



W.P.No.12077 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2025

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CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

W.P.No.12077 of 2022
and WMP.No. 11513 of 2022

K.Sampath Kumar

... Petitioner

Vs

1. The Chairman
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
MPKRR Maligai, 144, Anna Salai,
Chennai-600002.

2.The Chief Engineer,
Chennai Region-South
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
MPKRR Maligai, 144, Anna Salai,
Chennai-600002.

3.The Superintending Engineer
CEDC (South 1)
110/33, KVSS Complex,
K.K.Nagar, Chennai-600078.

.... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, calling for the records of the 3rd respondent in its Charge Memo No.598/SE/CEDC South1/Admn 1/A3/Frame Charge/22 dated 11.04.2022 and quash the same.

For Petitioner : M/s.N.S.Amogh Simha

For Respondents : M/s.David Sundar Singh



W.P.No.12077 of 2022

ORDER

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The writ petition is filed to quash the charge memo dated 11.04.2022 issued by the 3rd respondent.

Brief facts :

2.1 The petitioner joined as Helper in 1992. Thereafter, the petitioner was promoted as Telephone Operator, Commercial Assistant, and Commercial Inspector in 2000, 2002, and 2007 respectively. While so, in August 2009, the petitioner was implicated in a trap case for having demanded illegal gratification from one Sasikumar, for providing a three-phase service connection. The petitioner was proceeded against for offences under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. A criminal case was also registered in S.C.C. No. 8/2011, on the file of the Chief Judicial Magistrate, Tiruvallur. As a consequence of the registration of the criminal case, the petitioner was suspended from service in 2009. The petitioner's suspension continued for 10 years, and thereafter, in 2019, the petitioner was reinstated into service. Meanwhile, after a full-fledged trial, the Chief Judicial Magistrate, Tiruvallur, by judgment dated 27.09.2021, acquitted the petitioner of the criminal charges for the offences under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. According to the petitioner, the judgment by the criminal court attained finality as no appeal was preferred against the said judgment. As a consequence of acquittal in the criminal case, the petitioner requested the



respondent to regularise the period of suspension as duty and to grant other attendant benefits. As the respondent did not accede to the request, the petitioner submitted a representation to the respondent on 29.09.2021. Since there was no response from the respondent, the petitioner filed a writ petition in W.P. No. 25120 of 2021 for a mandamus, in which an order was passed, directing the 3rd respondent to consider the petitioner's representation in accordance with law, within a period of four weeks from the date of receipt of a copy of the order.

2.2 The petitioner forwarded a copy of the Court order to the respondents, but the respondent did not act on the same. In the meantime, the 3rd respondent issued a charge memo dated 11.04.2022, indicting the petitioner for demanding and receiving bribe of Rs.3000/- from one Sasikumar, for providing domestic three phase service connection. As the charges framed in the charge memo of the 3rd respondent and the charges framed in the criminal case were identical and as the charge memo was issued with an inordinate delay of 10 years from the date of incident, the petitioner filed the present writ petition for the aforesaid relief.

3. The respondent filed a detailed counter affidavit denying all the allegations and contentions raised in the writ petition. According to the respondent the writ petition was premature and the same was liable to be dismissed in *limini*. The respondents stated that the acquittal in criminal case proceedings was not a bar to the



initiation of disciplinary proceedings. The respondents stated that the competent authority was entitled to initiate departmental proceedings de-hors the acquittal by the Criminal Court.

4. It was further stated that since the enquiry in the disciplinary proceedings related to grave misconduct by the petitioner, the respondents were entitled to proceed against him as per the statutory rules and regulations. The respondents further denied that the list of documents relied upon by the disciplinary authority were the same as in the criminal case. The respondents also denied the allegation that the disciplinary proceedings were initiated solely to harass the petitioner. The respondents hence prayed for the dismissal of the writ petition.

5. Learned counsel for the petitioner submitted that the respondents were barred from proceeding against the petitioner departmentally, on the same set of allegations, facts and circumstances that were presented in the criminal case, which ended in the petitioner's acquittal. The learned counsel for the petitioner further submitted that the charge memo was an abuse of process of the Court as it amounted to double jeopardy. Learned counsel further submitted that the impugned charge memo was liable to be set aside for inordinate delay and laches. The counsel therefore prayed that the writ petition be allowed.



