

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2013

CORAM

THE HON'BLE MR. JUSTICE ELIPE DHARMA RAO
&

THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. NOB. 16102 & 26246 OF 2011

A. Kruba Sankar

..Petitioner in
W.P. 16102 of 2011

All India Graduate Engineers & Telecom
Officers Association (AIGETOA)
rep. by its Circle Vice President
M. Sudha, Chennai Telephone District
No. 9, Sivasankaran Street
Kamarajar Puram, Ambattur
Chennai - 600 053

..Petitioner in
W.P. 26246 of 2011

Vs.

1. The Registrar
Central Administrative Tribunal
Chennai
2. Union of India
rep. By its Secretary
Ministry of Social Justice & Empowerment
New Delhi
3. The Chairman cum Managing Director
BSNL Corporate Office
Bharat Sanchar Bhavan
Harish Chandra Mathur Lane
Janpath, New Delhi - 110 001
4. General Manager (Personnel)
BSNL Corporate Office
Bharat Sanchar Bhavan
Harish Chandra Mathur Lane
Janpath New Delhi. 1
5. The General Manager (Recruitment)
Corporate Office, Eastern Court
Janpath, New Delhi - 110 001

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6. Chief Liaison Officer (SCT)
BSNL Corporate Office
R.No.221, 2nd Floor
Eastern Court
Janpath, New Delhi - 110 001

7. V. Jayaraman

8. V. Nani

9. M. K. Veerapandian

10. B. Karunanithy

11. M. Ramalingam

12. M. Gopinathan

13. All India Graduate Engineers &
Telecom Officers Association
(AIGETOA) rep. by its Circle
President A. Kannan
Chennai Telephone District
No. 9, