

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.997 OF 2019

DISTRICT : SINDHUDURG

Shri Satyawan Anant Sutar.)
Age : 43 Yrs., Occu.: Forest Guard,)
Social Forestry Division, Sindhudurg and)
Residing at At & Post : Kurli,)
Tal.: Vaibhavwadi, District : Sindhudurg.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Revenue & Forest Department)
(Forest), Mantralaya,)
Mumbai – 400 032.)
2. Chief Conservator of Forest (T),)
Kolhapur Vanbhawan,)
In front of Main Post Office,)
Tarabai Park, Kolhapur – 416 003.)
3. Deputy Conservator of Forest.)
Sawantwadi Forest Division,)
Vanbhawan, Salaiwada,)
Sawantwadi, Dist. : Sindhudurg.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 22.07.2021

JUDGMENT

1. The Applicant has challenged the order dated 10.03.2017 passed by Respondent No.3 holding the Applicant guilty for misconduct in departmental enquiry and also challenged the order of Appellate Authority dated 11.10.2017 thereby imposing punishment of recovery of Rs.49,781/- for the loss caused to the Government and further punishment of withholding one increment for two years without cumulative effect invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this O.A. are as under :-

While Applicant was serving as Forest Guard on the establishment of Respondent No.3 – Deputy Conservator of Forest, Sawantwadi, District: Sindhudurg, the departmental proceedings were initiated against him by issuance of charge-sheet dated 30.02.2009 under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) in respect of alleged misconduct of negligence and discharging duties and causing loss to the Government in the period from 2006-2009. The Applicant denied the charges levelled against him and contested departmental proceedings. In D.E, following were the charges [Page No.22 of Paper Book].

“दोषारोप क्रमांक १.

शासकीय नियम व आदेश यांचे अनुपालन न करता अधिकार क्षेत्रात होत असलेल्या अवैध वृक्षतोडीस प्रतिबंध न करता अक्षम्य हलगर्जीपणा व बेजबाबदारपणा करून घोर कर्तव्यव्युत्ती करणे व शासन नुकसानीस कारणीभूत होणे.

दोषारोप क्रमांक २.

गुन्हे कामातील जप्त शासकीय माल विक्री आगारावर वेळीच वाहतूक न करणे.”

3. In D.E, the Enquiry Officer examined two witnesses and submitted report to the Disciplinary Authority [Page Nos. 33 to 38 of P.B.]. The Enquiry Officer held the Applicant guilty for Charge No.1, but exonerated

him from Charge No.2. All that, the Enquiry Officer recorded his reasoning and finding, which is as under in vernacular.

“अपचारी श्री. स.अ. सुतार, तत्कालीन वनरक्षक यांचेतर्फे दोषारोपाबाबतच्या त्रुटीविषयी काही कथन केलेले आहे ते अगदीच तथ्यहीन किंवा निरर्थक आहे असे वस्तुस्थिती पाहता म्हणता येत नाही. अर्थात या सर्व उणिवा प्रशासकीय कार्यप्रणालीशी संबंधित असून अपचा-यास त्याविरुद्ध एवढ्या मोठ्या प्रमाणात आक्षेप घेण्याची संधी तत्कालीन प्रशासनाने उपलब्ध दिली याचा अर्थ दोषारोपपत्र अचूक व नेमके होण्यासाठी जी काळजी किंवा खबरदारी प्रशासनाकडून घेण्यात आलेली नाही. ते तितकेसे गांभीर्यपूर्वक बनविले गेले नाही. तर अगदी सहजगत्या (casually) बनविले गेले असे स्पष्ट होते. अर्थात यासाठी जबाबदार असणार-यांचा सध्याच्या प्रशासनाने जरूर शोध घ्यावा व त्यावर योग्य ती कारवाई करावी म्हणजे अशा गांभीर्यहिन कार्यपद्धतीत प्रतिबंध होऊ शकेल.