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6. Learned counsel for the respondent reiterated the submissions made in the counter affidavit and submitted that the writ petition was premature as the issuance of charge memo does not give rise to any cause of action. The learned counsel further submitted that the acquittal in the criminal case does not bar the respondent from initiating disciplinary proceedings, more so, when charges against the petitioner related to grave misconduct of illegal gratification. The counsel therefore submitted that there were no merits in the writ petition and it deserved to be dismissed.

7. Heard both the learned counsels and perused the materials available on record.

8. Facts are undisputed. The criminal case in SCC.No. 8/2011, on the file of Chief Judicial Magistrate, Tiruvallur was initiated against the petitioner for demanding and accepting illegal ratification from one Sasikumar on 17.01.2008, by invoking Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. The petitioner was placed under Suspension in 2009, and the same was revoked after 10 years in 2019. Meanwhile after full fledged trial, the Chief Judicial Magistrate, Tiruvallur, by judgment dated 27.09.2021, acquitted the petitioner of the charges on the ground that there was no evidence of either demand or acceptance of bribe by the



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petitioner. It is admitted fact that the criminal court's judgment attained finality as no further appeal was filed against the acquittal order. Instead of accepting the acquittal order and reinstating the petitioner in service, the respondents issued a charge memo to the petitioner on 11.02.2022. The charges framed against the petitioner were that he demanded and accepted bribe of Rs. 3,000/- from one Sasikumar, for providing a domestic service connection. As the impugned charge memo was issued after acquittal by the criminal court and that too after a lapse of 10 years from the date of the incident, the petitioner filed the present writ petition for the aforesaid relief.

10. After considering the elaborate arguments advanced by both learned counsels, the points that arise for consideration by this Court are summarised as follows:

- i. In view of the acquittal by the criminal court, whether the charge memo premised on identical facts and evidence is sustainable;*
- ii. Whether the charge memo is liable to be set aside on the ground of delay and laches in initiating departmental proceedings;*
- iii. Whether the pendency of the criminal case was a bar to initiate departmental proceedings.*

11. Facts and evidences in the departmental as well as criminal proceedings were the same

11.1. Before addressing the legal aspect concerning the sustainability of the charge memo, a comparative table of the charges in the criminal proceedings and the



disciplinary proceedings is given below.

	Criminal Court Proceedings	Second Charge Memo
Allegation	Accused (Petitioner) was working as Commercial Inspector in TNEB functioning at Kumananchavadi. De-facto complainant Sasikumar submitted application for obtaining three phase electricity connection to his house situated in Poonamallee for which the accused demanded an amount of Rs. 11,500/- as bribe. Since the de-facto complainant expressed his inability, Accused asked to pay Rs. 3,000/- as first instalment and pay the balance later and accepted the same as bribe on 19.08.2009	K. Sampathkumar, Commercial Inspector formerly Kumananchavadi currently o/o. E.E, KK Nagar Div/O&M/South-I, was trapped by DV&AC for demanding and accepted a sum of Rs. 3,000/- as part of bribe amount from the complainant Thiru A. Sasikumar, S/o. Anbumani No. 16/25, Church Cross Street, Ezhil Nagar, Poonamallee, Chennai-56 for providing 3-phase domestic service

11.2. It is further seen that the list of witnesses in the criminal proceedings and annexure to the charge memo are also identical. The statement of list of witnesses are as follows;

	Criminal Court Proceedings	Second Charge Memo
Documents	Ex.P1 to Ex.P24	Copies received from the Director, DVAC
1	Thiru Perumalsamy, Chief Engineer, TNEB, Chennai	Thiru Perumalsamy, Chief Engineer, TNEB, Chennai
2	Thiru.Sasikumar/defacto complainant	Thiru.Sasikumar/defacto complainant



