

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

I.C.A. No.188 of 2015  
Ch. Mohammad Nawaz and another  
**Versus**

The Federal Government Employees Housing Foundation and  
others

**Date of Hearing:** 19.06.2017  
**Appellants by:** Mr. Taimoor Aslam Khan, Advocate  
**Respondents by:** Mr. Javaid Iqbal Wains, Advocate for  
respondents No.1 to 3,  
Mr. Tariq Mehmood Mirza, Advocate for  
respondent No.5.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant intra court appeal, the appellants, Chaudhry Mohammad Nawaz, and his son, Chaudhry Muhammad Rizwan, impugn the order dated 08.04.2015, passed by the learned Single Judge-in-Chambers, whereby the appellants' writ petition No.3763/2013, was disposed of with the direction to respondent No.1 (Federal Government Employees Housing Foundation) to abide by their commitment regarding allotment of category-II plot to the appellants on availability.

2. Learned counsel for the appellants submitted that the impugned order is not in accordance with the law; that appellant No.1 retired on 14.05.1996 after attaining the age of superannuation; that at the time of his retirement, appellant No.1 was serving as Project Manager (BPS-20) in WAPDA; that appellant No.1 applied to respondent No.1 for the allotment of category-I plot (600 square yards) in Phase-III of respondent No.1's Housing Scheme at Sector G-13, Islamabad; that in his application form, appellant No.1 represented that he was holding BPS-20 position on regular basis and not by move over; that appellant No.1 submitted an affidavit deposing therein that he or any of his family members do not have a plot or house in Islamabad; that on 02.09.1999, respondent No.1 provisionally offered allotment of a plot in Phase-III, Sector G-13, Islamabad to appellant No.1; that on 22.04.2002, appellant No.1 was allotted plot No.34, Street No.49, Sector G-13/2, Islamabad measuring

500 square yards; that vide letter dated 12.09.2006, respondent No.1 called upon appellant No.1 to clear the outstanding dues amounting to Rs.1,94,678/-; that the said amount was deposited by appellant No.1 through pay order dated 12.09.2006; that on 24.06.2013, appellant No.1 transferred the said plot to his son i.e. appellant No.2; that after a period of more than eleven years after the allotment of the said plot, respondent No.1, vide letter dated 09.09.2013, cancelled the said allotment on the ground that appellant No.1 was a regular BPS-19 officer on the cut off date of the scheme i.e. 01.04.1996; that the transfer of the said plot in favour of appellant No.2 was also cancelled by respondent No.1; and that aggrieved by the cancellation of the allotment of the said plot, the appellants, on 01.10.2013, filed W.P.No.3763/2013 before this Court; and that vide the impugned order dated 08.04.2015, the said writ petition was dismissed.

3. Learned counsel for the appellants further submitted that allotment of the said plot in the appellants' favour was cancelled by respondent No.1 without issuing a show cause notice and without affording an opportunity of hearing to the appellants; that the appellants had not made any misdeclaration in the application form for the allotment of a category-I plot; that respondent No.1 cancelled the allotment only so as to allot the plot to the petitioner in W.P.No.753/2012; that respondent No.1 allotted the appellants' plot to the petitioner in W.P.No.753/2012 before cancelling the allotment from the appellants' names; and that respondent No.1 could have allotted some other plot to the petitioner in writ petition No. 753/2012 instead of cancelling the allotment from the appellants' names. Learned counsel for the appellants prayed for the appeal to be allowed and for respondent No.1's impugned letter dated 09.09.2013 to be set aside.

4. On the other hand, learned counsel for respondents No.1 to 3 submitted that appellant No.1 in his application form for a category-I plot had misrepresented that he was a regular BPS-20 officer; that in the verification process, it was confirmed by appellant No.1's employer that appellant No.1's original scale was BPS-19 and he was moved over to BPS-20; that a category-I

plot could not have been allotted to appellant No.1; that it was explicitly made clear to appellant No.1 that in case the information furnished by him turned out to be false, the allotment in his favour was liable to be cancelled; that as a gesture of good will, respondent No.1 had agreed to allot a category-II plot to appellant No.1 as and when the same became available; that the plot in question has been allotted on 05.11.2013 to Umar Khan Ali Sherzai on the orders passed by this Court in W.P. No.753/2012 titled "Umar Khan Ali Sherzai Vs. Secretary, Ministry of Housing and Works etc."; that in the brochure issued by respondent No.1, it was clearly mentioned that *"for the purpose of entitlement to a particular category, the basic pay scale of the post and not the move over scale will be considered"*, and that since appellant No.1 was a BPS-19 officer when he applied for the allotment of a plot, he was entitled to be allotted a plot in category-II, but not in category-I. Learned counsel for respondents No.1 to 3 prayed for the appeal to be dismissed.