प्रस्तुत विभागीय चौकशीच्या प्रयोजनार्थ तयार करण्यात आलेल्या आणि अपचा-यावर बजावण्यात आलेल्या दोषारोपपत्राबाबतचे अपचा-यातर्फे उपस्थित करण्यात आलेले वरील आक्षेप जरी मान्य केले तरी दोषारोपात नमूद करण्यात आलेली चोरटी जंगलतोड व त्यायोगे झालेले नुकसान हे उपलब्ध कागदपत्रे, दस्तऐवज व साक्षीपुराव्यांच्या आधारावर अमान्य करता येत नाही. चोरतूट झाली ही वस्तुस्थिती आहेच. आणि या चोरतुटीस काही प्रमाणात का होईना परंतु तत्कालीन वनरक्षक श्री. स.अ. सुतार यांचा निष्काळजीपणा किंवा दुर्लक्ष कारणीभूत नाही असे म्हणणे धाडसाचे होईल. शिवाय चोरतूट ही वनखात्यास नवीन किंवा नवलाईची बाब नाही किंवा ती अभावानेच घडते असेही नाही. त्यामुळेच कदाचित संबंधित नियतक्षेत्रात चोरतूट झालीच नाही असे श्री. सुतार यांनी आपल्या बचावाच्या अंतिम लेखी निवेदनात कुठेही म्हटलेले नाही. याचा अर्थ झालेली चोरतूट त्यांनाही अमान्य नाही. त्यांनी घेतलेले आक्षेप केवळ तांत्रिक बाबींविषयी आहेत. त्यामुळे दोषारोप बाब 9 बदल मी श्री. सुतार यांना दोषी ठरवित आहे. परंतु शासन नुकसानीच्या भरपाईबाबत शासकीय मापदंड आणि सहअपचा-याकडून करण्यात आलेली वसुली यांचा प्रशासनाने विचार करावा अशीही शिफारस आहे.

गुन्हेकामातील जप्त मालविक्री आगारात वेळीच पोहोचविला नाही या कार्यपद्धतीतील उणिवेबाबत श्री. सुतार यांना दोषी धरले तरी त्यातून शासन नुकसानी झाल्याचे दिसून आले नाही किंवा प्रशासन तसे सिद्ध करू शकले नाही. त्यामुळे सदर दोषारोप तितकासा गंभीर आहे, असे मला वाटत नाही. म्हणूनच मी सदर दोषारोपातून श्री. सुतार यांना दोषमुक्त ठरवित आहे.

सबब

दोषारोप बाब - 9 :- दोषारोप सिद्ध
दोषारोप बाब - २ :- अपचारी निर्दोष”

4. The Applicant has preferred an appeal before Respondent No.2 – Chief Conservator of Forest [Regional], Kolhapur who dismissed the appeal by order dated 11.10.2017, but modified the punishment. The Respondent No.3 reduced the quantum of loss caused to the Government to Rs.49,781/- from Rs.82,028/- and imposed punishment of withholding of next increment for two years without cumulative effect. The Appellate Authority also treated the period of suspension from 01.11.2009 to 01.03.2010 as duty period for all purposes which was earlier treated suspension as such by Disciplinary Authority.

5. Being aggrieved by the order of punishment, the Applicant has filed the present O.A.

6. Shri M.D. Lonkar, learned Advocate for the Applicant sought to challenge the impugned orders on the following grounds :-

(i) Though Enquiry Officer has exonerated the Applicant from Charge No.2, surprisingly Respondent No.3 - Disciplinary Authority held both the charges proved without giving an opportunity of hearing to the Applicant in violation of Rule 9(2) of 'Rules of 1979' which *inter-alia* mandates of giving an opportunity of hearing where Disciplinary Authority disagreed with the finding recorded by Enquiry Officer.

(ii) The Appellate Authority too ignored infringement of Rule 9(2) of 'Rules of 1979' and hold the Applicant guilty with the reasoning that Applicant failed to prove his innocence as if burden to establish innocence was upon the Applicant forgetting the fundamental principle that it is always for the Department to establish the charge and it is not for the delinquent to prove his innocence. Thus, according to him, the enquire approach of Disciplinary Authority as well as Appellate Authority is totally erroneous.

