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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.3090/2003

New Delhi, this the 3rd day of November, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

Ajit Mohan Sharan, IAS
2C, HUDCO Place
Andrew's Ganj
Delhi.

.... Applicant

(By Advocate: Sh. G.D.Gupta, Sr. Counsel with Sh. M.Tripathi)

Versus

The Union of India through its
Secretary
Ministry of Personnel, Public Grievances & Pensions
(DOP&T), North Block
New Delhi. Respondent

(By Advocate: Sh. K.R.Sachdeva)

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicant (Ajit Mohan Sharan) joined the Indian Administrative Service in 1979. He was allocated the State of Haryana as his cadre. During the course of his service, he served the Government of Haryana in different capacities. He was posted as Managing Director, Haryana Financial Corporation on 2.7.1991. After serving the Haryana Financial Corporation till 1996, he was transferred as Transport Commissioner in the State of Haryana and posted at Chandigarh. He applied for deputation to the Government of India in November, 1999 under the Central Staffing Scheme. His name was approved and an order of 23.3.2000 was issued, which reads:

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“Reference D.O. letter
No.12011/1/2000-Admn.II(Pt.), dated the
17th February, 2000 from Special Secretary,
Department of Economic Affairs.

2. The Appointments Committee of the Cabinet has approved the proposal to appoint Shri Ajit M. Sharan, IAS (HY:79), as Joint Secretary in the Department of Economic Affairs in the pay scale of Rs.18,400-22,400, for a normal tenure of five years from the date of assumption of charge of the post or until further orders, whichever event takes place earlier, vice Shri C.S.Rao, CSS.

Sd/-
(V.K.Cherian)
Deputy Secretary to the Government of
India”

2. The applicant was initially appointed as Incharge of the Insurance Division in the Department of Economic Affairs. He was entrusted with the additional responsibility in the Banking Division on 31.3.2000 and redesignated as Joint Secretary (Banking and Insurance).

3. On 9.5.2003, he received a letter from the Department of Personnel and Training whereby it was communicated to him that Appointments Committee of the Cabinet (for short 'ACC') has approved his premature repatriation to his parent cadre. The relevant portion of the order reads:

“The Appointments Committee of the Cabinet has approved the following:-“

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"The Appointments Committee of the Cabinet has also approved the following:

1. Smt. Usha Mathur, IRAS (74), Joint Secretary (Personnel), Department of Expenditure is repatriated to her since she is very shortly to be considered for appointment in her cadre.
2. Shri Navin Kumar, I.A.S. (BH:75), Joint Secretary, Department of Economic Affairs, placed on compulsory wait in the Department of Economic Affairs till his adjustment elsewhere.
3. Shri Ajit M.Sharan, IAS (HY:79), Joint Secretary (Banking and Insurance Division), Department of Economic Affairs, is prematurely repatriated to his parent cadre."
4. By virtue of this order, the applicant was repatriated. He relinquished the charge on 26.5.2003 and was sanctioned leave.
5. By virtue of the present application, the learned counsel for the applicant primarily relied upon the Central Staffing Scheme and stated that the repatriation is by way of a penalty. The applicant seeks setting aside of the order of 9.5.2003, by virtue of which he was prematurely repatriated to his parent cadre. It is asserted that repatriation is harassment to the applicant.
6. The application is opposed. Respondent No.1 in the reply states that Indian Administrative Service is an All India Service. Persons recruited to the Service are allocated to different State Cadres in accordance with the rules/regulations and policy laid down by the Central Government as provided under the All India

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Service Act, 1951. The Central Government has already provided guidelines for protecting the right to promotion of Indian Administrative Service officers in their parent cadres. Contesting respondent pleads that when the turn for promotion of an IAS officer in a higher rank is reached in the parent cadre, the officer is allowed to opt to revert to his parent cadre to avail of promotion. Besides, the officer can seek repatriation to his parent cadre on compassionate/personal grounds. Further the officers can always be repatriated prematurely on administrative grounds in public interest. The applicant is stated to have been appointed to the post of Joint Secretary in the Banking and Insurance Division of the Department of Economic Affairs with the approval of the Appointments Committee of the Cabinet. There was a Press Report regarding the big scam unearthed in Haryana Financial Corporation during the years 1992 to 1996, when the applicant was holding the post of Managing Director, Haryana Financial Corporation. The Government of Haryana had intimated that the applicant worked as Managing Director, Haryana Financial Corporation during that period and had mentioned certain acts of omission and commission purported to have been committed by the applicant. The State Government had called for the explanation regarding the alleged irregularities and had decided to get an inquiry conducted by the State Vigilance Bureau. After considering the inquiry report, the

