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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3792 of 2011

K.M. Mishra, S/o Shri V.N. Mishra, Aged about 55 years, Sub Inspector, Police Station Durg, Distt. Durg (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Home (Police), DKS Bhawan, Mantralaya, Raipur, Distt. Raipur (C.G.)
2. Director General of Police, Police Headquarters, Raipur, Distt. Raipur (C.G.)
3. Inspector General of Police, Durg Range, Durg, Distt. Durg (C.G.)
4. Dy. Inspector General of Police, Distt. Durg (C.G.)
5. Superintendent of Police, Durg Range, Distt. Durg (C.G.)
6. Sub Divisional Officer of Police, Bemetara, Distt. Durg (C.G.)

---- Respondents

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AND

Writ Petition (S) No.3793 of 2011

Subhash Borkar, S/o Shri M.R. Borkar, aged about 43 years, Caste Mahar, Presently working as Constable No.1471 in District Crime Records Department, Rajnandgaon, Distt. Rajnandgaon (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Home (Police), DKS Bhawan, Mantralaya, Raipur, Distt. Raipur (C.G.)
2. Director General of Police, Police Headquarters, Raipur, Distt. Raipur (C.G.)
3. Inspector General of Police, Durg Range, Durg, Distt. Durg (C.G.)
4. Dy. Inspector General of Police, Distt. Durg (C.G.)
5. Superintendent of Police, Durg Range, Distt. Durg (C.G.)
6. Sub Divisional Officer of Police, Bemetara, Distt. Durg (C.G.)

---- Respondents

For Petitioners: Mrs. Fouzia Mirza, Senior Advocate with Mrs. Smita Jha, Advocate.

For Respondents / State: -
Mr. Sunil Otwani, Additional Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board
(Through Video Conferencing)

24/08/2021

1. V.R. Krishna Iyer, J. speaking for the Supreme Court in the matter of **State of Assam and another v. J.N. Roy Biswas**[1] has held that in the absence of a rule authorising the Government, reopening of the proceedings is ultra vires and bad, and observed as under: -

> "3. … No rule of double jeopardy bars but absence of power under a rule inhibits a second inquiry by the disciplinary authority after the delinquent had once been absolved. ..."

It was further observed in paragraph 4 of the report as under: -

> "4. … The basics of the rule of law cannot be breached without legal provision or other vitiating factor invalidating the earlier enquiry. ..."

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2. The above statement of law aptly applies to the factual matrix of the present case, where second departmental enquiry has been launched without express provision in the Chhattisgarh Civil services (Classification, Control and Appeal) Rules, 1966.

3. Petitioner K.M. Mishra, at the relevant point of time, was working as Sub-Inspector, Police Station Berla, Distt. Durg and petitioner Subhash Borkar was working as Constable in the same police station. A complaint was made against both the petitioners stating that they have accepted illegal gratification from the complainants to the extent of ₹ 3,800/- pursuant to which common departmental proceeding was

1 (1976) 1 SCC 234

instituted against both the petitioners and the Sub-Divisional Officer (Police), Berla in the capacity of enquiry officer on 14-11-2006 submitted enquiry report against both the petitioners to the Senior Superintendent of Police, Durg, who accepted the report of the said enquiry and the Senior Superintendent of Police, Durg, being the disciplinary authority imposed punishment of censure on both the petitioners by its order. The Inspector General of Police, Durg, though is the appellate authority, being not satisfied with the punishment of censure inflicted upon the petitioners by the disciplinary authority, by exercising *suo motu* revisional jurisdiction under Regulation 270(1) of the Chhattisgarh Police Regulations and directed for fresh disciplinary proceeding against both the petitioners and Mr. N.S. Bais, Sub-Divisional Officer (Police), Bemetara, was appointed as enquiry officer and the said enquiry officer submitted its report on 31-1-2009 to the Senior Superintendent of Police vide Annexure P-8 and clearly recorded a finding in its report that two charges are not established against both the petitioners.

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4. On consideration of enquiry report, the Inspector General of Police, Durg Range, Durg, by its order dated 20-11-2009 in its report recorded five reasons for not accepting the report and remanded the matter for enquiry by appointing Mr. M.L. Kotwani, Additional Superintendent of Police (City), Durg as enquiry officer. This time, Mr. M.L. Kotwani conducted enquiry afresh and by its report (no date is mentioned) which is available at Annexure P-10, page 57, found both the charges proved against the petitioners which was accepted by the disciplinary authority by Annexure P-13 dated 5-6-2010 {in W.P.(S) No.3792/2011} and inflicted the stoppage of two increments with cumulative effect and in case of petitioner Subhash Borkar, similar

punishment has been imposed by order dated 1-7-2010, which is undisputedly a major punishment.

