

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.09.2016

Pronounced on : 15-11-2016

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 4699 of 2016

and

W.M.P. Nos. 4087, 4088 and 5965 of 2016

D. Sounder Raj ... Petitioner

Versus

1. The Chairman and Managing Director
Air India Limited
Airlines House
113, Gurudwara Rakadganj Road
New Delhi - 110 001

2. The Manager-GS
Ground Service Department
Air India Air Transport Services Limited
Air India Unity Complex
Pallavaram, Cantonment
Chennai - 600 043

3. Mr. A. Arumugam
Regional Manager-GS
Air India
Ground Service Department
AUC Complex
Pallavaram, Cantonment
Chennai - 600 043

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in his proceedings GDS/MAA/06-01/PERS/732 dated 07.10.2015 and charge memo issued by the second respondent in his proceedings GDS/MAA/06-01/PERS/809 dated 30.10.2015 and quash the same and direct the respondents to confer all the consequential benefits to the petitioner.

For Petitioner : Mr. C. Selvaraju, Senior Advocate
for M/s. C.S. Associates

For Respondents : Mr. N.G.R. Prasad for RR1 and 2
Mr. S. Satish Kumar for R3

ORDER

The petitioner challenges the order of suspension dated 07.10.2015 and the consequential charge memo dated 30.10.2015 issued by the second respondent as without jurisdiction.

2. The facts which gave rise to the filing of the present writ petition which are germane and necessary are as follows:-

(i) The petitioner joined as Sepoy in Army Service Corps (Motor Transport) in Army in the year 1978 and after serving five years, he was relieved on medical ground. Thereafter, the petitioner joined as Security Guard in Vigilance and Security Department, Air India under Ex-serviceman quota on 11.04.1983. The petitioner was subsequently promoted as Senior Security Guard. During the course of such employment, applications were invited for filling up the post of Junior Operator in Ground Service. In response, the petitioner applied for such post and he was selected to the post of Junior Operator in Ground Service Department on 29.07.1988. The petitioner was thereafter further promoted as Operator on 01.07.1995 and as Senior Operator on 01.01.1998. From 01.01.2003, the petitioner is working as Lead Aircraft Equipment Operator and from 01.07.2008, he is working as Chief Aircraft Equipment Operator.

(ii) Earlier, the petitioner was served with a charge memo dated 18.02.2010 and he submitted his explanation. After conclusion of the departmental proceedings, by an order dated 21.12.2011, the petitioner was imposed with the punishment of reversion from the post of Chief Aircraft Equipment Operator to the post of Master Aircraft Equipment Operator for a period of five years. Challenging the same, the petitioner filed WP No. 973 of 2012 and obtained an interim stay. During the pendency of the writ petition, the Regional Manager - Ground Service passed an order dated 31.08.2012 modifying the punishment imposed on the petitioner into one of reduction from the rank of Chief Aircraft Equipment Operator Grade 25 to the post of Lead Equipment Operator Grade 14. Recording the same, WP No. 973 of 2012 filed by the petitioner was dismissed. As against the modified punishment, the petitioner preferred an appeal on 10.09.2012 to the General Manager-GH, Ground Support Department and the appeal was dismissed on 22.10.2012. As against the same, the petitioner has filed WP No. 29563 of 2012 and it is pending.

(iii) According to the petitioner, once again, by the impugned order dated 07.10.2015, the second respondent placed him under suspension. The petitioner also submitted a representation dated 22.10.2015 seeking to review the order of suspension. While so, on 30.10.2015, a charge memo was issued for which the petitioner has submitted his explanation on 12.11.2015. Not satisfied with the explanation offered by the petitioner, the Deputy General Manager (Personnel) was appointed as enquiry officer on 07.01.2016. and the enquiry officer proposed to conduct an enquiry. Therefore, petitioner made a representation dated 12.01.2016 to have the assistance of one Mr. B. Ramanathan, Superintendent - Stores & Supplies (Retired) during the course of enquiry against him. Such a plea made by the petitioner was not accepted by the second

respondent since the said Ramanathan retired from service from the Mumbai Region and therefore the petitioner was asked to have the assistance of his colleagues working in Chennai region itself. The petitioner was also directed to appear for an enquiry on 19.01.2016. On 19.01.2016, at the instance of the petitioner, the enquiry officer postponed the enquiry. In such circumstances, the petitioner has come forward with this writ petition challenging the order of suspension as well as the charge memo issued by the second respondent.