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State Government had decided to initiate disciplinary proceedings for major penalty. It was mentioned that chargesheet was under preparation. In view of these circumstances, the applicant was repatriated to State Cadre with the approval of the Appointments Committee of the Cabinet. It is the practice that when a decision had been taken to initiate disciplinary proceedings by the concerned State Government against an officer while serving at the Centre, the services of such officer are placed at the disposal of the State Government. Accordingly, the applicant was prematurely repatriated to his State Cadre. The action of the respondents in this regard is being justified.

7. By way of additional affidavit filed by the respondents, certain additional facts have been mentioned contending that State of Haryana is a necessary party to the present proceedings. However, the applicant has not impleaded the State of Haryana as a necessary party.

8. We have heard the parties' counsel. During the course of submissions, it was not being disputed that the applicant in pursuance of the impugned order had been repatriated and it is also not in dispute that he was placed under suspension. In the light of these facts, it has been urged that the State of Haryana is a necessary party and in any case it is an exercise in futility to seek setting aside of the order of 9.5.2003 because the applicant cannot

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be taken back on deputation since he has already been placed under suspension.

9. In the facts of the present case, we find that the contention of the learned counsel for the respondents cannot be ignored. This is for the reason that in pursuance of the impugned order the applicant had been repatriated to the State of Haryana and placed under suspension. It is admitted that applicant belongs to Haryana Cadre of the Indian Administrative Service. Keeping in view these facts, the Government of Haryana was a necessary party because presently the applicant has been placed under suspension by the Government of Haryana after he has joined his parent cadre in pursuance of the impugned order. Effective relief, if at all, could only be granted if the State of Haryana had been impleaded as a necessary party.

10. Another argument advanced was that applicant has not been given any opportunity of being heard before he was repatriated.

11. We do not dispute the proposition that where civil right of a person is effected, the principle of *Audi Alteram Partem* necessarily has to be observed. But where no civil right is effected and the order is purely administrative in nature, in that event the said principle should not be extended unnecessarily. In the present case, the applicant has only been repatriated to his parent



department. As would be noticed hereinafter, there was no such vested right with the applicant to urge that his civil rights were effected. Consequently, this particular argument must be repelled.

12. Great stress on behalf of the applicant was being placed on the fact that under the Central Staffing Scheme, the applicant had to be posted for a period of five years. He could not be repatriated except on the grounds mentioned therein. As a consequence to that, it was further contended that the order passed is punitive in nature and harassment to the applicant.

13. The general principle pertaining to the rights of the deputationists have been stated by the Delhi High Court in Civil Writ No.5220/97, decided on 7.2.2001 in the case of **CONSTABLE NAFE SINGH v. UNION OF INDIA AND OTHERS**. The findings read:

“We are in agreement with the above findings of the Tribunal as it is settled law that a deputationist has no legal and vested right to resist repatriation to his parent department. The petitioner was repatriated as far back as on August 8, 1992 and he continued to agitate this question before the Tribunal as well as before this Court. We do not find any ground to take a contrary view than the view as expressed by the Tribunal in the present case. The petition is, therefore, devoid of merit and the same is dismissed accordingly.”

Once again, in Civil Writ Petitions No.9100-9226/2003, decided on 27.1.2004, though the question was little different, the principle

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stated was the same that a person on deputation has no right for continuation if the respondents do not desire it.

“...The petitioners who have already been working with the respective paramilitary organizations have no vested right for appointment or continuation of their deputation if respondent do not desire the same. However, Mr. Bhushan has contended that children of some of the petitioners are studying if the transfer order is given effect from 3.2.2004, it would entail hardship to the children who are studying in schools. Mr. D.S. Norawat, DCP (Headquarter) Delhi Police is present in the Court. He says that they will not implement the transfer order till 30.4.2004.”