5. Being dissatisfied with the punishment awarded, both the petitioners preferred separate appeals before the appellate authority and the appellate authority maintained the penalty inflicted upon K.M. Mishra, however, partly interfered with the punishment awarded to Subhash Borkar and reduced the punishment from stoppage of two increments to one increment in the light of Regulation 226(iv) of the Chhattisgarh Police Regulations. Now, the aforesaid orders of the disciplinary authority having been partly interfered by the appellate authority in case of Subhash Borkar and not interfered with in case of K.M. Mishra have been sought to be challenged in these two writ petitions.

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6. Return has been filed justifying the imposition of penalty inflicted upon the petitioners by the disciplinary authority and affirmed by the appellate authority.

7. Since common question of law and fact is involved in both the writ petitions, they have been clubbed together and heard together and are being disposed of by this common order.

(Facts of W.P.(S)No.3792/2011 are taken-up as lead case for the sake of convenience.)

8. Mrs. Fouzia Mirza, learned Senior Counsel appearing for the petitioners, would submit that both the authorities have fallen into error in not appreciating the fact that first enquiry report submitted on 31-1-2009 clearly exonerates the petitioners from the charges so levelled against them, therefore, in accordance with Rule 15 of the Chhattisgarh Civil services (Classification, Control and Appeal) Rules, 1966 (for short, ‘the Rules of 1966’), at the best, only the matter could have been remanded for further evidence and it could not have been

directed for fresh enquiry after setting aside the enquiry already held and could not have appointed new enquiry officer which runs contrary to Rule 15 of the Rules of 1966 and the decision of the Supreme Court in the matter of **K.R. Deb v. The Collector of Central Excise, Shillong**[2] followed in the matter of **Vijay Shankar Pandey v. Union of India and another**[3], as such, the order of the disciplinary authority and that of the appellate authority deserve to be set aside.

9. Mr. Sunil Otwani, learned Additional Advocate General appearing for the State / respondents, would submit that though it appears that second enquiry was said to be made, but in fact, the disciplinary authority by its order dated 20-11-2009, clearly remanded the matter to the enquiry officer in view of Rule 15 of the Rules of 1966 and it cannot be said to be second enquiry and therefore the impugned orders passed by the two authorities are in accordance with law and both the writ petitions deserve to be dismissed.

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10. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

11. In the departmental proceeding initiated against the two petitioners in a common enquiry, the Senior Superintendent of Police, Durg, imposed the punishment of censure on 16-11-2007 against both the petitioners, but the Inspector General of Police, Durg did not accept the punishment of censure inflicted by the disciplinary authority and exercising *suo motu* revisional jurisdiction under Regulation 270(1) of the Chhattisgarh Police Regulations, set aside the enquiry already held against the petitioners and directed for conducting fresh departmental proceeding in accordance with law, which was ultimately

2 1971 (2) SCC 102
3 (2014) 10 SCC 589

conducted by Mr. N.S. Bais, Sub-Divisional Officer (Police), Bemetara who submitted his enquiry report to the Inspector General of Police, Durg Range, Durg on 31-1-2009. It has clearly been recorded by the SDO (P), Bemetara – Mr. N.S. Bais that two charges are not found proved against the petitioners. When the enquiry report was submitted to the Inspector General of Police on 31-1-2009 vide Annexure P-8, the Inspector General of Police, on consideration, by order dated 20-11-2009 (Annexure P-9) found five errors in conducting the enquiry. The order dated 20-11-2009 states as under:-

कार्यालय, पुलिस महानिरीक्षक, दुर्ग रेंज दुर्ग (छत्तीसगढ़)

क्रमांक/पुमनि/दुर्ग/निस/से–1/M/1690-B/2009 दिनांक 20/11/2009

प्रति,

पुलिस अधीक्षक,
दुर्ग

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विषयः– संयुक्त विभागीय जांच विरूद्ध उप निरी. के.एम. मिश्रा, तत्का. थाना प्रभारी बेरला, जिला दुर्ग वर्तमान जिला कांकेर एवं आरक्षक क्र0 1351 सुभाष बोरकर तत्का. थाना बेरला, वर्तमान प्रतिनियुक्ति पर परिवहन विभाग, रायपुर के संबंध में।