3. At the time of admission of this writ petition, this Court granted interim stay of operation of the order of suspension as well as the charge memo on 08.02.2016. The interim order was subsequently extended from time to time.

4. The learned senior counsel appearing for the petitioner would vehemently contend that the second respondent is not the competent authority to issue the impugned order of suspension as well as charge memo. As per the certified standing order applicable to the respondents, the competent authority to initiate disciplinary proceedings against the petitioner is the Regional Manager. The appointing authority to the petitioner is the Regional Manager-Ground Service inasmuch as the petitioner is working as Chief Aircraft Equipment Officer, which comes under grade 14. Consequently, the second respondent is only subordinate to the Regional Manager and he is not competent to suspend the petitioner or to issue the charge memo to him.

5. The next contention urged on behalf of the petitioner is that the disciplinary proceedings have been initiated against the petitioner with an ulterior motive to punish him. According to the learned Senior counsel for the petitioner, the petitioner has already given a complaint against the third respondent to the Chief Vigilance Officer regarding his unlawful activities in the matter of inviting tender on behalf of the respondents. On the basis of such complaint, by an order dated 31.10.2012, the third respondent was transferred to Mumbai as a measure of punishment. Aggrieved by the same, the third respondent with the active connivance of the second respondent harassed the petitioner in various forms and manifestations, particularly, the second respondent kept the petitioner idle without allotting him any work. According to the learned Senior counsel for the petitioner, the charge against the petitioner is that he had sent e-mail to the third respondent threatening him for having violated the certified standing orders of the establishment. According to the learned senior counsel for the petitioner, such e-mail was sent only to bring to the notice the violations he has committed and the attitude of the third respondent in causing mental agony and harassment to him.

6. The learned Senior counsel for the petitioner would further contend that it is trite that during the enquiry proceedings the delinquent can be permitted to have the assistance of a person of his choice to put forth the defence

on his behalf. Such a procedure adhered during the enquiry proceedings is in compliance with principles of natural justice. However, in the present case, the second respondent refused the claim of the petitioner to have the assistance of one Mr.R. Ramanathan, a retired Superintendent from the Mumbai Unit as his defence assistant. Such a refusal on the part of the second respondent is with an ulterior motive and it calls for interference by this Court.

7. The learned counsel appearing for the respondents 1 and 2 vehemently opposed the writ petition. The learned counsel for the respondents 1 and 2, by placing reliance on the averments contained in the vacate stay petition, would contend that the first respondent, being the Chairman and Managing Director of Air India Limited is not a proper and necessary party and the petitioner has unnecessarily impleaded him as a party to the lis. Further, the first respondent has nothing to do with the day to day administration of Air India Limited and therefore also, for misjoinder of the first respondent, he prayed for dismissal of the writ petition.

8. The learned counsel for the respondents 1 and 2 would further contend that earlier, the petitioner was subjected to disciplinary proceedings while he was employed as Chief Aircraft Equipment Operator and ultimately by an order dated 12.01.2015 he was imposed with punishment of withdrawal of passage facility for two years with effect from 12.01.2015 for suppression of information in the BCAS Airport entry application form. As far as the present charge against the petitioner is concerned, he had sent e-mails to the Assistant General Manager (GS), posing himself as Regional Manager-GS, third respondent herein by enclosing a copy of the vigilance report containing certain observation against the third respondent. Notwithstanding the same, the petitioner also sent messages from his mobile phone containing threatening comments to the third respondent. Therefore, the petitioner was placed under suspension on 07.10.2015 by the second respondent, who is the disciplinary authority and the charge sheet was also issued in exercise of the powers conferred under item No.15 (b) of Annexure E to the certified standing orders applicable to the petitioner. As per item No.15 (b), the Senior Manager (Technical) or the Manager Technical (Operations) or its equivalent officers in Grade No. 32 of 30 are the competent authorities to impose punishment to any workmen not above the grade of supervisory service Engineer or its equivalent or Officer Administration or its equivalent rank in grade No. 28/14. In this case, the second respondent is an officer holding grade 30 and the petitioner is a workman having grade 14 and therefore, as per item 15 (b) of the certified standing order, the second respondent is competent to issue the suspension order as well as charge memo to the petitioner.