14. With this backdrop, we revert back to the Central Staffing Scheme. The Central Staffing Scheme prescribes the procedure for selection and appointment of officers to the secretarial posts above the rank of Under Secretary. It refers to the fact that the Cabinet Committee of Appointments, known as the ACC, has been constituted under Rule 6(1) of the Government of India (Transaction of Business) Rules, 1961. Its function is to consider all recommendations and take decisions with respect to appointment of certain officers. The purpose and the manner has been provided pertaining to officers who have been taken on deputation:

“The Central Staffing Scheme has been in operation now for over 30 years. It provides a systematic arrangement for the selection and appointment of officers to senior administrative posts at Centre, excluding posts which are specifically encadred within the organized Group ‘A’ services or filled by recruitment through the Union Public Service Commission. Some posts of Deputy

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Secretary and Under Secretary under the Central Government are shown as numbers, without specifying individual posts, in the cadre strength of the Central Secretariat Service. These posts are filled in accordance with the rules of the CSS, and when so filled, stand outside the Central Staffing Scheme. Appointments to all other posts of the rank of Under Secretary and above in the Government of India are filled under the Central Staffing Scheme, by borrowing officer from the All India Services and participating Group 'A' services; the cardinal principle being that all officers who are so borrowed will serve the Government of India for a stipulated tenure on deputation and, thereafter, return to their parent cadre. Their growth, development and career prospects will be mainly in their own Service.

4. The raison d'etre of such a scheme is the Centre's need for fresh inputs at senior levels in policy planning, formulation of policy and implementation of programmes from diverse sources, viz., the All-India Services and the participating organized Group 'A' Services. The services of scientific and technical personnel and professionals in the fields of economics, statistics, law and medicine are, similarly, obtained from officers serving for specified periods on deputation and who return to their respective cadres at the end of tenure. This two-way movement is of mutual benefit to the service cadres and the Government of India."

✓ The tenure has been mentioned in Paragraph 17.01 of the Scheme, which reads:

"17.01 The fixed tenure of deputation of posting under the Central Government is the heart of the Central Staffing Scheme. Rotation between the Centre and the States, Central Ministries and parent cadres, and headquarters and the field, provide a certain degree of pragmatism to policy formulation and programme implementation from the

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Central Ministries. Based on the experience gained so far, the periods of tenure at the different levels have been prescribed as under:-

Under Secretary	:	3 years
Deputy Secretary	:	4 years
Director	:	5 years
Joint Secretary	:	5 years

17.02 An officer holding the post of Joint Secretary or equivalent, when appointed to a post under the Government of India at the level of Additional Secretary, would have a tenure of 3 years from the date of appointment as Additional Secretary subject to a minimum of 5 years and maximum of 7 years of combined tenure as Joint Secretary/Additional Secretary. Where an officer remains on leave (either from the Centre or from his Cadre authority or both) on the expiry of his tenure as Joint Secretary till his appointment as Additional Secretary, the leave period shall be counted as tenure deputation."

15. Paragraph 17.03 provides that every officer shall revert at the end of his tenure but he will have a choice to revert to his cadre on the 31st May previous to the date of the end of his tenure on personal grounds such as children's education etc., necessitate such reversion.

16. Paragraph 17.11 refers to orders for premature reversion to their respective cadres of officers serving under the Central Staffing Scheme which unfolds itself in the following words:

"17.11 Orders for premature reversion to their respective orders of officers serving



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under the Central Staffing Scheme may be issued:-

- (a) By the Establishment Officer in cases where the officers want to avail the benefit of promotion in their cadres;
- (b) By the Establishment Officer, with the approval of the Cabinet Secretary, in cases of compassionate/personal grounds where the officer has a balance tenure of six months or less left.

The powers being delegated to the Establishment Officer/Cabinet Secretary will not extend to officers who constitute the "hard/core" in organizations like the IB."

17. It is on the strength of these facts that it had been highlighted that the applicant had not completed five years deputation. He was holding the post of Joint Secretary. The normal tenure is five years and repatriation has been made contravening the Central Staffing Scheme.

18. In our opinion, the said contention based on the said Scheme has to be stated to be rejected. These are broad guidelines that have been provided. These are not fetters on the powers of the Appointments Committee of the Cabinet who in an appropriate case can repatriate the Government servant holding the post of Joint Secretary before completing the said period. So far as Paragraph 17.11 of the Scheme is concerned, it by no event curtail the power of the ACC. It only permits certain cases where Establishment Officer may pass the order where a person wants to avail the benefit

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of promotion in his parent cadre or in certain cases with the approval of the ACC. It will be erroneous to read Paragraph 17.11 so as to contend that even the ACC has no power to repatriate a person prematurely.

