4 30.04.2015 Syed Hikmat Shah, Advocate on behalf of counsel for the petitioner and Mr. Muhammad Iqbal, SDO alongwith Addl: A.G and Sr.GP for respondents present. Submitted copy of letter dated 24.3.2015 (placed on record of Execution Petition No. 10/2015) according to which the appellate authority has rejected appeal of the petitioner. According to Addl: A.G and Sr.GP the execution petition has become infructuous. Junior counsel appearing on behalf of counsel for the petitioner requested for adjournment. To come up for further proceedings on 8.6.2015 before S.B.

Chairman

5 08.06.2015 Counsel for the petitioner and Mr. Muhammad Arif, SDO alongwith M/S Kabirullah Khattak, Assistant A.G and Usman Ghani, Sr. GP for respondents present. Arguments heard and record perused.

According to the judgment of this Tribunal dated 19.2.2015 service appeal of the petitioner was treated as departmental appeal with the direction to the appellate authority to decide the same within a period of one month. According to notification dated 24.3.2015 the appellate authority has rejected the said service appeal treated as departmental appeal regarding which the petitioner has already preferred another service appeal before this Tribunal.

In view of the above, the petition has become infructuous and disposed of accordingly. File be consigned to the record.

ANNOUNCED
08.06.2015

Chairman
08.06.15

FORM OF ORDER SHEET

Court of _____

Execution Petition No. **11/2015**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26/03/2015	The Execution Petition submitted by Mr. Hussain Khan through Mr. Asad Jan Advocate, may be entered in the relevant Register and put up to the Court for proper order please. REGISTRAR This Execution Petition be put up before Bench I ST on 31.03.15 CHAIRMAN
3	31.03.2015	Counsel for the petitioner present. Notice be issued to the respondents for implementation report on 30.4.2015. Chairman

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Execution Petition No. 11/2015

Hussain Khan

VERSUS

SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK AND OTHERS.

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4.	Wakalat nama.		17.

Petitioner

ASAD JAN (Advocate)

Supreme Court of Pakistan

OFFICE: ROOM NO. 211 AL-MUMTAZ HOTEL HASHTNAGRI PESHAWAR.

(1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Execution Petition No. 11/2015

Hussain Khan S/O Raj Wali R/O Amankot District, Nowshehra.

---------- **Petitioner**

VERSUS

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
3. ASSISTANT DIRECTOR, 1V PBMC C&W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
4. SECRETARY C&W KHYBER PAKHTOON KHWA PESHAWAR
5. SHAMS .UZ. ZAMAN EX- SUPERINTENDENT ENGINEER.PBMC C&W PESHAWAR PRESENTLY POSTED AS DIRECTOR (TECH).EQAA ABBOTTABAD.

.....**RESPONDENTS**

IMPLEMENTATION OF ORDER DATED 19/02/2015 PASSED BY THIS HONORABLE COURT TO THE EFFECT BY TREATING THE PETITIONER`S APPEAL TITLED "RAEES KHAN VS SUPERINTENDENT ENGINEER PBMC C&W DEPARTMENT, PESHAWAR & OTHERS" DECIDED ON 19/02/2015 AS ACCEPTED AND TO ALLOW PETITIONER TO DUTIES AND TO FURTHER DIRECT TO PAY ALL THE SALARIES TO THE PETITIONER WITH BACK BENEFIT.

Respectfully sheweth,

1. That the petitioner is law abiding citizen of Pakistan.

(2)

2. That the petitioner/appellant was appointed in the respondent's establishment and were performing his duties with full diligent and devotion since from the date of his arrival, but the respondents were not paying his monthly salaries to the petitioner with out any cogent reasons, therefore appellant has instituted appeal before the service tribunal KPK.

(Copy of the appeal is annexed as annexure "A")

3. That vide order dated 19/02/2015 this Honorable Tribunal decided the petitioner`s appeal the concluding Para of which is as under:

"Hence, while concluding this discussion, it is the considered opinion of the tribunal to treat these appeals as departmental appeals and to remit the cases to appellant authority who is directed to decide the appeal within one month of its receipt failing of which these appeals shall be deemed to have been accepted by this tribunal"

(Copy of the order dated 19/02/2015 is annexed as annexure "B")

4. That despite of the clear cut direction of this honorable tribunal which was passed in the presence of Mr. Usman Ghani Sr. GP with Muhammad Arif, SDO for the official respondents, the respondent failed to decide the departmental appeal within stipulated period, moreover if the respondent produce any order passed in the back dated the same will viod Abi nitio and ineffective upon the rights of the petitioner.