5. Learned counsel for respondent No.5 submitted that the plot in question had finally been transferred in respondent No.5's favour during the pendency of the proceedings of this Court; that allotment letter dated 22.04.2015 had been issued in respondent No.5's favour; and that respondent No.5's valuable rights would be destroyed if the appellants' appeal was to succeed. Learned counsel for respondent No.5 prayed for the appeal to be dismissed.

6. We have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

7. It is not disputed that the brochure issued by respondent No.1 for Phase-III of the Housing Scheme located in Sector G-13, Islamabad, clearly provided that *"for the purpose of entitlement to a particular category, the basic pay scale of the post and not the move over scale will be considered"*. This brochure contained the terms and conditions on which allotment of plots could be made. Category-I plots measuring 60x90 feet could be allotted to applicants in BPS-20 to 22 or equivalent, whereas category-II

plots measuring 50x90 feet could be allotted to applicants in BPS-18 to 19 or equivalent.

8. Appellant No.1's application to respondent No.1 shows that he had applied for a category-I plot representing himself to be in BPS-20 on regular basis at the time of his retirement on 14.05.1996. Certificate dated 05.09.1996 from the Project Manager, WAPDA Construction Works Organization (Central), Lahore, shows that appellant No.1 was employed as Project Manager in BPS-20 until his retirement. On 02.09.1999, respondent No.1 issued a provisional allotment letter of a category-I plot in appellant No.1's favour. Respondent No.1 also informed appellant No.1 that the cost of the plot could be enhanced due to delay in the execution of the project caused by stay orders. On 22.04.2002, respondent No.1 allotted Plot No.34, Street No.49, Sector G-13/2, Islamabad, to appellant No.1. Vide letter dated 12.09.2006, respondent No.1 called upon appellant No.1 to pay his outstanding dues amounting to Rs.1,94,678/-. This amount was paid by appellant No.1 to respondent No.1 vide pay order No.1049668, dated 14.09.2006. The statement of account shows that appellant No.1 paid a total of Rs.9,69,303/- for the said plot. The said plot was gifted by appellant No.1 to his son Ch. Muhammad Rizwan (appellant No.2). On 24.06.2013, respondent No.1 transferred the said plot in favour of appellant No.2.

9. Vide letter dated 04.09.2013, WAPDA confirmed to respondent No.1 that appellant No.1 original pay scale was BPS-19 and was moved over to BPS-20. It was also confirmed that appellant No.1 retired from service on 14.05.1996 while serving as Superintendent Engineer. Vide letter dated 09.09.2013, respondent No.1 cancelled the allotment of the said plot from the appellants' names. The ground taken in the said letter dated 09.09.2013 for the cancellation of the allotment was that in view of WPADA's letter dated 04.09.2013, it had been "established" that appellant No.1 was holding a regular BPS-19 position when he applied for the allotment of a plot, and that since appellant No.1 was not a regular BPS-20 officer, he was not entitled to be allotted a category-I plot. Prior to cancelling the allotment from

the appellants' names, respondent No.1 had (on 05.09.2013) allotted the said plot to another allottee namely Umar Khan Ali Sherzai.