3	Thiru.Jeyavel, Superintendent, Office of Animal Husbandry and Medical Services Chennai	Thiru.Jeyavel, Superintendent, Office of Animal Husbandry and Medical Services Chennai
4	Thiru.Rajagopal, Retd Junior Engineer	Thiru.Rajagopal, Retd Junior Engineer
5	Thiru. Deenadayalan, Retd. Assessment, TNEB, Senneerkuppam.	Thiru. Deenadayalan, Retd. Accounts Officer
6	Thiru. Ganapathi, Assistant Engineer, Mangadu	Thiru. Ganapathi, Assistant Executive Engineer, Mangadu
7	Thiru. Baskaran, Inspector of Police, DVAC, Special Branch-3	Thiru. Baskaran, Inspector of Police, DVAC, Special Wing-3
8	Tmt.Mallika, Assistant Director, Forensic Science Laboratory, Chennai.	Tmt.Mallika, Assistant Director, Chennai Forensic Science Laboratory.
9	Thiru.Rajendran, Retd. Additional Superintendent, Chennai DVAC, Chennai.	Thiru.Rajendran, Retd. Additional Superintendent, Chennai DVAC.
10	Thiru. Mohammed Iqbal, Retd. Superintendent of Police DVAC	Thiru. Mohammed Iqbal, Retd. Superintendent of Police DVAC
11	Thiru. Ravindran, Assistant Animal Husbandry and Medical Services Directorate.	Thiru. Ravindran, Assistant Animal Husbandry and Medical Services Directorate.

11.3. Therefore, it is clear that not only charges in both proceedings are identical, but also the witnesses are also the same. The criminal court by judgment dated 27.09.2021, acquitted the petitioner of the charge of demanding and accepting bribe of Rs.3000/- after a full fledged trial. It is relevant to point out here that the judgment of the criminal court attained finality as no appeal was preferred against the said judgment. It is only after conclusion of the criminal proceedings that the



respondents issued the impugned charge memo, on 20.04.2022. The charges framed in the criminal proceedings and the disciplinary proceedings and also the list of witnesses clearly reveal that the same set of evidence would be relied on in the disciplinary proceedings also.

11.4. The Hon'ble Supreme Court in ***G.M.Tank Case reported in ([2006] 5 SCC 446)*** while considering the similar issue held in paragraphs 30 to 32 as follows;

30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the



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prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”

11.5. In the latest judgment of the Hon'ble Supreme Court in **Ram Lal Vs. State of Rajasthan & others reported in 2024 1 SCC 175** in para 30 held as follows;

30. We are additionally satisfied that in the teeth of the finding of the Appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the



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orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive, This case is very similar to the situation that arose in G.M.Tank.”

11.6. In the present case, as discussed above, the witnesses listed in both proceedings including the complainant, police investigators, forensic experts, and other relevant officials are the same. The criminal court, after a full fledged trial, acquitted the petitioner on 27.09.2021, having found no substantial evidence to support the charge of bribe solicitation or acceptance. As the judgment remained unchallenged, it attained finality. Consequently, in the light of the law laid down by the Hon'ble Supreme Court in the cases referred supra, the impugned charge memo premised on the same facts, allegations and evidence cannot be sustained post acquittal by the criminal court.

12. Delay and Laches

12.1 One important aspect that deserves consideration in the present case is that, after the petitioner's acquittal in the criminal case on 27.09.2021, the respondent issued the impugned charge memo for an incident that occurred in 2009 i.e., nearly 13 years after the date of the incident. In my view, the inordinate delay of 13 years raises serious issues of laches.



12.2 I find favour with the learned counsel for the petitioner, that the charge memo deserves to be set aside even on the ground of inordinate delay and laches. In this regard, the judgment of the Hon'ble Supreme Court in ***P.V Mahadevan Vs. Managing Director, Tamil Nadu Housing Board reported in [(2001) 6 SCC 636]*** is worthy of reference. The Hon'ble Supreme Court in paragraphs 7 to 11 held as follows;

“7. The very same ground has been specifically raised in this appeal before this Court wherein it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition.