5. That keeping in view the above facts and circumstances the petitioner`s appeal have been deemed as accepted.

(3)

6. That there exist no legal bar on the acceptance of this petition rather the same is in the interest of justice.

It is therefore requested that the instant petition may kindly be allowed as prayed for in the heading of instant petition with further direction to respondent to allow the petitioner to duties and to pay them all the salaries with arrears and back benefit.

Petitioner

Through

ASAD JAN (Advocate)

Supreme Court of Pakistan)

Dated: /03/2015

Affidavit

Declared on oath that all the contents of this petition are true and correct and nothing has been concealed from this honorable court.

Deponent

ATTESTED

Oath Commissioner
24.03.2015
Peshawar

(4) (5) Annexure 'A'

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

S.A. NO..... /2014

HUSSAIN KHAN S/O RAJ WALI R/O VILLAGE AMANKOT DISTRIC NOWSHERA.

.....APPPELLANT

VERSUS

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
3. ASSISTANT DIRECTOR, IV PBMC C&W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
4. SECRETARY C&W KHYBER PAKHTOON KHWA PESHAWAR
5. SHAMS .UZ. ZAMAN EX- SUPERINTENDENT ENGINEER.PBMC C&W PESHAWAR PRESENTLY POSTED AS DIRECTOR (TECH).EQAA ABBOTTABAD.

.....RESPONDENTS

APPEAL U/ S 4 OF THE SERVICE TRIBUNAL ACT, 1974 WHEREBY MONTHLY SELARIES OF APPELLANT WERE WITHHELD SINCE APPOINTMENT AND ARRIVAL REPORT FOR DUTY TILL DATE FOR NO LEGAL REASON AND THAT THE REPRESENTATION/DEPARTMENTAL APPEAL FILED AGAINST WAS NOT HONOURED.

ATTESTED

ASAD JAN
(Advocate High Court)
E-CI/JMIO

Reply to Preliminary objections.

1. That the appellant is law abiding citizen of Pakistan.

(5) (5)

2. That the appellant was appointed in the respondents establishment on post of Cooly (BPS-01) vide order dated Peshawar the, 14-01-2013 passed by respondent no-5 and is house hold staff after approval by the D.S.C. in the meeting held on 14-01-2013.

3. That the appellant accordingly carried out his medical from Service Hospital Peshawar.

(Copy of the medical report is annexed)

4. That the appellant has there after made arrival report on 16-01-2013.

5. That appellant furnished service book with medical certificate along with arrival report which were duly entered and certified by the Superintending Engineer and Executive Engineer.

(Copies of the appointment letters and arrival report and service book are annexed here with)

6. That the appellant performing his duties with full diligent and devotion since from the date of his arrival, but the respondents were not paying his monthly salaries to the appellant with out any cogent reasons, therefore appellant has instituted a writ petition before Peshawar high court Peshawar, however the respondent due to institution of the writ petition have become biased and even started not allowing appellant and his others colleagues to duties and created problems in this regard due to malafide reasons and at the time of arguments their lord ships were of the view that pay being falls within terms and condition of service therefore to withdraw the writ petition and to move the service tribunal KPK, hence the writ petition was withdrawn with permission to move the proper forum which was not objected by learned A.A.G.

(Copy of the writ petition and order dated 27-01-2014

ATTESTED

ASAD JAN
Advocate High Court
X-C/JMIC

is annexed)

7. That the appellant has also approached the respondent no.5 for the release/payment of his salaries but nothing has been paid, despite the legal rights of the appellant

(Copy of the appeal/ representation is annexed)

8. That due to above mentioned appellant prefer this appeal on the following grounds amongst others:

GROUNDS

1. That due to non payment of the salaries, appellant has not been treated in accordance with law, and his right secured and guaranteed under the law have been violated by not releasing his salaries and issuance of appointment letter have created valuable right in favour of appellant and those rights can not be taken away in the manner respondents are adopting.

2. That the discrimination as observed by the respondents with appellant is highly deplorable and condemnable, being unlawful, unconstitutional, without authority, without jurisdiction, against the norms of natural justice and equity and against the law on subject, hence liable to declared as such.

3. That respondent are not acting in accordance with law and are taking illegal acts with ulterior motive and malafide intention by not releasing appellants salaries which are stopped without any cogent reason since date of appointment / arrival report.