10. Writ petition No.753/2012 was instituted by Umar Khan Ali Sherzai against the Secretary, Ministry of Housing and Works and Director General, Federal Government Employees Housing Foundation ("F.G.E.H.F."), before this Court. Order dated 26.03.2012 passed by this Court shows that the petitioner in the said case had been denied allotment of a plot. Vide order dated 15.10.2012, this Court directed F.G.E.H.F. to allot a plot to the petitioner and produce allotment letter before the Court on 22.10.2012. In the order dated 22.10.2012, this Court observed that F.G.E.H.F. was bound to allot an alternative plot to the petitioner. On 25.10.2012, F.G.E.H.F. sought reasonable time to redress the petitioner's grievance. Vide order dated 14.06.2013, this Court directed the Director General, F.G.E.H.F. to appear in person on 19.06.2013. On 26.09.2013, the said writ petition was disposed of with the observation that a plot had been allotted to the petitioner in the said case.

11. As mentioned above, on 05.09.2013, respondent No.1 had allotted Plot No.34, Street No.49, Sector G-13/2, Islamabad, to the petitioner in writ petition No.753/2012. This was done even before cancelling the allotment of the said plot from the appellants' names. Respondent No.1 had issued the letter 09.09.2013 (cancelling the allotment of the said plot from the appellant's names), four days after allotting the said plot to the petitioner in W.P. No.753/2012.

12. Respondent No.1 before taking the extreme step of cancelling the allotment of the said plot from the appellants' names did not bother to give an opportunity of hearing to the appellants. Respondent No.1 neither issued a show cause notice to the appellants, nor associated them in the process of determining whether or not appellant No.1 was a BPS-20 officer on regular basis at the time of his retirement in 1996 or thereabouts. True, letter dated 04.09.2013 from WAPDA shows that appellant No.1's original scale was BPS-19 and he was

moved over to BPS-20, when he retired from service, but there was an earlier certificate from WAPDA which shows that appellant No.1 was a BPS-20 officer. The said letter dated 04.09.2013 shows that the same was issued in-continuation of letter dated 04.07.2013, which letter was not brought on record by respondent No.1. Respondent No.1's letter in response to which the said letter dated 04.09.2013 was sent has also not been brought on record. Respondent No.1 should have exercised caution and should have associated the appellants in the verification process before taking a drastic measure of cancelling the allotment of the said plot from their names.

13. Paragraph-8 of the brochure on which respondent No.1 heavily relies on, shows that applicants in BPS-18 to 19 are entitled to a category-II plots which measure 50x90 feet. Respondent No.1's allotment letter dated 22.04.2002 shows that he was allotted Plot No.34 which measures 50x90 feet. Although the said plot is said to be in category-I, respondent No.1 has not placed any material on record to show that the sizes of the plots of categories-I and II were changed. Respondent No.1 cancelled the allotment more than eleven years after it was made, and that also after receiving the full payment for the same from appellant No.1. Since respondent No.1 did not afford an opportunity of hearing to the appellants prior to cancellation of the allotment letter, we are of the view that this is a fit case for interference in the constitutional jurisdiction of this Court.

14. A move over is simply an extension in an employee's pay scale. It is well settled that a move over from one scale to another does not amount to a promotion, but it is awarded to an incumbent after reaching the maximum of his substantive scale. A move over cannot be equated with a promotion. It is a sort of a financial aid to an employee who otherwise fulfills all the qualification for a higher grade but cannot be promoted for want of a vacancy or a post. In the cases of Muhammad Rafique Vs. Management Director (WAPDA) (1995 SCMR 1549), and Tanvir Ahmad Vs. Chief Secretary, Government of Punjab (2004 SCMR 647), it has been *inter-alia* held that a move over should not be

considered as a promotion to a post in a higher pay scale. There is nothing preventing respondent No.1 to carry out a verification process to determine whether appellant No.1 was an employee in BPS-20 at WAPDA on the basis of promotion or move over when he applied for the allotment of a plot. In this process, the appellants have a right to be associated. Respondent No.1 could not have carried out this process behind the appellants' back.

