



W.P.No.9805 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2023

DELIVERED ON : 20.02.2023
CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.9805 of 2018

1.All India Association of Postal Drivers and
Artisans rep. by its Secretary,
Mail Motor Service,
CHQ, Dindigul.

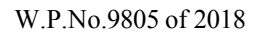
2.T.C.Krishnan

...Petitioners

Vs.

1.Union of India,
Rep. by the Director General of Posts,
Department of Posts,
Ministry of Communications & IT
Government of India,
Dak Bhavan, Sansad Marg,
New Delhi.

2.Assistant Director General (CDS/PCC),
Department of Posts Establishment Division)
Ministry of Communications & IT,
Government of India,



3. The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai.

4.The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings,
Chennai - 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to order dated 07.01.2016 made in O.A.No.30/2013 by the fourth respondent and quash the same with consequential direction to the respondents 1 to 3 to grant Fifth Pay Commission Scales of pay i.e.Rs.4,000-6,000 to the Drivers and Artisans working in the Postal Department on par with similarly placed employees in the Central Government with consequential monetary benefits.

For Petitioners : Mr.Haja Nazirudeen, Senior Counsel
Assisted by Mr.P.Haribabu

For R1 to R3 : Mr.M.Arvind Kumar, SPCCG



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ORDER

(R.HEMALATHA, J.)

The present writ petition is filed challenging the orders passed by the Central Administrative Tribunal, Madras Bench, in O.A.No.30/2013 dated 07.01.2016.

2.The present writ petitioners filed the above said O.A.No.30/2013 before the Central Administrative Tribunal, Madras Bench, to call for the records on the file of the Assistant Director General (CDS/PCC), Department of Posts Establishment Division bearing No.2-12/2009-PCC dated 24.08.2012 rejecting the claim of the Postal Drivers and Artisans for granting pay on par with Postal Assistants working in the Postal Department and direct the respondents to grant Fifth Central Pay Commission Scales of pay i.e.Rs.4,000-6,000 to the Drivers and Artisans working in the Postal Department with all consequential monetary benefits with retrospective effect. The said O.A.No.30/2013 was dismissed by the Central Administrative Tribunal, Madras Bench,



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vide its order dated 07.01.2016. Aggrieved over the same, the present writ petition is filed.

3. The brief facts of the case are as follows:

- i. The first writ petitioner is an Association consisting of drivers and Artisans as members who are working in the Postal Department and the second writ petitioner is the secretary of the first petitioner Association.
- ii. The grievance of the writ petitioners is that they have been denied pay on par with Postal Assistants. According to them, the drivers of the Postal Department were enjoying equal pay on par with Postal Assistants till Third Central Pay Commission and the same was upset during Fourth Central Pay Commission in which the driver cadre was granted a grade pay of Rs.1,900/-, postmaster cadre a grade pay of Rs.2,000/- and the Postal Assistant a grade pay of Rs.2,400/-.
- iii. Aggrieved over this disparity, the 1st writ petitioner and another filed O.A.No.148/2003 before the Central Administrative Tribunal,



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Madras Bench, challenging the orders of the Department of Posts dated 07.02.2002 and sought for a direction to the Union of India represented by the Director General of Posts to grant a grade pay of Rs.4,000-6,000 on par with Postal Assistants.

- iv. The said O.A. was dismissed by the Tribunal vide its order dated 19.09.2003 on the ground that these matters ought to be considered by the expert body, namely, National Pay Anomaly Committee.
- v. Challenging the said order, the petitioners therein filed W.P.No.21367/2004 dated 10.09.2009 before this Court and the same was disposed of on 10.09.2009 with a direction to the respondents to refer the matter to the National Pay Anomaly Committee for consideration of the case of the petitioners and to pass appropriate orders within a period of three weeks.
- vi. In pursuance of the orders of this Court, the respondents sent a proposal to the Department of Posts and Telegraph vide orders dated 30.04.2010, instead of referring the matter to the National Pay Anomaly Committee as directed by this Court in



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W.P.No.21367/2004. Therefore, the 1st writ petitioner filed a Contempt Petition in Cont.P.No.1371/2010 before this Court in which the respondents undertook to refer the matter to the National Anomaly Committee based on which the Contempt Petition was closed by this Court.