ASAD JAN
(Advocate High Court)
K-CJ/JMIC

4. That the appellant was recommended for appointment as per D.S.C. held on 14-01-2013 but are not being paid salaries though to three officials namely (i). Said

(7) (8)

Rasan (ii). Waqar Ul. Islam (iii). Riaz Khan mentioned in the same D.S.C. were later on paid and even fresh appointment made of one Noor Akbar S/O Haji Akbar R/O village Akazai Tehkal Bala Peshawar on recommendation of D.S.C. held on 28-06-2013 in the same manner of appointment as of appellant was also made payment of salaries but appellant is treated discriminately which is not permissible under the law **(Copy of the DSC dated 14-01-2013 and dated 28-06-2013 along with appointment of Noor Akbar are annexed)**

5. That appellant is entitled for the receipt of his salaries and the act of respondent by not paying the same is against the law and rules and as such the respondents are under the legal obligation to pay salaries to appellant as per the appellant appointment order.

6. That the act of respondents by not allowing appellant to his duties due to institution of writ petition for salaries and others legal rights are based on malafide and illegal because demand of salary/ pay is a legal right.

7. That others grounds will be raised at the time of arguments.

It is therefore requested that on acceptance of instant appeal, the respondent be directed to pay the withheld salaries since arrival report for duty till date and onward and not to create illegal hurdle in the way of performance of duties as well as to restrain respondents from taking any discriminatory action against appellant with such other relief as may be deemed proper and just in circumstances of the case.

Appellant

ATTESTED

D JAN
Advocate High Court
X-CJ/JMIC

(8) (9)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

HUSSAIN KHAN

VERSUS

SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK AND OTHERS.

PETITION FOR GRANT OF INTERIM RELIEF IN FAVOUR OF THE PETITIONER AGAINST RESPONDENTS TO THE EFFECT THAT THE RESPONDENTS BE RESTRAINED FRON RESTRAINING OR CREATING HURDLE IN THE PERFORMANCE OFFICIAL DUTIES OF THE PETITIONER TILL FINAL DECISION OF THE APPEAL. ---

---

Reply to Preliminary objections.

1. That the above titled service appeal is pending adjudication in this honorable court.
2. That the petitioner performing his duties with full diligent and devotion since from the date of his arrival but the respondents were not paying his monthly salaries to the petitioner, since from his appointment and till Hence, the petitioner has filed the writ petition before Peshawar high court Peshawar.
3. That the respondents now due to the filing of the above titled writ petition creating hurdle for the petitioner and not allowing him to perform his duty.
4. That the due to appointment order, copies of the appointment letters and medical report as well as arrival report and service book the petitioner is got prima facie case, balance of convenience also lies in favour of the

ATTESTED

ASAD JAN
(Advocate High Court)
K-C/JMC

petitioner, more over if the instant petition is not accepted the petitioner will irreparable loss.

5. That there is no legal bar on the acceptance of this petition rather the same is in the interest of justice.
6. That the act of respondents by not allowing appellant to his duties due to institution of writ petition for salaries and others legal rights are based on malafide and illegal because demand of salary/ pay is a legal right.
7. That others grounds will be raised at the time of arguments.

It is therefore requested that on acceptance of instant petition relief in favour of the petitioner against respondents to the effect that the respondents may kindly be restrained from restraining or creating hurdle in the performance of official duties of petitioner till the decision of this appeal in the interest of justice and other relief for which the petitioner entitled may also be granted.

Petitioner

Through

ASAD JAN (advocate high court Peshawar)

Dated: /02/2014

AFFIDAVIT

As per instruction of my clients I, Asad Jan advocate (Peshawar high court) do hereby solemnly affirm and declare that the contents of this petition are true and correct to the best of my knowledge and belief and that nothing has been concealed or kept secret from this Hon, able court.

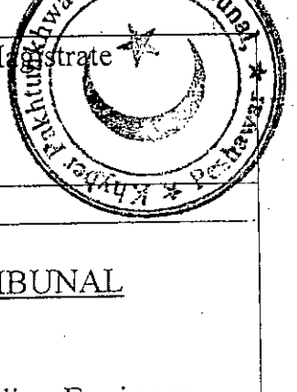
ATTESTED

DEPONENT

ASAD JAN
(Advocate High Court)
E-CI/IMIC

Annexure 'B'

(10)



Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3

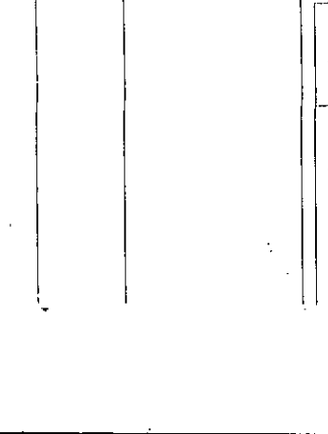
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 183/2014,
Muhammad Alamgir Khan Versus Superintending Engineer,
PBMC, C&W Department, Peshawar & 4 others.