15. In the case at hand, it cannot be held that it had been "established" that appellant No.1 was not an employee in BPS-20 at the time of his retirement or when he applied for the allotment of a plot. This is more so when the certificate dated 05.09.1996 issued by Project Manager, WAPDA Construction Works Organization (Central), Lahore, had not at any stage been withdrawn. Penalizing the appellants by cancelling the allotment of the said plot, without affording him an opportunity of hearing was procedurally improper and unreasonable. Respondent No.1 may have been under pressure to allot a plot to the petitioner in W.P.No.753/2012, because this Court had made a direction for an allotment of a plot, but that did not mean that an allotment to the petitioner in the said petition could be made by hastily cancelling the allotment from the appellants' names. Respondent No.1 could have allotted some other plot to the petitioner in W.P.No.753/2012. As observed earlier, the allotment of Plot No.34 was made to petitioner in W.P.No.753/2012 on 05.09.2013 i.e. four days before cancelling the allotment of plot No.34 from the names of the appellants. This bespeaks of a sorry state of affairs at respondent No.1, to say the very least. Respondent No.1's lack of *bona fides* is apparent from the fact that it has now been more than three years and a plot in category-II has not been allotted to appellant No.1. Appellant No.1 is almost 80 years old and respondent No.1 has held on to his money and also cancelled his plot.

16. It was well settled that if there is a violation of the principles of natural justice, the proceedings would be rendered *coram non judice* and the order would be void. Right of personal hearing to a person against whom an adverse order is to be made has been

equated with a fundamental right and an adverse order made without affording an opportunity of personal hearing is to be treated as a void order. If the principles of natural justice are violated in respect of any decision, it is immaterial whether the same decision would have been arrived at in the absence of departure from the essential principles of justice. Such a decision must be declared to be no decision. In the case of Hazara (Hill Tract) Improvement Trust Vs. Mst. Qaisra Elahi (2005 SCMR 678), it has been held that violation of the principle of *audi alteram partem* (no one should be condemned unheard) would be enough to vitiate even the most solemn proceedings. This principle is said to have its origin in the Islamic Principle of Justice. This principle applies to all judicial and non-judicial proceedings. Since neither a show cause notice was issued by respondent No.1 to the appellant, nor were the appellants afforded an opportunity of hearing prior to cancellation of the allotment of Plot No.34 from their names, the decision dated 09.09.2013, is liable to be declared as void and *coram non iudice*.

17. At this stage, it would be appropriate to made reference to the following case law on the subject:-

- (i) In the case of Surriya Parveen Vs. Muzaffar Islam Malik (2007 SCMR 1202), the Capital Development Authority ("CDA") had cancelled the allotment of a plot from the original allottee's name without affording him an opportunity of a hearing. The same plot was then allotted to another allottee who had raised construction thereon. The original allottee had made the entire payment for the said plot to CDA. The cancellation of the allotment from the original allottee's name was set aside. The Hon'ble Supreme Court in the said report observed that the subsequent allottee should be compensated with the allotment of some other plot.
- (ii) In the case of Hafiz Muhammad Siddique Anwar Vs. Faisalabad Development Authority (2007 SCMR 1126), the appellant was allotted a plot in Faisalabad. The appellant had paid the entire consideration and had also taken over



possession of the plot. Subsequently, the said allotment was cancelled. The Appellant's suit against the cancellation of allotment was dismissed by the Civil Court for want of jurisdiction. The Hon'ble High Court maintained the judgment of the Civil Court. The Hon'ble Supreme Court granted leave to appeal on the question whether the principles of natural justice were applicable to the case. The judgments of the Civil Court as well as the Hon'ble High Court were set aside and the matter was remanded to the Civil Court for a decision afresh. Furthermore, it was held as follows:-

*“As in instant case admittedly opportunity of hearing was not granted to appellant before passing the cancellation order of plot from the name of appellant by the Martial Law functionaries, therefore, it being an order coram non judice was not immune from judicial review by the Civil Court.”*

- (iii) In the case of Federal Government Employees' Housing Foundation Vs. Muhammad Akram Alizai (PLD 2002 SC 1079), it has been held as follows:-

*“We may add that Housing Foundation while acting as' an official organization, has framed a policy to regulate its business as per its declaration made in the Memorandum and Articles of Association and despite the facts the said policy has no statutory force, still the organization would be bound by its policy which is being implemented and followed as departmental instructions of the controlling ministry and mandatory rule, therefore, the violation of said policy would be challengeable in the High Court in its Constitutional jurisdiction. Notwithstanding any procedural defect in the allotment of plots to the different categories of the employees of Federal Government, the Housing Foundation after making such allotments has no power to rescind the same in the light, of principle of locus poenitentiae and once an allotment is made and taken effect, the same would have legal protection and in consequence to a subsequent act of Housing Foundation the right of an allottee is affected, such allottee can conveniently invoke the Constitutional jurisdiction of High Court to protect his right in the allotment. In nutshell, the entitlement of a person for allotment of a plot in the scheme of Housing Foundation or a right of allotment if already created is undone, on any ground, the aggrieved person can maintain a writ petition in the High Court as the remedy of civil suit in such cases is not an efficacious.”*