(iii) The order of recovery of Rs.82,028/- towards loss caused to the Government imposed by Disciplinary Authority which was later reduced to Rs.49,781/- by Appellate Authority is without cogent evidence to sustain the same.

(iv) The matter pertained to alleged misconduct for the period 2006 to 2009 but there was an inordinate delay in completion of D.E. which ultimately concluded by order dated 10.03.2017 and caused serious prejudice to the Applicant.

7. Per contra, Mrs. A.B. Kololgi, learned Presenting Officer submits that the evidence recorded in D.E. is sufficient to sustain the charges levelled against the Applicant and interference in limited jurisdiction of review is unwarranted. She further submits that no prejudice is caused to the Applicant because of delay in completion of D.E. and that itself cannot be the ground to quash the punishment.

8. True, in the matter arising from D.E, the jurisdiction of the Tribunal under judicial review is limited. However, where there is breach of mandatory provisions of law as well as settled principles of law, interference is inevitable.

9. As stated above, in D.E, there were two charges against the Applicant. First charge was pertaining to loss caused to the Government due to alleged negligence and dereliction in performance of duties. Whereas, second charge was pertaining to his failure and negligence for not transporting seized wood to Depot. Interestingly, the Enquiry Officer in his report had exonerated the Applicant from Charge NO.2. However, surprisingly, the disciplinary authority held the Applicant guilty for both the charges. While doing so, all that disciplinary authority observed as under :-

“अपचारी श्री. स.अ. सुतार, तत्का. वनरक्षक यांचेतर्फे दोषारोपाबाबतच्या त्रुटीविषयी जे काही कथन केलेले आहे ते तथ्यहीन किंवा निरर्थक आहे असे वस्तुस्थिती पाहता म्हणता येत नाही. या सर्व उणिवा प्रशासकीय कार्यप्रणालीशी संबंधित असून अपप्रचा-यास त्याविरुद्ध मोठ्या प्रमाणात आक्षेप घेण्याची संधी प्रशासनाने दिली. चौकशीच्या प्रयोजनार्थ तयार करण्यात आलेल्या आणि उपचा-यावर बजावण्यात आलेल्या दोषारोप पत्राबाबतचे अपचारी-यातर्फे उपस्थित करण्यात आलेले वरील आक्षेप जरी मान्य केले तरी दोषारोपात नमूद करण्यात आलेली चोरटी जंगलतोडी व त्या योगे झालेले शासन नुकसान हे उपलब्ध कागदपत्रे, दस्तऐवज व साक्षीपुराव्यांच्या आधारावर अमान्य करता येत नाही. चोरतुट झाली ही वस्तुस्थिती आहे. तसेच जप्त केलेला माल विक्री आगारावर वेळीच वाहतूक करून न नेल्यामुळे लिलावाअभावी खराब होऊन शासनाचे नुकसान झालेले आहे. त्याला तत्कालीन वनरक्षक श्री. स.अ. सुतार यांचा निष्काळजीपणाच कारणीभूत आहे. अपचारी यांनी आपल्या बचावाच्या अंतिम लेखी निवेदनात याचा कुठेही उल्लेख केलेला नाही. (या प्रकरणी श्री. प्र.बा. बिर्जे, तत्कालिक वनपाल मळगाव यांचेविरुद्ध विभागीय चौकशी करून, मुख्य वनसंरक्षक (प्रा) कोल्हापूर यांचेकडील आदेश क्रमांक कक्ष ४-१/आस्था/विचौ/१२८१ दिनांक १४.१२.२०१५ अन्वये श्री. बिर्जे यांचेकडून रक्कम रुपये ५५४६८/- रोखीने वसूल करण्याबाबत कळविलेले आहे. त्यामुळे प्रकरणी शासकीय नुकसान रक्कम रुपये ४९७८१/- झालेले आहे.)