19.02.2015

PIR BAKHSH SHAH, MEMBER.- Appellant with his counsel (Mr. Asad Jan, Advocate), Mr. Usman Ghani, Sr.GP with Muhammad Arif, SDO for the official respondents and private respondent No. 5 with his counsel (Mr. Muhammad Asif Yousafzai, Advocate) present.

2. Summarizing facts of the case are that on the recommendations dated 14.01.2013 of the Departmental Selection Committee, appointment letters were issued to the appellants, by respondent No. 5, Shams-uz-Zaman, Ex-Superintending Engineer, PBMC, C&W Department, Peshawar, presently posted as Director (Tech) EQAA, Abbottabad, The appellants - as following - with their separate appeals, are 20 in numbers and as common issue of payment of salary is involved, therefore, all these appeals are proposed to be disposed off jointly by this single judgment:-



Sr. No	Appeal No.	Name	Designation	BPS	Date of appointment
1.	183/2014	M. Alamgir Khan	W.Supdt.	09	16.01.2013
2.	184/2014	Hussain Khan	Cooly	01	14.01.2013
3.	185/2014	Khurram Shehzad	Electrician	04	18.01.2013
4.	186/2014	Wareedullah	Pipe Fitter	04	23.01.2013

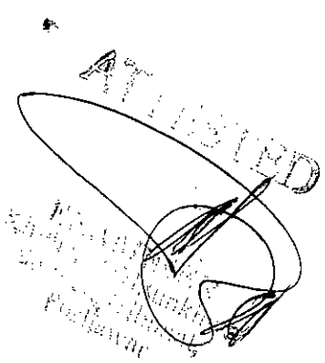
6.	188/2014	Muhammad Ismail	Electrician	02	28.01.2013
7.	189/2014	Sajid Khan	Electrician	05	23.01.2013
8.	190/2014	M.Tahir Hussain Shah	Suptdt.	09	16.01.2013
9.	217/2014	Yasir Mubarak	Cooly	01	14.01.2013
10.	218/2014	Hasan Dad	Pipe Fitter	04	23.01.2013
11.	219/2014	Muzzaffar	M.Sweeper	01	15.01.2013
12	220/2014	Muhammad Imran	Pipe Fitter	04	18.01.2013
13.	221/2014	Muhammad Tanveer	Mistri	06	14.01.2013
14.	222/2014	Ruhullah	Work Mistri	06	24.01.2013
15.	223/2014	Raees Khan	Carpenter	06	28.01.2013
16	249/2014	Asfandyar	Skilled Cooli	02	17.01.2013
17.	250/2014	Aftab	Mali	02	17.01.2013
18.	251/2014	Shahabuddin	Chowkidar	01	15.01.2013
19.	759/2014	Asad Ali	Mali	02	17.01.2013
20	760/2014	Naveed ur Rahman	Khansama	04	28.01.2013

Appellants claim per their appeal that they submitted arrival reports, after formality of being medically examined and so much so that necessary entries in their service books have also been made. They further claim that they were performing their duties from the date of their arrival but the respondent-department has denied to them their salary on which they knocked at the door of the Hon'ble Peshawar High Court in Writ Petition No. 1301-P/2013. The Hon'ble Peshawar High Court vide its order dated 27.01.2014, dismissed the Writ Petition being not pressed but observed that the petitioners are at liberty to approach the proper forum for redressal of their grievances in accordance with the law. Hence these separate service appeals have been filed before this Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of instant appeal, the respondent be directed to pay the [illegible] duty till date and onward

and not to create illegal hurdle in the way of performance of duties as well as to restrain respondents from taking any discriminatory action against the appellant. . The record further reveals that this Bench, then presided by our learned predecessors passed order dated 16.04.2014 under which the respondent department was directed to allow the appellants to perform duties and to start paying them their monthly salary provisionally. Feeling aggrieved from this order, the respondent department filed Civil Petitions No. 517-P to 534-P/2014 before the august Supreme Court of Pakistan. The august Apex Court was pleased to pass the following order on 16.10.2014:-

> "From the nature of the lis and also from the order, under question, we are not inclined to interfere in the interim order, passed by the learned Service Tribunal. However, we direct the Registrar of the learned Service Tribunal to fix these cases, if not yet fixed, in the week commencing 3rd November, 2014 and the learned Tribunal is directed to decide all these cases within a week thereof. Disposed of accordingly."

On 16.02.2015, we the undersigned became seized of the appeals for the first time.