8. Our attention was also drawn to the counter-affidavit filed by the respondent Board in this appeal. Though some explanation was given, the explanation offered is not at all convincing. It is stated in the counter-affidavit for the first time that the irregularity during the year 1990, for which disciplinary action had been initiated against the appellant in the year 2000, came to light in the audit report for the second half of 1994-95.

9. Sections 118 and 119 of the Tamil Nadu State Housing Board Act, 1961 (Tamil Nadu Act 17 of 1961) read thus:

"118. At the end of every year, the Board shall submit to the Government an abstract of the accounts of its receipts and expenditure for such year.



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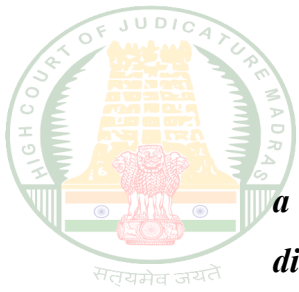


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119. The accounts of the Board shall be examined and audited once in every year by such auditor as the Government may appoint in this behalf."

10. Section 118 specifically provides for submission of the abstracts of the accounts at the end of every year and Section 119 relates to annual audit of accounts. These two statutory provisions have not been complied with at all. In the instant case the transaction took place in the year 1990. The expenditure ought to have been considered in the accounts of the succeeding year. In the instant case the audit report was ultimately released in 1994-95. The explanation offered for the delay in finalising the audit account cannot stand scrutiny in view of the above two provisions of the Tamil Nadu Act 17 of 1961. It is now stated that the appellant has retired from service. There is also no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings. Mr R. Venkataramani, learned Senior Counsel is appearing for the respondent. His submission that the period from the date of commission of the irregularities by the appellant to the date on which it came to the knowledge of the Housing Board cannot be reckoned for the purpose of ascertaining whether there was any delay on the part of the Board in initiating disciplinary proceedings against the appellant has no merit and force. The stand now taken by the respondent in this Court in the counter-affidavit is not convincing and is only an afterthought to give some explanation for the delay.

11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping

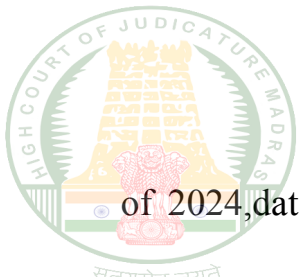


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a higher government official under charges of corruption and disputed integrity would b cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.”

12.3 Admittedly, no explanation is offered by the respondents in the counter, for the inordinate delay of 10 years, in issuing the charge memo. The respondents merely state that there was no legal impediment for conducting disciplinary proceedings after the conclusion of the criminal trial, as it is well settled that in departmental enquiry, mere preponderance of evidence is sufficient, that the strict rules of evidence are not applicable and are not required to prove the charges against the delinquent official. There is no dispute regarding the said legal principle, but that cannot be used as ruse to issue a belated charge memo.

12.4 The Hon'ble Division Bench of this Court in a judgment in W.A.No.1488



of 2024, dated 03.07.2024 reported in **2024 SCC Online Mad 5320** following the above judgment of the Hon'ble Supreme Court in **P.V.Mahadevan's case** quashed the charge memo impugned therein on the ground of inordinate delay of 14 years in issuing the same.

12.5. In the absence of any justifiable reasons for the inordinate delay of 13 years in issuing charge memo, I am of the view that the impugned charge memo cannot be sustained. Under the facts and circumstances of the case and in the light of the judgments of the Hon'ble Supreme Court and the Division Bench of this Court referred above, I am of the view that the impugned charge memo deserves to be quashed even on the ground of delay and laches.