9. The learned counsel for the respondents 1 and 2 would also further contend that on 30.10.2015, a charge sheet was issued to the petitioner by the second respondent for having committed misconduct which are in violation of under Clauses 19

(1) (a), 19 (2) (xxxvii), 19 (2) (xli), 19 (2) (xivii) and 19 (2) (xlvii) 2 of the Certified Standing Orders. On 07.01.2016, a two member Enquiry Committee was constituted to enquire into the charges levelled against the petitioner. One of the members of the committee is a retired Deputy General Manager of the respondents company and such appointment was made in accordance with clause (III) (iii) (a) and (b) of the Annexure - F which deals with procedure for disciplinary action in the Certified standing order. On notice regarding enquiry, on 12.01.2016, the petitioner made a request that he may be permitted to have one Mr. R. Ramanathan, a retired employee employed in Stores & Purchase Department of Air India at Mumbai as his defence representative. Since the standing orders do not permit a delinquent employee to have a retired personnel as a defence representative, such a request made by the petitioner was rejected by a letter dated 18.01.2016 and consequently, the petitioner was directed to attend the enquiry on 19.01.2016. On 19.01.2016, the petitioner sought for adjournment and the enquiry was adjourned to 28.01.2016. On 28.01.2016, the petitioner sent a letter requesting for adjournment of the enquiry to 01.02.2016 citing health reasons. Accordingly, the enquiry proceedings was adjourned to 01.02.2016 and thereafter it was once again adjourned to 09.02.2016 at the instance of the petitioner. In the meantime, the petitioner has filed the present writ petition before this Court and obtained interim stay.

10. According to the learned counsel for the respondents 1 and 2, clause (III) (iv) of Annexure F to the certified standing order only states that if a delinquent employee wants some one to be represented on his behalf during the course of enquiry, such defence assistant shall be a person employed by the company and employed in the same station. Since the person who is sought to be engaged by the petitioner as his defence assistant is a retired official of the respondent firm from Mumbai unit, the plea of the petitioner to engage him as his defence assistant is not feasible of consideration as per the certified standing orders.

11. The learned counsel for the respondents 1 and 2 would further submit that the petitioner did not raise the question of competency or authority of the second respondent to issue the order of suspension as well as the charge memo in the explanation submitted by him at the first instance. However, for the first time, only in the affidavit filed in support of the writ petition, the petitioner has raised such a defence. At any rate, the second respondent is the competent authority to issue the order of suspension as well as the charge sheet to the petitioner as per the provisions contained in the Certified Standing Orders applicable to the respondents company. The writ petition has been filed by the petitioner only to drag on the enquiry proceedings. Therefore, the learned counsel for the respondents 1 and 2 prayed for dismissal of the writ petition.

12. In support of his contentions, the learned counsel for the respondents 1 and 2 relied on the decision of the Honourable Supreme Court in the case of (Crescent Dyes and Chemicals Limited vs. Ram Naresh Tripathi) reported in (1993) 2 Supreme Court Cases 115 wherein it was held that the right to be represented through counsel or agent can be restricted, controlled or regulated by statutes, rules, regulations or standing orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of rules of natural justice in so far as the delinquent's right of hearing cannot and does not extend to a right to be represented through a counsel or agent.

13. On behalf of the petitioner, a rejoinder was filed. In the rejoinder, while reiterating the averments contained in the affidavit filed in support of the writ petition, it was stated that the first respondent is the Chairman and Managing Director of Air India Limited and it is not as if the first respondent is alien to the activities taking place in the second respondent company. According to the learned counsel for the petitioner, the Vigilance Department had sent adverse report against the third respondent for which no action has been taken so far. The irregularities committed by the third respondent are serious in nature inasmuch as he has colluded with the contractor and disclosed the tender schedule to his close associates thereby he has leaked official secrets maintained by the company.