vii.However, the respondents did not take steps which forced the 1st writ petitioner to file another Contempt Petition in Cont.P.No.259/2011 before this Court and during the pendency of the said Contempt Petition the second respondent addressed a letter dated 03.10.2011 enclosing a copy of the Minutes of the meeting of the National Pay Anomaly Committee dated 15.02.2011 to the first writ petitioner and this Court directed the respondents to pass a speaking order.

viii.Thereafter, the second respondent passed an order in 2-12/2009-PCC dated 24.08.2012, based on which the contempt petition was closed.

ix. The order of the second respondent was challenged by the writ petitioners in O.A.No.30/2012. As already observed the Central



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WEB COPY Administrative Tribunal, Madras Bench, dismissed the said OA vide its order dated 07.01.2016.

4. Heard Mr.Haja Nazirudeen, learned Senior Counsel assisted by Mr.P.Haribabu, learned counsel appearing for the petitioners and Mr.M.Arvind Kumar, learned SPCCG appearing for the respondents 1 to 3.

5. Mr.Haja Nazirudeen, learned senior counsel assisted by Mr.P.Haribabu, learned counsel appearing for the petitioners submitted that though this is the second round of litigation, the respondents did not grant pay to the Postal Drivers and Artisans on par with Postal Assistants working in the Postal Department. His contention is that, till Third Central Pay Commission there was no anomaly between the two cadres and only in the Fourth Central Pay Commission, the Postman cadre was granted a grade pay of Rs.2,000/- while the Postal Assistants were granted a grade pay of Rs.2,400/-. His further contention is that though this Court in W.P.No.21367/2004 directed the Department to refer the



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matter to the National Pay Anomaly Committee for consideration and for passing appropriate orders, the Department referred the matter to the Department of Expenditure, Ministry of Finance, and based on the reply, the second respondent, namely, the Assistant Director General (CDS/PCC) Department of Posts Establishment Division, passed an order dated 05.07.2010 stating that the Ministry of Finance, Department of Expenditure, has not accepted the proposal for upgradation of the pay scale of the entry grade Drivers and Artisans. Subsequently, in the Contempt Petition in Cont.P.No.1371/2010 filed by the 1st writ petitioner, the respondents undertook to refer the matter to the National Pay Anomaly Committee as per the directions of this court and therefore, the said Contempt Petition was closed. Since no further steps were taken by the respondents, the 1st writ petitioner was constrained to file another Contempt Petition in Cont.P.No.259/2011 before this Court and thereafter, the second respondent passed an order dated 24.08.2012 rejecting the claim of the applicants. The learned Senior Counsel relying on the decision in ***Kallakurichi Taluk Retired Officials Association, Tamil Nadu and Others vs. State of Tamil Nadu*** reported in (2013) 2



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SCC 772 contended that there must be a valid classification as per Article 16 of the Constitution of India and the valid classification should be based on a 'just objective'. His contention is that the result to be achieved by the 'just objective' presupposes the choice of some for differential consideration / treatment, over others. According to him, in the instant case there is no valid classification between the two workers in the same department and therefore, the order passed by the second respondent dated 24.08.2012 is liable to be set aside. Reliance was also based upon the decision in *Secretary, Finance Department and Others vs. West Bengal Registration Service Association and Others* reported in *1993 Supp (1) Supreme Court Cases 153* in which it has been held that Executive function, undertaken by expert body like Pay Commission whose recommendations carry great weight and therefore, interference by the Courts could not be ordinarily called for, unless there is unjust treatment by arbitrary State action or inaction. According to the learned Senior Counsel for the petitioners, though till Third Central Pay Commission, the Postal Drivers and Postal Assistants were drawing equal pay, the Postal Assistants were given higher pay than the Postal Drivers



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in the Fourth Central Pay Commission which *prima facie* is an unjust classification / action on the part of the respondents. He would therefore contend that the writ petition is liable to be allowed.