(Emphasis added)

- (iv) In the case of the University of Dacca through its Vice Chancellor Vs. Zakir Ahmed (PLD 1965 SC 90), it has been held as follows:-

*“... in all proceedings by whomsoever held, whether judicial or administrative, the principles of natural justice have to be observed if the proceedings might result in consequences affecting “the person or property or other right of the parties concerned.” This rule applies even though there may be no positive words in the statute or legal document; whereby the power is vested to take such proceedings, for, in such cases this requirement is to be implied into it as the minimum requirement of fairness.”*

(Emphasis added)

- (v) In the case of Muhammad Younus Ahmed Zai Vs. Executive Officer, Malir Cantonment (2017 MLD 1094), after the allottee had made the entire payment for the plot in question, the allotment was cancelled by the respondent. Neither was the allottee issued a show cause notice, nor was he afforded an opportunity of hearing before the impugned action was taken. The Hon’ble High Court set the cancellation of the allotment aside on the ground that action was taken in violation of the principles of natural justice.
- (vi) In the case of Muhammad Ayub Vs. Azad Government of the State of Jammu and Kashmir (2016 YLR 45), plots were allotted by the Mirpur Development Authority to the allottees after receiving payment from them. These allotments were cancelled by the Government without affording an opportunity of hearing to the allottees. The Hon’ble High Court of Azad Jammu and Kashmir set aside the orders cancelling the allotments of plots. In paragraph-14 of the said report, it was *inter-alia* observed that the allotments of plots were cancelled in violation of the principles of natural justice, as neither were show cause notices issued to the allottees, nor were they afforded an opportunity of hearing.
- (vii) In the case of Pakistan Medical Cooperative Society Vs. Azra Latif (2012 CLC 662), the appellant’s case was that the respondent’s membership and provisional allotment of

plot were cancelled because she had failed to clear her dues, and the cancellation of allotment was approved in the Annual General Meeting of the Society/appellant. Since the appellant had cancelled the allotment without affording an opportunity of a hearing to the respondent, the cancellation of the allotment was set aside. It was held that the cancellation of the allotment “was an act against the golden principle of *audi alteram partem*”.

- (viii) In the case of Jamal Nasir Vs. Karachi Development Authority (2004 CLC 15), an allotment of a plot in favour of an allottee was cancelled on the ground that the allotment was made in violation of the Rules and Regulations. The Division Bench of the Hon'ble High Court of Sindh set aside the cancellation of the allotment *inter-alia* on the ground that no prior notice had been issued by the respondent authority to the allottee.
- (ix) In the case of Muhammad Talib Vs. Karachi Development Authority (1999 CLC 813), an allotment of a plot made in the petitioner's favour was cancelled by the Karachi Development Authority without issuing the petitioner a show cause notice. The cancellation of the allotment was said to have been made on the directions of the Prime Minister. The Division Bench of the Hon'ble High Court of Sindh allowed the petitioner's writ petition and set aside the order of cancellation of the allotment of the petitioner's plot. It was *inter-alia* held that the order of cancellation of the allotment was passed ignoring the established judicial norms.
- (x) In the case of Yaqub Eusuf Mayet Vs. Pakistan Defense Officers' Housing Authority (1992 CLC 1444), the petitioner had purchased a plot from the original allottee, and the transfer was approved by the respondent authority. Subsequently, the respondent authority cancelled the allotment of the plot without issuing a show cause notice to the petitioner and without hearing the petitioner. The Division Bench of the Hon'ble High Court of

Sindh set aside the cancellation of the allotment on the ground before taking an action to cancel the allotment of a plot, no prior show cause notice was issued and no hearing was granted to the petitioner/allottee. Furthermore, it was held as follows:-