19. Stress on behalf of the applicant was placed on Paragraph 17.01 where it is mentioned that fixed tenure of deputation of posting under the Central Government is the heart of the Central Staffing Scheme. But it only refers, as referred to above, that it is the heart of the Scheme. In an appropriate case it cannot be that a person cannot be repatriated even in certain exigencies as would be noticed hereinafter. Therefore, in our considered opinion, the applicant cannot take advantage of the same.

20. In the preceding paragraph, we have already reproduced above the order appointing the applicant on deputation for a period of five years. It clearly shows that it does not refer to a fixed tenure but normal tenure of five years. It further provides that applicant was to hold the post from the date of assumption of charge until further orders or whichever event takes place earlier.

21. The language of the order which was the contract between the parties, clearly indicates that so far as the powers of the ACC is concerned, it has not been curtailed to cut short the period of deputation. In the peculiar facts, expression 'further orders' cannot be read as usual order. It draws its strength and colour from the

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tenure of five years. Therefore, even as per the contract of appointment, the applicant, indeed, could be repatriated because the Central Staffing Scheme cannot be stated to be exhaustive in nature and we hold that in an appropriate case, there can be premature repatriation.

22. In that event, the other argument was again pressed that it is in the form of *stigma* and reduces the applicant in rank. The Supreme Court in the case of **STATE OF PUNJAB AND OTHERS v. INDER SINGH AND OTHERS**, (1997) 8 SCC 372 indeed was dealing with different facts but held:

“18. The concept of “deputation” is well understood in service law and has a recognized meaning. “Deputation” has a different connotation in service law and the dictionary meaning of the word “deputation” is of no help. In simple words “deputation” means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments

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which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be."

23. In fact, the learned counsel on the contrary refers to us various precedents so as to support his above said argument. He relies strongly on the decision of the Supreme Court in the case of **K.H.PHADNIS v. STATE OF MAHARASHTRA**, 1971(1) SCC 790. To appreciate the ratio deci dendi of the same, we take liberty in referring to the facts of the cited case. Shri K.H.Phadnis was sent on deputation to another Government department where he was promoted to a much higher grade. He was alleged to have misused his official position. On investigation, he was found not guilty. But before submission of the report, he was reverted back to his parent department. His contention was that he has been reduced in rank by way of punishment and it was in violation of Article 311 of the Constitution. The Supreme Court held that the order of reversion will not be a reduction in rank but in the facts of that case, it amounted to. The principle laid down by the Supreme Court was:

"17. The order of reversion simpliciter will not amount to a reduction in rank or a punishment. A Government servant holding a temporary post and having lien on his substantive post may be sent back to the substantive post in ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher than that of his

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substantive post and when he is reverted to his parent department the loss of salary cannot be said to have any penal consequence. Therefore, though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the nature of punishment, Article 311 will be attracted."

24. When the present case is examined on the touchstone of the aforesaid, this principle has little application, the applicant had not been reduced in rank. He was reverted back holding the same rank in the Government of Haryana. Resultantly, the ratio decidendi of the decision in the case of *Shri K.H.Phadnis* will not be applicable herein.

25. Reliance further is being placed on the decision of the Supreme Court in the case of **DEBESH CHANDRA DAS v. UNION OF INDIA**, 1969 (2) SCC 158. In that case, Shri Debesh Chandra Das was a member of the Indian Civil Service. He came on deputation to Government of India and became Under Secretary and Joint Secretary. He was sent back to Assam where he held the post of

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Development Commissioner and Chief Secretary. He again came to Government of India as Secretary, Public Service Commission. He held different other posts. On 7.9.1966, he was informed that after considering his oral and written submissions, his services are placed at the disposal of his parent State. At the time of filing of the Writ Petition, he was appointed as Special Secretary under one of his Juniors although he was next to the Cabinet Secretary in seniority. It was on these facts that the Supreme Court held that he had been reduced in rank with a stigma without following the procedure under Article 311 (2) of the Constitution of India. The findings of the Supreme Court are:

“18. Therefore, we are satisfied that Das was being reduced in rank with a stigma upon his work without following the procedure laid down in Article 311(2). We say nothing about a genuine case of accident of service in which a person drafted from a State has to go back for any reason not connected with his work or conduct. Cases must obviously arise when a person taken from the State may have to go back for reasons unconnected with his work or conduct. Those cases are different and we are not expressing any opinion about them. But this case is clearly one of reduction in rank with a distinct stigma upon the man. This requires action in accordance with Article 311(2) of the Constitution and since none was taken, the order of reversion cannot be sustained. We quash it and order the retention of Das in post comparable to the post of a Secretary in emoluments till such time as his present tenure lasts or there is an inquiry against him as contemplated by the Constitution.”