6.Per contra, Mr. M. Arvind Kumar, learned Senior Panel Counsel Central Government appearing for respondents 1 to 3 contended that the Central Government Employees have been categorised into two viz., (1) Common Category and (2) Individual Departmental category. Common categories are common to all Central Government Departments and their Recruitment Rules and pay-scales are similar. According to him, Drivers and Artisans belong to this common category and that Postal Assistants and Postmen belong to individual departmental categories confined to the Department of Posts only. The pay scales and service conditions of Central Government servants are regulated by the decision of the Government, taken on the recommendations of the Central Pay Commission and as per the directions of this Court in W.P. No.21367/04, the Assistant Director General (CDS/PCC) Department of Posts Establishment Division, passed a speaking order dated 24.08.2012



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rejecting the claim of the present Writ Petitioners and there is no reason for interfering with the same by this Court. He also relied on the decision in ***Punjab State Electricity Board and another vs. Thana Singh and others*** reported in **(2019) 4 SCC 113**, wherein it has been held that the grant of pay-scales is purely executive function and the Court should not interfere with the same and that Article 14 of the Constitution of India would be applicable only when a discrimination is made out between the persons who are similarly placed and not otherwise. It was further held that it is the duty of an employee seeking parity of pay to prove and establish that they have been discriminated. The specific contention of the learned counsel for the respondents is that in the instant case, the writ petitioners had not adduced sufficient materials to show that the nature of duties and functions performed by the Drivers are similar to that of Postal Assistants for seeking pay-parity. Reliance was also placed upon the decision in ***Union of India and others vs. M.V. Mohanan Nair*** reported in **2020 5 SCC 421**, wherein, the Hon'ble Supreme Court held as follows:

"29.The change in policy brought about by supersession of ACP Scheme with the MACP Scheme is after consideration of



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all the disparities and the representations of the employees. The Sixth Central Pay Commission is an expert body which has comprehensively examined all the issues and the representations as also the issue of stagnation and at the same time to promote efficiency in the functioning of the departments. MACP Scheme has been introduced on the recommendation of the Sixth Central Pay Commission which has been accepted by the Government of India. After accepting the recommendation of the Sixth Central Pay Commission, the ACP Scheme was withdrawn and the same was superseded by the MACP Scheme with effect from 01.09.2008. This is not some random exercise which is unilaterally done by the Government, rather, it is based on the opinion of the expert body – Sixth Central Pay Commission which has examined all the issues, various representations and disparities. Before making the recommendation for the Pay Scale/Revised Pay Scale, the Pay Commission takes into consideration the existing pay structure, the representations of the government servants and various other factors after which the recommendations are made. When the expert body like Pay Commission has comprehensively examined all the issues and representations and also took note of inter-departmental disparities owing to varying promotional hierarchies, the court should not interfere with the recommendations of the expert body. When the government has accepted the recommendation of the Pay Commission and has



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also implemented those, any interference by the court would have a serious impact on the public exchequer.

30. Observing that it is the function of the Government which normally acts on the recommendations of the Pay Commission which is the proper authority to decide upon the issues, in [Union of India and another v. P.V. Hariharan and another](#) (1997) 3 SCC 568, it was held as under:-

“5. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of “equal pay for equal work” is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering



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with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e., matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising at least one Judicial Member.”

7. The learned Central Government Senior Panel Counsel would further contend that the Central Administrative Tribunal, Madras Bench, had rightly observed that there is no basis for comparison between the Postal Drivers and the Postal Assistants and that drawing up the pay structure for various cadres in the Government Department fall within the domain of the expert body, namely, the Central Pay Commission and issuing a final order thereon is within the domain of executive and it is not for the judicial forum to go further into the question. He therefore, prayed for dismissal of the present Writ Petition.



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8. It is seen from the records that the 1st writ petitioner and another filed a similar petition in O.A.No.148/2003 before the Central Administrative Tribunal, Chennai Bench, seeking for grant of pay on par with Postal Assistants and the same was dismissed by the Tribunal vide its orders dated 19.09.2003, in which it has been observed thus:

"After considering the entire matter, we are of the considered view that no sufficient material has been placed before us to record a specific finding as to whether there had been arbitrary, discriminatory and hostile discrimination made to the applicants in granting the pay scale. In no circumstances, the cadre of Postal Assistant could be treated at par with Artisans/Drivers. It is well settled law that mere pay scale is not the criteria to seek parity. In our view, the judgements cited by the learned counsel for the applicants are not applicable to the facts and circumstances of the present case. We also find that the impugned communication dated 07.02.2002 has been passed after examining all the aspects of the case and suffer from no illegality or infirmity.