14. As regards the competency of the second respondent, category 15, Serial No. 15 (a) is applicable to employees of the local stations, whereas, Serial No. 15 (b) is applicable to employees of the outstations. For southern region, the head office is Chennai and the employees working in Chennai are to be dealt with by the officers coming under Serial 15 (a). As per item 15 (a) of the Certified standing order, the Deputy General Manager - Ground Service or equivalent officers in the rank in Grade Code No. 36 are competent to initiate disciplinary proceedings against any workmen not above the grade of supervisory service Engineer or equivalent or Officer Administration or its equivalent grade in Grade Code 28 or 14. The petitioner holding a class 14 grade of employment has to be dealt with only by the Deputy General Manager - Ground Service or equivalent officer holding grade 36 and the orders passed by the second respondent, which are impugned in this writ petition, are without authority of law.

15. It is further contended in the rejoinder of the petitioner that the object of engaging a defence assistant from the outstation unit is to ensure that they are not influenced by the authorities which is possible if the in-service candidates are engaged as defence representative. At any rate, there is no embargo for engaging the services of a retired employee from Mumbai as defence assistant during the course of the enquiry proceedings and therefore, the petitioner prayed for allowing the writ petition as prayed for.

16. I heard the learned counsel for both sides and perused the materials placed on record. The petitioner challenges the impugned orders of suspension as well as charge sheet issued by the second respondent mainly on the ground that they were issued by the second respondent without authority of law and the second respondent has no jurisdiction to keep the petitioner under suspension or to departmentally deal with him. According to the petitioner, he being a workman coming under grade 14, it is only the Deputy General Manager - Ground Service or equivalent officer holding grade 36 is competent to issue the impugned orders as per the item No. 15 of the Certified Standing Orders and therefore the second respondent has no competency to issue the impugned orders. In this regard, useful reference can be made to Clause (III) (iii) (a) & (b) of Annexure F - procedure for disciplinary action in the Certified Standing Order of the respondents firm, which reads as follows:-

"(a) Whenever the Disciplinary Authority is of the opinion that there are grounds for enquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may appoint an officer of the Company or any retired official of Central or State Government or any Public Sector Undertaking (hereinafter called the Enquiring Authority) to enquire into the truth thereof.

(b) The Enquiry Committee may comprise of one or more officers, one of who must be a representative of the Department to which the charged employee belongs. The enquiry committee must be constituted in writing in such a manner that the member/ members appointed to hold the enquiry is/are always in a grade higher than that of the person charged. In cases where the committee consists of more than one person, it should be indicated in the Order as to who will be its Convenor."

17. Therefore, it is evident that as per the Annexure - F to Clause (III) (iii) (a) & (b) of Annexure F in the Certified Standing Order of the respondents which deals with procedure for disciplinary action the respondents are well within their power to constitute an enquiry committee to conduct disciplinary enquiry and for such purpose, even a retired officer of the company or retired official of the Central and State Government can be appointed.

18. As regards the competency of the second respondent, it is stated that as per Serial No. 15 (b) of the Certified Standing Order of the company, the second respondent is in grade 30 holding the post of Manager - Ground Service and he is the competent authority to initiate disciplinary proceedings against the petitioner who is in grade 14. Therefore, it cannot be said that the second respondent lacks competency to initiate disciplinary proceedings against the petitioner. Further, it is seen that the petitioner in his explanation to

the charge sheet has not raised the issue as regards the jurisdiction or competency of the second respondent to initiate disciplinary proceedings against him. As rightly pointed out by the learned counsel for the respondents, such a plea has been raised only for the first time before this Court in this writ petition. Therefore, the plea raised by the petitioner as regards jurisdiction of the second respondent is hereby rejected.