सन्दर्भः– आपका पत्र क्र0 पुअ/दुर्ग/एसटी/01/वि.जा./06/08 दिनांक 27.02.2009।

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कृपया उपरोक्त विषयक संदर्भित पत्र का अवलोकन करने का कष्ट करें, जिसके माध्यम से विषयांकित विभागीय जांच आगामी कार्यवाही हेतु इस कार्यालय को भेजी गई। विभागीय जांच नस्ती का अवलोकन करने पर पाया गया कि जांच अधिकारी ने अपने निष्कलंक आरोपियों पर लगाए गए उक्त आरोपों को अप्रमाणित होना पाया है। नस्ती में उपलब्ध साक्ष्यों एवं दस्तावेजों का अवलोकन करने के उपरान्त मैं जांच अधिकारी के निष्कर्ष से सहमत नहीं हूं। जांच अधिकारी द्वारा जांच के क्रम में निम्नानुसार त्रुटियां की गई हैंः–

1–प्रमुख अभियोजन साक्षियों चन्द्रकान्त, कृष्णा प्रसाद, पूर्णानन्द एवं ऐतराम साहू ने विभागीय जांच के दौरान दिए गए कथनों में प्रारम्भिक जांच के कथनों से मुकरते हुए आरोपियों को रिश्वत देने के तथ्य से इन्कार किया है। ऐसी स्थिति में इन अभियोजन साक्षियों को पक्ष विरोधी घोषित कर जांच अधिकारी को इनसे प्रतिपरीक्षण कर दोनों बयानों में आए विरोधाभास के संबंध

में वस्तुस्थिति स्पष्ट कराना चाहिए था।

2– रिश्वत की रकम रायपुर निवासी रामानन्द मिश्रा से उधार प्राप्त किया गया, जिसे इसने प्रारम्भिक जांच में दिए अपने कथन में स्वीकार किया है तथा इसे अभियोजन साक्षियों की सूची में भी रखा गया था। इस साक्षी का कथन जांच अधिकारी द्वारा विभागीय जांच के दौरान नहीं लिया गया है। जबकि यह महत्वूपर्ण साक्षी है। इस गवाह का कथन न लेने का कोई यथोचित कारण भी जांच अधिकारी द्वारा आदेश पत्र में लेख नहीं किया गया है।

3– अभियोजन प्रदर्श क्र0 2, 3, 4 एवं 5 अभियोजन साक्षी क्र0 11 प्र0आ0 सुरेन्द्र सिंह द्वारा सिद्ध किया गया है। जबकि जांच अधिकारी द्वारा इसे दस्तावेजों में अभियोजन साक्षी क्र0 12 द्वारा सिद्ध किया जाना अंकित किया गया है।

4– जांच अधिकारी ने अभियोजन साक्ष्य की समाप्ति के उपरान्त आरोपियों के परीक्षण नहीं किया है। हालांकि जांच अधिकारी ने उपपत्ति के पृष्ठ क्र0–36 के पैरा क्र0–02 का अपचारी परीक्षण किया जाना लेख किया है। किन्तु नस्ती में अपचारी परीक्षण उपलब्ध नहीं है। आदेशपत्र में भी अपचारी परीक्षण किए जाने का उल्लेख नहीं है। आदेश पत्र में दिनांक 13.01.2009 को अन्तिम अभियोजन साक्षी का कथन लेने के उपरान्त दिनांक 20.01.2009 को दोनों आरोपियों द्वारा लिखित जवाब पेश करने का उल्लेख है। इसके बाद दिनांक 31.01.2009 को उपपत्ति तैयार करने का उल्लेख है। जिससे स्पष्ट है कि जांच अधिकारी द्वारा आरोपियों का परीक्षण नहीं किया गया है। जबकि यह विभागीय जांच में नैसर्गिक न्याय की दृष्टि से अत्यन्त आवश्यक है। आरोपियों का परीक्षण न कर उन्हें बचाव के युक्तियुक्त अवसर से वंचित किया गया है।

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5– उपपत्ति विधिवत् तैयार नहीं की गई है। नियमानुसार प्रत्येक आरोपों के संबंध में साक्ष्यों का पृथक–पृथक विश्लेषण करते हुए निष्कर्ष लेख किया जाना चाहिए, किन्तु जांच अधिकारी ने एक साथ साक्ष्यों का विश्लेषण कर अपना निष्कर्ष लेख किया है।

चूंकि विभागीय जांच नियमों के तहत् विधिवत् नहीं की गई है। अतएव विभागीय जांच अभियोजन साक्ष्य की स्टेज पर रिमाण्ड की जाती है। श्री एम0एल0 कोटवानी, अति0 पुलिस अधीक्षक, नगर जिला दुर्ग को जांच अधिकारी नियुक्त कर 01 माह के भीतर उनसे उपपत्ति प्राप्त कर नस्ती आगामी कार्यवाही हेतु पुनः उपलब्ध करावे।

जांच अधिकारी द्वारा विभागीय जांच प्रक्रिया संबंधी गम्भीर लापरवाही बरती गई विभागीय जांच नस्ती में दस्तावेजों को भी व्यवस्थित क्रम

में नहीं रखा गया है। नस्ती वरिष्ठ कार्यालय को प्रेषित करते समय आपके कार्यालय के स्तर पर भी इस ओर ध्यान नहीं दिया गया है। कृपया भविष्य में इसका ध्यान रखें। उपरोक्त त्रुटियों के संबंध में जांच अधिकारी से स्पष्टीकरण लेकर अपने अभिमत के साथ उपलब्ध कराने का कष्ट करें।

संलग्नः– नस्ती अ–213 पन्ने
नस्ती ब–78 पन्ने

सही/–
(मुकेश गुप्ता)
पुलिस महानिरीक्षक
दुर्ग रेंज, दुर्ग

12. By the aforesaid order, the Inspector General of Police, Durg Range, Durg, remanded the matter at the stage of prosecution evidence and appointed Mr. M.L. Kotwani, Additional Superintendent of Police (City), Durg, as inquiry officer for enquiry and granted one month time. After conducting second enquiry, Mr. Kotwani submitted his enquiry report and this time, both the charges were found proved against the petitioners and they were granted punishment of stoppage of two increments with cumulative effect which is admittedly major penalty. As such, stoppage of two increments with cumulative effect amounts to major penalty in view of the decision of the Supreme Court in the matter of **Kulwant Singh Gill v. State of Punjab**[4].

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13. The question for consideration would be, whether the Inspector General of Police is justified in ordering / remanding for second enquiry on 20-11-2009 by appointing a new enquiry officer Mr. M.L. Kotwani, in view of the fact that in first enquiry dated 31-1-2009, Mr. N.S. Bais, Sub-Divisional Officer (Police), Bemetara, has not found the charges proved against the petitioners?

14. At this stage, it would be appropriate to notice Rule 15(1) of the Rules of 1966. Rule 15 of the Rules of 1966 which provides for action on the inquiry report. Sub-rule (1) of Rule 15 states as under: -

4 1991 Supp (1) SCC 504

> "**15. Action on the inquiry report**.—(1) The disciplinary authority if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14 as far as may be."

15. In **K.R. Deb** (supra), their Lordships of the Supreme Court (Constitution Bench) have considered the identical issue with reference to Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 and held that the disciplinary authority has no power to set aside the previous enquiry, as there is no provision in Rule 15 of the said Rules of 1957, and observed as under: -

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> "12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.
>
> 13. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant."

16. In the matter of **Kanailal Bera v. Union of India and others**[5], the Supreme Court while following the principle of law laid down in **K.R. Deb** (supra), held that once a disciplinary proceeding has been

5 (2007) 11 SCC 517

initiated, the same must be brought to its logical end, meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not.

17. The principle of law laid down in **K.R. Deb** (supra) was further followed with approval by the Supreme Court in **Vijay Shankar Pandey** (supra) in which it was held as under: -

> "24. Be that as it may, the question is whether the disciplinary authority could have resorted to such a practice of abandoning the enquiry already undertaken and resort to appointment of a fresh enquiring authority (multi-member)? The issue is not really whether the enquiring authority should be a single member or a multi-member body, but whether a second inquiry such as the one under challenge is permissible. A Constitution Bench of this Court in *K.R. Deb v. CCE*, (1971) 2 SCC 102, examined the question in the context of Rule 15(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was a case where an enquiry was ordered against a Sub-Inspector, Central Excise (the appellant before this Court). The inquiry officer held that the charge was not proved. Thereafter the disciplinary authority appointed another inquiry officer "to conduct a supplementary open inquiry". Such supplementary inquiry was conducted and a report that there was "no conclusive proof" to "establish the charge" was made. Not satisfied, the disciplinary authority thought it fit that "another inquiry officer should be appointed to inquire afresh into the charge"."