9. Thereafter, a Writ Petition in W.P. No.21367/2004 was filed before this Court challenging the abovesaid orders passed by the Central Administrative Tribunal. This Court directed the respondents to refer the



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matter to Pay Anomaly Committee. Since no steps were taken by the respondents, Contempt Petition in Cont.P. No.1371/2010 was filed and thereafter, the matter was referred to National Anomaly Committee which falls under the jurisdiction of Department of Posts and Telegraphs. The National Anomaly Committee conducted a meeting on 15.02.2011 and the relevant minutes of National Anomaly Committee is extracted hereunder:

"The Staff Side felt the NAC was not the appropriate forum to discuss the issue since as per the negotiation mechanism under NAC; the Committee was not mandated to pass orders on judgments pronounced by the Courts. The Official side stated that Drivers belong to a common category of employees to whom pay scales were granted as per the recommendations of the 6th Central Pay Commission. Accordingly, the Department of Posts was called upon to present the facts on these lines before the Hon'ble Court."

This resolution was conveyed to the Postal Drivers' Association, namely, the present writ petitioners and thereafter another Contempt Petition in Cont.P. No.259/2012 was filed before this Court and this Court, after



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taking note of the order dated 24.08.2012 passed by the Assistant Director General (CDS/PCC), Department of Posts Establishment Division, closed the said contempt petition. It is needless to say that the second respondent passed a detailed order, which is extracted hereunder.

"Further, in the light of the view taken by NAC, it is considered appropriate to put on record the following facts:-

a) Department of Posts is an operative department. The functions undertaken by it, viz., counter operations, mail operations, mail delivery and Savings Bank operations are unique to this Department and the duties and responsibilities carried out by Postmen & Postal Assistants/Sorting Assistants have no equivalence with other cadres/Ministries/Departments in the Central Government. On the other hand, the drivers working in the Department belong to the common category of Drivers post and hence, the duties and responsibilities being carried out by them have no parity with the cadres of Postmen & Postal Assistants/Sorting Assistants. The duties and responsibilities of the drivers primarily consists of plying staff cars/light and heavy mail motor vehicles and for the transportation of individuals and closed bags.



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b) The successive Central Pay Commissions have dealt with the cadre of drivers as common category posts keeping in view the broad nature of duties carried out by the cadre of drivers. It is the expert body like Central Pay Commission that can evaluate the uniqueness of a cadre as a distinct from others taking submissions of the concerned associations/unions as also feedback furnished by general public and respective departments.

The pay scales recommended by successive Central Pay Commissions (not the 6th Central Pay Commission alone) have been implemented by the Government from time to time on consideration of the recommendations made in this regard not only in the case of drivers, but also for the cadres of Postmen & Postal Assistants as also for other cadres.

Merely the equivalence of minimum of the pay scale without taking into account the maximum of the scale, which was different in the case of drivers as compared to other posts which whom they are now claiming equivalence, does not in any way establishes any kind of parity between the cadre of



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drivers and other operations cadres of Department of Posts like Postmen and Postal Assistants.

Job profile, Educational Qualification, Pay Scales and Promotional Avenues of the cadre of Drivers and Postal Assistants has no equivalence, whatsoever. No expert body like the Central Pay Commission has held that the drivers of MMS of the Department are unique and distinct from the cadre of drivers working in other Ministries/Department or having parity of equivalence with the cadre of Postal Assistant unique to this Department.

To conclude, it is reiterated that Pay Commission is an expert body set up by the Government from time to time to consider and recommend grant of appropriate pay scales for any cadre after, inter alia, taking into account the job profile, parity and relatives and that too after considering the submissions made by staff unions. Subsequent to implementation of the recommendations of the Pay Commission, the definition of an anomaly is mutually agreed to by Office Side and Staff Side through deliberations and the Departmental as well as National Anomaly Committees are constituted at Departmental & National level to take care of



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anomalies that might have arisen as a result of the implementation of the recommendations of the Pay Commission.