19. The next contention raised on behalf of the petitioner is that the petitioner wanted to have a defence assistance to assist him during the enquiry proceedings, but it was rejected by the respondents. It is seen from the averments in the affidavit that the petitioner wanted to have the assistance of one Mr. R. Ramanathan, a retired employee employed in Stores & Purchase Department of Air India at Mumbai as his defence representative. In this context, it is submitted on behalf of the respondents that there is no provision in the Certified standing order of the respondents to permit the petitioner to have a person who retired from Air India, Mumbai as his defence assistant. The respondents would further stated that the petitioner can be permitted to have a defence assistance of his choice, but such defence assistance should be an employee working in the present station and not a retired official. Therefore, it is evident that the respondents have not denied the right of the petitioner to have a defence assistance during the course of enquiry and they are ready to permit the petitioner to have any one who is working in the present station. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of (Crescent Dyes and Chemicals Limited vs. Ram Naresh Tripathi) reported in (1993) 2 Supreme Court Cases 115 relied on by the learned counsel for the respondents 1 and 2. In that case the question arose for consideration of the Honourable Supreme Court is whether a delinquent is entitled to be represented by an office bearer of another Trade Union, who is not a member of either a recognised union or a non-recognised union functioning within the undertaking in which the delinquent is employed, notwithstanding the statutory limitation contained in the certified Standing Orders and Clause (ii) of Section 22 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereafter called 'the Act'). In para No.11 of the said judgment it was held as follows:-

"10. A delinquent appearing before a Tribunal may feel that the right to representation is implied in the larger entitlement of a fair hearing based on the rule of natural justice. He may, therefore, feel that refusal to be represented by an agent of his choice would tantamount to denial of natural justice. Ordinarily it is considered desirable not to restrict this right of representation by counsel or an agent of one's choice but it is a different thing to say that such a right is an element of the principles of natural justice and denial thereof would invalidate the enquiry. Representation through counsel can be

restricted by law as for example, Section 36 of the Industrial Disputes Act, 1947, and so also by certified Standing Orders. In the present case the standing orders permitted an employee to be represented by a clerk or workman working in the same department as the delinquent. So also the right to representation can be regulated or restricted by statute. Such provisions in fact serve to underline the importance attached to the right to representation.....

From the above decisions of the English Courts it seems clear to us that the right to be represented by a counsel or agent of one's own choice is not an absolute right and can be controlled, restricted or regulated by law, rules or regulations. However, if the charge is of a serious and complex nature, the delinquent's request to be represented through a counsel or agent could be conceded.

20. In the present case, the respondents did not deny the right of the petitioner to have a defence assistance of his choice, but they only contend that the petitioner is entitled to have such an assistant who is employed in the present station and not a person who retired from Mumbai Unit. Thus, the respondents have not denied the claim of the petitioner to have a defence assistance of his choice and consequently there is no violation of principles of natural justice, as alleged by the petitioner. As held by the Honourable Supreme Court in the above decision, the right to be represented by a counsel or agent of one's own choice is not an absolute right and can be controlled, restricted or regulated by law, rules or regulations. Such being the position, I do not find any reason to interfere with such a decision taken by the respondents to have a defence assistance to assist the petitioner during the course of the departmental enquiry who shall be an employee employed in the present station. Therefore, the argument advanced on behalf of the petitioner in this regard is also hereby rejected.

21. The charge against the petitioner is that he had sent threatening letters to the third respondent through e-mail. On the other hand, the petitioner alleges malafide against the third respondent as the third respondent was instrumental in initiating disciplinary proceedings against him. However, on perusal of the entire records and the averments made in the affidavit filed in support of the writ petition, I do not find any reason to hold that the disciplinary proceedings has been initiated against the petitioner by reason of malafide. The petitioner admitted that he had sent e-mails to the third respondent and precisely that is the charge against the petitioner. While so, I do not find any malafide attributable on the part of the respondents in initiating the disciplinary proceedings against the petitioner.