*“if any action is proposed to be taken by the respondent authority against the petitioner in respect of the plot, a prior show cause notice giving full facts and the grounds, on which cancellation is intended, shall be given and thereafter full opportunity will be granted to the petitioner to place his case before the Defence Authority and only after fulfilling such formalities, action shall be taken by the respondent authority”*

- (xi) In the case of Jamal Shah Vs. Azad Government of the State of Jammu and Kashmir (1991 MLD 1243), the allotment of a plot was cancelled without affording an opportunity of a hearing to the allottee. The cancelled plot was subsequently allotted to another allottee. The Hon'ble Supreme Court of Azad and Jammu Kashmir set aside the cancellation of the allotment *inter-alia* the ground that no show cause notice was issued to the original allottee and therefore the doctrine of *audi alteram partem* had been violated.
- (xii) In the case of Muhammad Iqbal Shaikh Vs. Karachi Development Authority (1990 CLC 879), the petitioner had challenged an order directing him to hand over possession of an industrial plot. The petitioner had been allotted the said plot for which he had made the entire payment. The Division Bench of Hon'ble High Court of Sindh, without going into the merits of the case, set aside the impugned order on the ground that the petitioner had not been given an opportunity of hearing before an adverse order regarding the plot had been passed against him. Both the Hon'ble Judges on the said Bench rose to grace the Hon'ble Supreme Court of Pakistan. Therefore this judgment is to be revered and respected.
- (xiii) In the case of Noor Muhammad Shah Vs. Chairman, Karachi Development Authority (1989 CLC 1470), the Karachi Development Authority had cancelled the

petitioner's residential plot on the ground that there was no specific order of the competent authority for the allotment of plot. The petitioner's writ petition against the cancellation of the allotment was set aside by the Division Bench of the Hon'ble High Court of Sindh on the ground that the cancellation of the allotment was made in violation of the principles of natural justice (*audi alteram partem*). Furthermore, a direction was given to the Karachi Development Authority to grant an opportunity of hearing to the petitioner after taking his submissions into consideration.

- (xiv) In the case of Karachi Development Authority Vs. Dawood (1984 CLC 2080), the Karachi Development Authority cancelled the allotment of an industrial plot, after the allottee had paid for the plot and after taking over possession of the same. The Hon'ble High Court of Sindh set aside the cancellation of the plot. In the said report, it was *inter-alia* observed that the action of cancellation of the allotment could not be sustained as the same was against the principles of natural justice.

- (xv) In the case of Yar Muhammad v. K.D.A. (P L D 1976 Karachi 830), it has been observed as follows:-

*"The mere fact that an allotment order could be cancelled without giving reason does not abrogate the rule of natural justice that the aggrieved party has to be heard before an order affecting his right is passed. The allotment order issued in favour of the petitioner's father conferred an important right upon him. In fact the reason given by respondent No. 1, in its letter, dated 17th October, 1973, for cancelling the allotment in favour of petitioner's father was that the old allotment order in favour of Hidayatullah had been cancelled without notice to him."*

- (xvi) In the case of Noor Muhammad Vs. K.D.A. (PLD 1975 Karachi 373), it has been held as follows:-

*"Paragraph 19 of the application form specifically provides that in case of breach of any of the conditions stated in the application form, the K.D.A. would have the right, by notice in writing, to cancel the allotment. This, however, does not mean that the K.D.A. or the Chairman would act in an arbitrary, discriminating or in a capricious manner or that the allottee was not to be given a fair opportunity of representing his case or that any*

*representation or cause shown by him was not to be examined or taken into consideration.”*

18. In view of the law laid down by the Superior Courts in the judgments mentioned above, and since respondent No.1's action of cancelling the allotment of Plot No.34 from the appellants' name was in violation of the principles of natural justice, the letter dated 09.09.2013 is declared as void. Respondent No.1's remain liable to allot an alternate plot to the petitioner in W.P.No.753/2012 or to person whose rights flow from the said petitioner. This appeal is allowed and the impugned order dated 08.04.2015 is set-aside. Consequently, the appellants' writ petition No.3763/2013 is allowed.

(ATHAR MINALLAH)  
JUDGE

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2017.

(JUDGE)

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan\*

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