3. The record shows that respondent No. 5 has been transferred from his erstwhile post long ago and he has been made respondent in his private capacity. He however, owns that appointment orders to have been issued by him. On the other hand the respondent department per their written reply have termed these appointments illegal, to be shorn of the required criteria of domicile and reserved quota, that those were made in violation of the rules and void ab-initio.

4. We have heard the learned counsel for the appellant, Mr. Usman Ghani, Sr.GP for the official respondents and private counsel for respondent No. 5 at length, and perused the record with their assistance.

5. The learned counsel for the appellant contended that the appellants are civil servants, duly appointed by the appointing authority (respondent No.5) after fulfilment of all the codal formalities. The appellants have also submitted their arrival reports after their medical examination but due to change of the incumbents in the office of respondent No. 5, the department-respondent is neither letting the appellants to perform their duties nor paying them their salary. The arguments of the learned counsel for the appellant were further augmented by the learned counsel for private respondent No. 5 that for filing an appeal before this Tribunal, the impugned order in writing was not essential. Reliance placed on PLD 1991 (SC)226.

6. The learned Addl. Advocate General and Senior Government Pleader vehemently resisted these appeals. Their contention is that this Tribunal under Section 4 r/w Section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 lacks jurisdiction because there is neither any original order nor any final order against which the appeals should have been filed. On merits, it was submitted that the appointment orders are totally illegal, void ab-initio, do not fulfil the required criteria and qualifications. In this respect it was

Rule 10 (4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 but it has been found in enquiry conducted by Engr. Shahid Hussain that the appointees were not sons of the deceased employees; that some of the appointment orders have been shown issued in hurry on the very date on which the Departmental Selection Committee took its meeting; that some of the appointees as prescribed in Rule 12 (3) of the rules ibid have not been appointed from the respective districts. It was also submitted that the relevant record like arrival report etc. were also not found in the office and further that notice thereof was also taken by the Audit Party. They also contended that the appeal is time barred and finally prayed that all the appeals may be dismissed.

7. We have considered submissions of the parties and have thoroughly gone through the record. This is not disputed by the respondent department that at the relevant time respondent No. 5 was the competent appointing authority for the disputed appointments. Respondent No. 5 has openly conceded that he had made the appointments and has further taken plea that after fulfilment of all the codal formalities the appointments were made. In defence of appointments, he referred to corrigendum dated 08.02.2013 issued to rectify mistakes in the original appointment orders pertaining to quoting rule 10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in the appointment orders. This is also very important aspect of the matter that so far these appointment orders have not been cancelled by the

respondent-department. The issue pertains to the payment/non-payment of salary to the appellants, therefore, in the light of the above factual position on record, we are led to prima-facie opine that the appellants qualify to attract jurisdiction of this Tribunal. Hence jurisdiction is assumed.

8. On record, there is enquiry report conducted by Engr. Shahid Hussain and being important we are also inclined to reproduce its final conclusion at para-5 which is follows:-

> "In the light of the findings/Conclusion, detailed above, it is found that not only the prevailing rule 10 & 12 of Appointment, Promotion & Transfer Rules-1989 as well as merit list of employee sons were not followed but also numerous lapses mentioned above are observed in whole process, hence the aforesaid appointment can not be termed as legal."

This being so, this is also noticeable that the appellants have not made the present incumbent/competent authority as respondent. On the other hand the department-respondent has its objection on making Mr. Shamsuz Zaman, then appointing authority as respondent No. 5 in which respect it was also submitted that departmental proceedings on the basis of these disputed appointments had also been initiated against him. It is our considered opinion that the factual position of arrival report, charge assumption reports and performance of duty really pertains to the office of the respondent department and a person cannot be held to be entitled to salary merely on the basis of the appointment orders and that which is also disputed by the department to be legal. Unfortunately, the said appointing/competent authority has not been

made respondent who would have assisted the Tribunal on these factual position because the facts mentioned above has a very close connection with the payment/non-payment of salaries to the appellants. For the above said reasons, the Tribunal feels itself in vacuum and perceive a disconnect between the disputed appointment orders and payment of salary on its basis. On record, it was also not shown that departmental appeal had been moved by the appellant before the competent appellate authority next above the appointing authority as contemplated in Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, much less that the outcome of such appeal would have come before the Tribunal. Hence, while concluding this discussion, it is the considered opinion of the Tribunal to treat these appeals as departmental appeals and to remit the cases to the appellate authority who is directed to decide the appeals within one month of its receipt failing which these appeals shall be deemed to have been accepted by this Tribunal. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
19.02.2015

Sd/- Pir Bakhsh Shah, Member
Sd/- Abdul Latif, Member

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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