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As would be noticed hereinafter, in the present case, there is no such fact of reduction in rank and therefore, the decision must be held to be distinguishable.

26. Similarly, reliance on the other decision of the Supreme Court in the case of STATE OF UTTAR PRADESH AND ORS. v. SUGHAR SINGH, 1974(1) SLR (SC) 435 is misplaced. In the cited case, the reversion was from the officiating post and juniors were not reverted. The Supreme Court held that this act is discriminatory. In the present case before us, the applicant has been repatriated to his parent cadre and therefore, the ratio deci dendi of the said decision has little application.

27. Our attention was further drawn towards the decision in the case of DR. L.P. AGARWAL v. UNION OF INDIA AND OTHERS, (1992) 3 SCC 526. In the case of *Dr. L.P. Agarwal*, the recruitment rules of the All India Institute of Medical Sciences provided tenure of five years inclusive of one year probation. The post was to be filled up by direct recruitment. The post of Director as referred to was for a tenure. He was appointed for a period of five years. Compulsory retirement order was passed. The Supreme Court quashed the same.

28. As would be seen from the brief facts to which we have referred to above, the cases cited are totally distinguishable because it is a case of repatriation to the parent cadre. In all

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fairness to the learned counsel for the applicant, we must refer to the decision in the case of **KUNAL NANDA v. UNION OF INDIA & ANR.**, JT 2000(6) SC 574. The Supreme Court therein was considering a case of permanent absorption. It is not the controversy before us. We have no hesitation in concluding that the decision does not apply in the facts of the present case.

29. In fact, the Supreme Court in the case of **STATE OF MADHYA PRADESH AND OTHERS v. ASHOK DESHMUKH AND ANOTHER**, (1988) 3 SCC 503 held that if bias is not proved and there is no stigma, repatriation order would not be quashed. It was held:

“12. The counter-affidavit filed on behalf of the State Government before the High Court also shows that some other officers who had been posted on deputation like respondent 1 also had been reverted to their parent department and again some of them had been posted back as Block Development Officers. Perhaps even in the case of respondent 1 a similar order posting him back as Block Development Officer would have been passed by the State Government had he not filed the suit and then the writ petition making it difficult for the State Government to take a decision on the question of again posting him as a Block Development Officer during the pendency of the proceedings. The impugned order of repatriation passed in respect of respondent 1 does not on the face of it show that there is any stigma attached to respondent 1 by reason of the said order. We are clearly of the opinion that the allegations of bias and mala fides made against Smt. Nirmala Buch have remained unsubstantiated. Respondent



I had no vested right to continue on deputation as Block Development Officer. On the material placed before us we do not find that the order of repatriation is arbitrary and violative of Article 14 of the Constitution. We, therefore, find it difficult to agree with the High Court. The order passed by the High Court is therefore liable to be set aside. It is quite possible that respondent 1 may again be sent on deputation as Block Development Officer. That, however, is within the discretion of the State Government."

30. Identical was the view expressed in the case of **RATILAL B.**

SONI AND OTHERS v. STATE OF GUJARAT AND OTHERS, AIR 1990

SC 1132. The findings read:

"5. The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post....."

31. From the aforesaid, the conclusions can obviously be drawn that if the order repatriating the person even before the tenure is completed has no stigma attached to it, it is not punitive in nature and is not discriminatory. It requires no interference.

32. In the present case, as is apparent from the nature of the events, the applicant came on deputation and was holding the post of Joint Secretary. He was repatriated to his parent State keeping in view certain allegations. We hasten to add that this Tribunal is not concerned with those allegations that were made in the State of Haryana. He was repatriated. There was no reduction in rank. Keeping in view the sequence of events, if others were retained, it

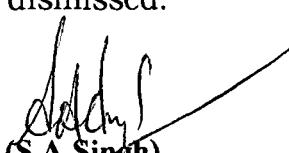


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cannot be termed that there is discrimination because such allegations are not shown to be available against these persons who were on deputation. It cannot be stated that order was punitive in nature. In addition to that, we have already pointed above that the applicant has already joined in the State of Haryana who is not a party to the present proceedings and has been placed under suspension.

33. The net result of these facts would be that the present application requires no interference and the contentions eloquently put-forth by the applicant's learned counsel must be repelled.

34. For these reasons, the Original Application must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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