available to the officer concerned. It is reiterated that the discretion of the Disciplinary Authority is vast and it should exercise such discretion in the most impartial manner on the merits of each case and be guided solely by the criterion whether the denial of assistance of a legal practitioner is likely to be construed as denial of reasonable opportunity to the officer concerned to defend himself."

We have examined the instructions and we find that the submission of Mr. Sharma has full force. This has also not been disputed by Mr. Deb Roy. In the present case, on the previous occasion when the disciplinary proceeding was conducted but could not be completed within the time allowed, the authority engaged an Advocate, Shri A. Sarma as a Presenting Officer. Thereafter when the matter was sent back from the Apex Court the Disciplinary Authority decided to appoint Shri N. Jayaram from Madras as Presenting Officer. We do not know what was the compelling reason to engage an officer from Madras. Was it a case that there was no person locally available having similar Qualification of

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Mr. Sarma to substitute him, we feel such situation might not have arisen. At any rate, the respondents have chosen to remain total silence. It is also not known whether Shri A. Sarma was available or not. As the written statement has not been filed by the respondents all these things remain in darkness. Be that as it may, the fact is that once an advocate was engaged as a Presenting Officer and the applicant was allowed to be defended by a legal practitioner, Shri J. Baruah, we do not find any plausible reason why this was changed. If Shri A. Sarma was for some reason not available another legally trained person ought to have been appointed. We cannot believe that such persons were not available. As no written statement was filed and records not produced, we are inclined to accept the case of the applicant that Presenting Officer was brought from Madras just to deprive the applicant. It is settled law that the state or instrumentality of state is bound by public law limitation. Every action of the state or instrumentality of state must be fair, reasonable and just. The respondents are therefore, bound by those limitations.

8. The third ground of Mr. Sharma is that no reasonable opportunity was given to the applicant to defend herself by adducing defence evidence. In this connection he has drawn our attention to Sub rules 16 and 17 of Rule 14. We quote sub rules 16 and 17 below:

"(16) when the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded, and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced (emphasis added) The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority."

The contention of Mr. Sharma is that no opportunity was given to the applicant though two witnesses on behalf of the Disciplinary Authority were examined and the disciplinary proceeding was concluded without giving adequate opportunity to the applicant. There is a specific averment made by the applicant in para 4.12. is quoted below :

"4.12 That after depriving the applicant of her valuable right of a defence assistant, the enquiry authority hurriedly conducted the proceeding for completing the same without giving the applicant the minimum opportunity of adequate defence. On the other hand , the disciplinary authority was well represented in the enquiry proceeding by its Presenting Officer as well as the Inquiring Authority. Through out the enquiry proceeding the inquiring authority acted as per the dictation of the disciplinary authority. In view of the Apex Court directive for completion of the enquiry within two months from the date of the order dated 26-2-96, the inquiring authority with a bias attitude as per directive of the disciplinary authority conducted a farcical enquiry with undue haste so as to complete the proceeding by any means and to bring home the ~~guilt~~ against the applicant."

These averments made by the applicant have not been controverted by the respondents, in-as-much as no written statement has been filed by them. The respondents have also not produced the records pertaining to the disciplinary proceedings to enable this Tribunal to know what were the steps taken by them. In the absence of any such document and in view of the clear averment made by the applicant in the application we hold that proper opportunity as contemplated under Rule 14, and Sub Rules 16 and 17 had not been given to the applicant before disposal of the disciplinary proceedings. The case was fixed on 14-3-1996 and the report was submitted on 4-4-1996. We do not find any reason why an opportunity could not be given by the enquiry officer. Therefore, we feel that the enquiry was conducted in a most perfunctory manner without complying the procedures prescribed under the said Rule. The entire

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proceeding, we feel, was vitiated for non-compliance of the procedure prescribed.

9. In short the submission of the learned counsel for the applicant is that there was a complete violation of the procedure prescribed. Law is well settled in this regard. It is well known principle of law that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. It should be borne in mind that where the complaint is not that there was no hearing but one of not affording the proper hearing or violation of a procedural rule or requirement governing the enquiry, the complaint should be examined on the touchstone of prejudice. The test is, all things taken together whether the delinquent officer/employee had or did not have a fair hearing. Interest of justice equally demands that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter productive exercise. These principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. A substantive provision of any rule or any statutory rule has normally to be complied with and the theory of substantial compliance or the test of prejudice would not be applicable in such a case. In case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity

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to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. There may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. In case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it, the prejudice is self evident. No proof of prejudice as such need be called for in such a case. So the test is one of prejudice i.e. whether the person has received a fair hearing considering all things.

(See State Bank of Patiala vs. S.K.Sharma reported in (1996) 3 SCC 364).

10. Rule 14 of the CCS(CCA) Rules specifically provides that after the closure of the evidence from the side of the disciplinary authority the applicant should be given an opportunity to adduce evidence. In this case we do not find anything that such opportunity was given to the applicant. This will amount to denying of a fair

trial and the question of prejudice is apparent from the fact that the applicant was denied the fair hearing. On such an enquiry the applicant cannot be removed from service. The submission of Mr. Sharma is that charge Nos.1 and 4 were wrong in view of the fact that as per those charges she was alleged to be unauthorisedly absent during the period from the date of removal from service till the date of the order by which the order of removal was set aside by this Tribunal. The applicant was thereafter put under suspension. During this period there could be no charge for unauthorised absence. On these points Mr. Deb Roy finds no answer as it is apparent that during that period as per the order of the authority she was removed from service and then after the order of removal from service was set aside by this Tribunal she was placed under suspension. Therefore, charge Nos.1 and 4 were vague and indefinite and on these charges she could not be punished. We agree with the submission of learned counsel.

11. The last submission of Mr. Sharma is that the Enquiry Officer found the charge No.3 not proved and the Disciplinary Authority had not disagreed with the findings of the Enquiry Officer. Therefore, according to him charge No.3 could not have been proved.

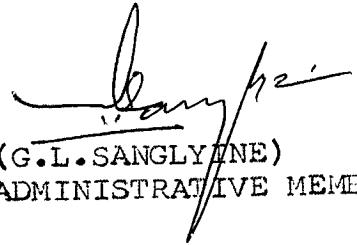
12. Considering the entire facts and circumstances of the case we hold that the assistance of a legal practitioner was denied to the applicant contrary to the provisions of the Government of India's instructions and the Presenting Officer was changed for the subsequent

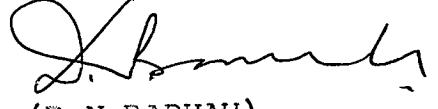
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disciplinary proceeding after the order of the Apex Court without any valid reason and adequate opportunity was not given to the applicant to establish the case of the defence and the charge being vague and indefinite the punishment awarded on such finding is untenable in law. Accordingly, we have no hesitation to set aside the impugned order of removal and the applicant shall be deemed to be in service.

Application is allowed. No order as to costs.


(G.L.SANGLYNE)
ADMINISTRATIVE MEMBER


(D.N.BARUAH)
VICE-CHAIRMAN

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