22. It is seen from the records that the petitioner was suspended from service by an order dated 07.10.2015 of the second respondent. Such an order of suspension passed against the petitioner is in force as on date and it has not been reviewed by the respondents. During the course of hearing, it is stated that by citing the order of interim stay granted by this Court, the petitioner is pressurising the respondents to permit him to join duty. The fact remains that the petitioner is out of employment owing to the order of suspension dated 07.10.2015 for the past more than one year. It is also not made known as to whether the second respondent has passed any further order extending the order of suspension dated 07.10.2015 passed against the petitioner after issuing the charge sheet against him on 30.10.2015. Therefore, this Court only observes that the continuance of suspension against the petitioner is not desirable and he can be reinstated in service pending completion of the disciplinary proceedings initiated against him. It is needless to mention that the respondents can consider posting the petitioner in a non-sensitive post till the conclusion of the disciplinary enquiry against him and it is not desirable to keep him under suspension for a long time.

23. In the result, the writ petition is dismissed holding that the second respondent is competent to pass the impugned orders of suspension as well as charge memo against the petitioner. No costs. Consequently, connected miscellaneous petitions are closed. It is needless to mention that the petitioner shall be permitted to have the assistance of an employee employed in the present station as his defence assistance during the course of enquiry. The petitioner is also directed to extend his cooperation for completion of the disciplinary enquiry initiated against him and the respondents are directed to conclude the disciplinary proceedings and pass final orders thereof within a period of four months from the date of receipt of a copy of this order. The respondents are further directed to pass appropriate orders, for posting the petitioner in a non-sensitive post till the conclusion of the disciplinary proceedings initiated against him, within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Chairman and Managing Director
Air India Limited
Airlines House
113, Gurudwara Rakadganj Road
New Delhi - 110 001

2. The Manager-GS

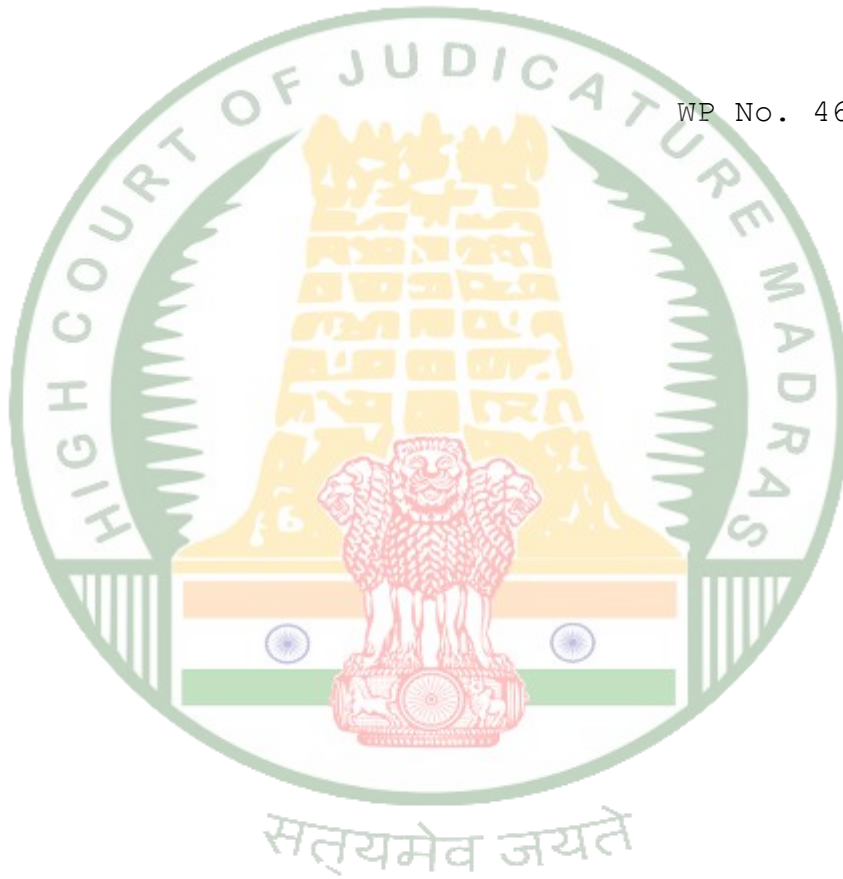
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+1 cc to M/s.C.S.associates,sr.66022

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rsy(co)
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WP No. 4699 to 2016



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