The process outlined in the above paragraph is uniformly adopted after each successive Central Pay Commission. While each Successive Central Pay Commission has dealt with the cadre of drivers as a cadre belonging to common category, there is no point in now contending by Petitioners' Association that the cadre of drivers in Department of Posts is a unique and distinct cadre as compared to the cadre of drivers in other Ministries/Departments. It is placed on record that neither successive Central Pay Commission(s) nor the Departmental/National Anomaly Committee has agreed to on the view point of the Petitioners' Association. That the cadre of drivers existing in Department of Posts continues to belong to the common category of posts of driver is also testified by the fact that the structured promotion scheme in the ratio of 30:30:34:5 extended by the Government to the drivers on the recommendation of the 5h Central Pay Commission was also extended by the Department of Posts to its drivers and the members of the Petitioners' Associations are already availing the benefits of this structured promotion



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Thus, taking into account all the relevant facts as brought out in this detailed Speaking Order, this Department does not find any merits in the demands of the Petitioners' Association and thereby reject them."

10. It is seen from the above orders that the second respondent had considered the case of the present writ petitioners extensively and had given a finding stating that the present writ petitioners cannot claim pay on par with the Postal Assistants. The contention of the learned Senior Counsel for the petitioners is that the staff car drivers in Rajya Sabha, Lok Saha, Law Ministry and Supreme Court are drawing more pay than the drivers of the Postal Department and therefore the case of the writ petitioners should also be considered and they must be given the same scale of pay as that of the drivers of other Departments. This contention of the counsel for the writ petitioners cannot be accepted for the simple reason that Recruitment Rules and Service Conditions vary from department to department and they cannot be equally placed.



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11. The decision in ***Secretary, Finance Department and Others vs. West Bengal Registration Service Association and Others***

(cited supra) relied on by the learned counsel for the writ petitioners would not apply to the facts of the present case since in that decision the directly recruited Sub Registrars sought to re-examine their pay scale as there was an upward revision of educational qualification for the post of direct recruitment as Sub Registrars. In such circumstances, it was held that when the minimum educational qualification for direct entry into the post has been periodically raised, the level of pay scale for the post has not undergone any change whatsoever and therefore, the State Government ought to have re-examined the question of appropriate scale of pay for Sub Registrars and upgrade their pay scale. The facts of the present case, as already observed, are entirely different.

12. Similarly in the decision in ***Kallakurichi Taluk Retired Officials Association, Tamil Nadu and Others vs. State of Tamil Nadu***

(cited supra), there was a dispute between the State Government and the retired employees in respect of the component "Dearness Allowance"



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liable to be treated as "Dearness Pay" for computation of pension. By order dated 09.08.1989, the pensionary benefits of an employee retiring on or after 01.06.1988 were required to be computed by adding Dearness Allowance as Dearness Pay on a fixed per centage and by virtue of the said determination, the employees retiring on or after 01.06.1988 were at a disadvantageous position compared to the employees who had retired prior to that. In such circumstances, the Government Order dated 09.08.1989 was held as unsustainable. It was further held that there was no valid classification as per Article 16 of the Constitution of India. In the instant case, as already observed, no materials are placed before this Court by the writ petitioners to show that they must be treated on par with Postal Assistants or drivers in the other departments especially when the National Anomaly Committee had dealt with this issue extensively. In the circumstances, we do not find any infirmity in the said orders. Moreover, it is settled law that drawing up the pay structure for various cadres in the Government departments fall within the domain of the expert body, namely, Central Pay Commission, and issue of final orders thereon is within the domain of the Executive and it is not for the judicial



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forum to go further into the question especially when no materials are placed before this Court to show that there was unjust classification and is therefore violative of Article 16 of the Constitution of India. Subsequent to the orders dated 24.08.2012, the 7th Central Pay Commission has also submitted its report and it has been given effect to.

13. In such circumstances, we do not find any reason to interfere with the findings rendered by the Central Administrative Tribunal, Madras Bench, dated 07.01.2016 in O.A. No.30 of 2013. Accordingly, the Writ Petition is dismissed. No costs.

(V.M.V.,J.)

(R.H.,J.)

20.02.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga/mtl



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To

- 1.Union of India,
Rep. by the Director General of Posts,
Department of Posts,
Ministry of Communications & IT
Government of India,
Dak Bhavan, Sansad Marg,
New Delhi.
- 2.Assistant Director General (CDS/PCC),
Department of Posts Establishment Division)
Ministry of Communications & IT,
Government of India,
Dak Bhavan, Sansad Marg,
New Delhi.
- 3.The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai.
- 4.The Registrar,
Central Administrative Tribunal,

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R. HEMALATHA, J.
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Pre-delivery order in
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