वरीलप्रमाणे सदर प्रकरणामध्ये विस्तृतपणे केलेल्या विवंचनाअंती मी या निष्कर्षाप्रत पोहोचलो आहे की, अपचारी यांनी शासकीय नियम व आदेश याकडे अक्षम्य दुर्लक्ष करून शासकीय वनांचे संरक्षणाचे कामात बेजबाबदारपणा आणि हलगर्जीपणा करून ते शासनाच्या नुकसानीस कारणीभूत ठरले आहेत, तसेच वरिष्ठांच्या आदेशाची अमान्यता/दुर्लक्ष करून त्यांनी वर्तणूक नियमाचा भंग केला आहे. त्यांचेवर ठेवलेले दोषारोप हे सिद्ध होत आहेत. सबब ते समुचित शिक्षेस पात्र ठरतात असे माझे स्पष्ट मत आहे.

अपचारी यांनी आजवर झालेली सेवा आणि उर्वरित सेवा काळात त्यांना सुधारण्याची संधी देणे नैसर्गिक न्यायाचे दृष्टिकोनातून उचित ठरेल अशा हेतूने, त्यांचे विरुद्धवा दोषारोप निर्विवादपणे सिद्ध झालेल्या निष्कर्षास अनुलक्षून सक्षम प्राधिकारात मी त्यांचेवर लादावयाच्या शिक्षेबाबत खालीलप्रमाणे आदेश देत आहे.

आदेश

१. शासन नुकसानीची रक्कम रुपये ८२०२८/- (ब्याँंशी हजार अठ्ठावीस मात्र) श्री. स.अ. सुतार, तत्कालीन वनरक्षक नेमळे यांचेकडून एक रकमी रोखीने वसूल करण्यात यावी.
२. श्री. स.अ. सुतार, तत्का. वनरक्षक यांचा दिनांक ०१.११.२००९ ते ०१.०३.२०१० हा कालावधी सर्व प्रयोजनार्थ निलंबन कालावधी म्हणून समजण्यात येत आहे.
३. अपचारी श्री. स.अ. सुतार, तत्कालीन वनरक्षक यांनी शासकीय कामात निष्क्रिय राहून अक्षम्य हलगर्जीपणा व बेजबाबदारपणा करून शासकीय नुकसान केलेने, त्यांची या आदेशानंतर देय होणारी एक वेतनवाढ, कायमस्वरूपी रोखण्यात येत आहे.’’

10. It is thus explicit that though Enquiry Officer had exonerated the Applicant from Charge No.2, the Disciplinary Authority held him guilty for both the charges without compliance of Rule 9(2) of 'Rules of 19779' which *inter-alia* provides for giving an opportunity of hearing to the delinquent where disciplinary authority disagreed with the findings recorded by Enquiry Officer.

11. Rule 9(2) of 'Rules of 1979' as amended by Notification dated 10.06.2010 is as follows :-

“**9(2):** The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is (favourable or not to the said Government servant).”

12. Thus, it was incumbent and obligatory on the part of Disciplinary Authority to supply the copy of Enquiry Report together with its tentative reasons for disagreement on Charge No.2 with his finding, so that delinquent can make representation on the disagreement recorded by the Disciplinary Authority. However, in the present case, no such disagreement was recorded by recording tentative reasons and by giving

opportunity of hearing to the Applicant before holding him guilty for Charge No.2, which has caused serious prejudice to the Applicant. Suffice to say, there is no compliance of mandatory provisions contained in Rule 9(2) of 'Rules of 1979', which vitiates the order of punishment.

13. The Appellate Authority too failed to consider the effect of non-compliance of provisions contained in Rule 9(2) of 'Rules of 1979'. Indeed, as per the observations made by Appellate Authority, it was for the delinquent to disprove the charges levelled against him, which is totally against the tenet of principle of law. The Appellate Authority had also held the Applicant guilty for Charge No.2 and on that count imposed the punishment of withholding one increment for two years without cumulative effect. As such, though Enquiry Officer had exonerated the Applicant from Charge No.2, the Disciplinary Authority as well as Appellate Authority held him guilty for Charge No.2 also and imposed punishment.