III. Pendency of Criminal Case is Not a Bar to initiate Departmental Proceedings

13.1 The issue whether the employer was justified in initiating disciplinary proceedings after conclusion of the criminal case was examined by the Hon'ble Division Bench of this Court in W.A.No.2346 of 2019 dated 16.04.2021. The Hon'ble Division Bench, in the said case allowed the writ appeal filed by the delinquent employee and set aside the order of the learned Single Judge who declined to quash the charge memo by relying on the decision of the Hon'ble Supreme Court in *G.M.Tank Case* and on the judgment of the Division Bench of this Court in W.A.No. 2710 of 2018 dated 16.07.2011. The Hon'ble Division Bench after comparison of the charges in the criminal case and in the disciplinary enquiry held,

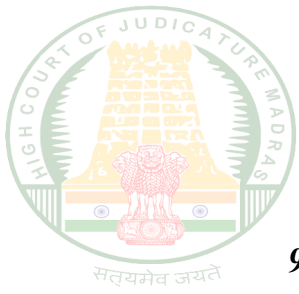


that after the conclusion of the criminal proceedings, departmental proceedings initiated on the same set of charges, was not sustainable and hence quashed the charge memo. The relevant paragraphs are extracted below;

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“ 7. The Hon'ble Supreme Court in G.M. Tank Vs. State of Gujarat and Ors. (MANU/SC/8156/2006 2006 (5) SCC 446), considered the issue relating to departmental proceedings after the acquittal of the accused. The departmental proceedings and the criminal case were based on similar set of facts and the charge-in-the-department case and the charge before the criminal court were one and the same. The Supreme Court found that the Investigating Officer and other departmental officials were the witnesses, examined by the Enquiry Officer. The same witnesses were examined in the criminal case, resulting in acquitting the accused. The Supreme Court, by placing reliance on the earlier judgment held that it would not be prudent to continue the disciplinary proceedings after the acquittal by the criminal Court on the basis of the very same charges and evidence.

8. The facts are identical here. The charge sheet issued to the appellant in the criminal case was converted as a charge memo to initiate disciplinary proceedings. The witnesses are one and the same. There is no question of re-appreciating the evidence by the Enquiry Officer to punish the respondent. The Incident is of the year 2002. Nothing prevented the appellants from initiating disciplinary proceedings against the respondent even before the disposal of the criminal case.



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9. The learned single Judge has given sufficient reasons for the ultimate conclusion taken in the Writ Petition. We do not find any ground made out by the appellants to take a different view in the matter.

10. In the upshot, we dismiss the intra court appeal. No costs."

13.2 From the aforesaid decision, it is clear that the pendency or conclusion of a criminal case does not, by itself, bar the initiation or continuation of departmental proceedings, as both operate in distinct and independent spheres. There was no legal impediment for the department to initiate disciplinary proceedings against the petitioner during the pendency of the criminal proceedings. The department need not have waited for the conclusion of the criminal proceedings. Simultaneous action could have been taken based on departmental standards of proof and internal administrative considerations. The petitioner was implicated in a trap case in August 2009, for allegedly demanding illegal gratification from one Sasikumar for providing a three-phase service connection.

13.3 Despite having the opportunity to proceed earlier, the 3rd respondent issued the charge memo only on 11.04.2022, nearly 13 years after the date of the alleged incident, and notably, only after the petitioner's acquittal. The charges in the departmental proceedings are identical to those in the criminal case, involving the



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same witnesses and allegations. While departmental proceedings can certainly be maintained independently, the unexplained delay in initiating action, combined with the identity of charges and evidence already adjudicated upon by a competent court, renders the departmental action arbitrary, unfair, and legally unsustainable.

14. Though the learned counsel for the petitioner relied on several judgments in support of his contentions, in order to avoid verbosity and multiplicity, I have referred to few judgments, which in my view, are sufficient to decide the issue.

15. In view of the above discussions and in the light of the law laid down by the Hon'ble Supreme Court as well as the Division of this Court, I am of the view that the impugned charge memo cannot be sustained as it amounts to abuse of power and over reaching the orders of the criminal court. The petitioner having faced the ordeal of criminal trial, it would be unjust, unfair and oppressive for the petitioner to face departmental enquiry for the identical charges all over again. I therefore find merit in the writ petition. Accordingly, the writ petition is allowed, and the impugned charge memo dated 11.04.2022 is quashed.



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16. In the result, the writ petition is allowed. No order as to costs.

Consequently, connected Miscellaneous Petition is closed.

22.04.2025

Index: Yes/No

Internet : Yes/No

Speaking order / Non speaking order

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To

1. The Chairman

Tamil Nadu Generation and Distribution
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