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18. Reverting to the facts of the case in the light of the aforesaid principle of law laid down by their Lordships of the Supreme Court in **K.R. Deb** (supra) followed in **Vijay Shankar Pandey** (supra) and **Kanailal Bera** (supra), it is quite vivid that first enquiry officer Mr. N.S. Bais had already conducted enquiry in accordance with the rules on the charges so framed against the petitioners and submitted report on 31-1-2009 finding therein that the charges are not proved against the petitioners which the Inspector General of Police, Durg Range, Durg considered and found that the enquiry report is not in accordance with

the rules and noticed five major discrepancies in the said report which have been reproduced herein-above and remanded the matter at the prosecution stage by appointing a new enquiry officer Mr. M.L. Kotwani, Additional Superintendent of Police (City), Durg.

19. Rule 15(1) of the Rules of 1966, on submission of enquiry report, empowers the disciplinary authority for reasons to be recorded by it in writing, to remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Rule 14 as far as may be. Rule 15(2) empowers the disciplinary authority, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidence on record is sufficient for the purpose. By virtue of Rule 15(3), if the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Rule 10 should be imposed on the Government servants, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty but in doing so it shall record reasons in writing.

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20. As such, on submission of report by the enquiry officer, the course open to the disciplinary authority was either to remit for further enquiry under Rule 15(1) of the Rules of 1966 or if the disciplinary authority disagrees with the findings of the enquiry officer, then as provided under Rule 15(2), he shall record its reasons for such disagreement and record its own finding on such charges, if the evidence on record is sufficient for the purpose. But in no case, the disciplinary authority can direct for fresh enquiry at the stage of prosecution evidence by appointing a new enquiry officer which the Constitution Bench of the

Supreme Court has held in **K.R. Deb** (supra) and followed in **Vijay Shankar Pandey** (supra), that too in absence of enabling provision in the Rules of 1966.

21. The order of the Inspector General of Police merely directing remitting of disciplinary enquiry at the stage of prosecution evidence cannot be said to be exercise of power under Rule 15 (1) of the Rules of 1966. It is a pure and simple case of fresh enquiry after brushing aside the enquiry already made by the earlier enquiry officer and report submitted by the said officer vide Annexure P-8 dated 31-1-2009. The intention of the Inspector General of Police while ordering fresh enquiry is quite clear from the fact that new enquiry officer Mr. M.L. Kotwani, Additional Superintendent of Police (City), Durg was appointed as new enquiry officer to which the rule does not permit and clearly prohibits. Rule 15(1) of the Rules of 1966 only empowers for remitting the matter for further enquiry according to the provisions of Rule 14 as far as may be and that too original enquiry report will have to be there and only further enquiry has to be made. As such, the Inspector General of Police has committed grave legal error in ordering fresh enquiry though in terms of remitting the matter by appointing new enquiry officer, but in sum and substance, it is a case of ordering fresh enquiry by appointing new enquiry officer which Rule 15(1) of the Rules of 1966 clearly prohibits and bars, and there is no provision in the Rules of 1966 providing for such a fresh enquiry.

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22. Therefore, the punishment of stoppage of two increments with cumulative effect could not have been imposed upon the petitioners by the Inspector General of Police and it could not have been confirmed by the appellate authority. Accordingly, the order dated 5-6-2010 in case of K.M. Mishra, the order dated 1-7-2010 in case of

Subhash Borkar and the appellate order dated 28-5-2011 are hereby quashed.

23. The writ petitions are allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3792 of 2011

K.M. Mishra

Versus

State of Chhattisgarh and others

AND

Writ Petition (S) No.3793 of 2011

Subhash Borkar

Versus

State of Chhattisgarh and others

Head Note

Second disciplinary proceeding on same set of allegation is not permissible in absence of enabling provision in rule.

नियम के सामर्थ्यकारी उपबंध के अभाव में, उन्हीं आरोपों के आधार पर, द्वितीय अनुशासनिक कार्यवाही अनुज्ञेय नहीं है।

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