14. As regard alleged loss caused to the Government due to negligence to prevent illegal cutting of trees in forest, material to note that in D.E, only two witnesses were examined to sustain the charge. As per detail imputation of Charge No.1, there was loss of Rs.1,60,370/- due to illegal cutting of trees. Whereas, as per detail imputation of Charge No.2, the Applicant had kept seized woods of Rs.32,247/- in his possession for a long time without taking immediate steps to deposit it in depot and thereby caused delay in holding auction. Since Applicant had denied the charges as well as imputation of charges, the Department was required to lead evidence to prove the charges. In this behalf, the Department had examined two witnesses viz. Mr. Sahadev Sawant, Forest Guard and Mr. Vijaykumar Kadam, Forester, which is at Page Nos.29 to 30 of Paper Book. As per the evidence of Shri Sahadev Sawant in checking incidence of illegal cutting of trees from Survey Nos.205 and 293 was detected and offences were registered against the concerned for theft and illegal cutting of trees. Significantly, his evidence is conspicuously silent about

the quantum of loss or damages caused to the Government due to alleged negligence on the part of Applicant.

15. Whereas, the evidence of Shri Vijaykumar Kadam reveals that there was loss of woods of Rs.30,875/- and Rs.19,070/- in Survey No.205. Thus, there was no such evidence of sustaining loss of Rs.1,60,370/- to the Government as attributed in detail imputation of Charge No.1.

16. In this behalf, material to note the finding recorded by Disciplinary Authority in which all that he observed that to some extent, the Applicant is responsible for theft of wood and illegal cutting of trees. His finding and report is totally silent about the quantum of loss caused to the Government. Indeed, in report, he mentioned that he leaves the said aspect for the determination of Disciplinary Authority. Suffice to say, the Enquiry Officer has not recorded any such specific findings for loss of Rs.1,60,370/- or for any specific amount caused to the Government on account of alleged negligence on the part of Applicant.

17. On the above background, it was mandatory on the part of Disciplinary Authority to record its tentative finding about the quantum of loss caused to the Government and after giving opportunity of hearing to the Applicant, he ought to have passed further appropriate order. However, the Disciplinary Authority directly held the Applicant responsible for loss of Rs.82,028/-. Interestingly, how he calculated and arrived to the loss of Rs.82,028/- is not clarified in the impugned order. All that, he observed that there was enquiry against one Shri P.B. Birje, Forester wherein order of recovery of Rs.55,468/- has been imposed upon him, and therefore, there remains loss of Rs.49,781/- to the Government. Whereas, in operative order, he imposed order of recovery of Rs.82,028/- for the loss caused to the Government.

18. Whereas, Appellate Authority has recorded totally different reasoning while reducing the amount of recovery from Rs.82,028/- to 49,781/-. It appears that it did so stating that there is total loss of Rs.1,60,370/- to the Government and after deducting Rs.55,121/- towards seized woods and again after deducting sum of Rs.55,468/- loss to be recovered from Shri Birje, he imposed recovery order of Rs.49,781/-

19. The order passed by Appellate Authority is interesting, which is as under :-

“अपिलीय अधिकारी तथा मुख्य वनसंरक्षक (प्रा) कोल्हापूर यांचे अपील अर्जावरील निष्कर्ष व अंतिम निर्णय :-

अपचारी श्री. स.अ. सुतार, तत्कालीन वनरक्षक नेमाळे यांनी त्यांच्या दिनांक २६/४/२०१७ रोजीच्या अपील अर्जामध्ये ते त्यांचेवर बजावलेल्या दोषारोपात निर्दोष असलबाबतचा असा कोणताही कागदोपत्री पुरावा सादर करून ते त्यांचे निर्दोषत्व सिद्ध करू शकलेले नाहीत, किंबहुना ठेवलेले दोषारोप निर्विवादपणे ते खोडून काढू शकलेले नाहीत किंवा तसा त्यांनी प्रयत्नसुद्धा केलेला अपील अर्जातील विवेचनावरून आढळून येत नाही. शिस्तभंग विषयक प्राधिकारी उपवनसंरक्षक, सावंतवाडी यांनी अपील अर्जावर सादर केलेले निष्कर्ष मान्य करणेत येत आहेत.

तथापि अपचारी यांना भविष्यात त्यांच्या क्षेत्रिय कामात तसेच प्रशासकीय कामातील जबाबदारीची जाणीव होऊन सुधारणा करणे वाव मिळण्याच्या दृष्टीने नैसर्गिक न्याय तत्त्वाद्वारे शिस्तभंग विषयक प्राधिकारी यांचे आदेशात खालीलप्रमाणे अंशतः बदल करणेत येत आहे.

आदेश :-

- १) श्री. स.अ. सुतार, तत्का. वनरक्षक नेमाळे-वसोली यांचे दि. २६/ ४/२०१७ रोजीचे अपील फेटाळण्यात येत आहे.
- २) नेमाळे नियतक्षेत्रातील शासन नुकसानीची रक्कम रु.४९७८१/- (एकूण नुकसानी रु.१६०३७० - माल जप्त रु.५५१२१ = रु.१०५२४९ - श्री. बिर्जे वनपाल रु. ५५४६८ = रु.४९७८१/- श्री. सुतार, वनरक्षक (रु.एकोनपन्नास हजार सातशे एक्याऐंशी मात्र) श्री. स.अ. सुतार, तत्कालीन वनरक्षक नेमाळे यांचेकडून एक रक्कमी रोखीने वसूल करण्यात यावी.
- ३) अपचारी श्री. स.अ. सुतार तत्का. वनरक्षक वसोली यांनी गुन्हे कामातील जप्त शासकीय माल विक्री आगारावर वेळीच वाहतूक न करून शासकीय नुकसानीस कारणीभूत झाले बदल त्यांची या आदेशानंतर देय होणारी एक वेतनवाढ पुढील वेतनवाढीवर परिणाम होणार नाही अशा दृष्टीने दोन वर्षे कालावधीसाठी तात्पुरत्या स्वरूपात रोखण्यात येत आहे.
- ४) श्री. स.अ. सुतार, तत्का. वनरक्षक नेमाळे-वसोली यांचा दि.१/११/२००९ ते १/३/२०१० पर्यंतचा निलंबन कालावधी हा सर्व प्रयोजनार्थ सेवा कालावधी म्हणून समजण्यात यावा.

(अरविंद पाटील)
मुख्य वनसंरक्षक, (प्रादेशिक)
कोल्हापूर”

20. Thus, what transpires from the record that there is no compliance of mandatory provisions contained in Rule 9(2) of ‘Rules of 1979’ while holding the Applicant guilty for Charge No.2 despite negative finding

recorded by Enquiry Officer. Secondly, there was no such evidence to quantify loss of Rs.82,028/- to the Government, as held by Disciplinary Authority which has been modified by Appellate Authority to Rs.49,781/- . Needless to mention that the Disciplinary Authority was required to examine the evidence to quantify loss allegedly caused to the Government and burden is never upon the delinquent to disprove the charges. As such, the entire approach of Disciplinary Authority as well as Appellate Authority is incorrect. The matter is, therefore, required to be remitted back to the Disciplinary Authority for decision afresh after compliance of Rule 9(2) of 'Rules of 1979'.

21. In so far as delay in conclusion of D.E. is concerned, true, the Department took period of eight years for completion of D.E, but in my considered opinion, that itself would not vitiate punishment.

22. The totality of aforesaid discussion leads me to sum-up that the impugned orders are not sustainable in law and matter needs to be remitted back to the Disciplinary Authority for decision afresh having regard to the evidence led before the Enquiry Officer. Hence the following order.

ORDER

- (A) The Original Application is partly allowed.
- (B) The impugned orders dated 10.03.2017 and 11.10.2017 are quashed and set aside.
- (C) The matter is remitted to Respondent No.3 – Deputy Conservator of Forest [Disciplinary Authority] for passing appropriate order after following Rule 9(2) of 'Rules of 1979', if he proposes to disagree with the finding recorded by Enquiry Officer on Charge No.2 and then pass appropriate order in accordance to law within three months from today.

- (D) If Applicant felt aggrieved by the said order, he may avail further remedy as available in law.
- (E) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 22.07.2021

Dictation taken by :

S.K. Wamanse.

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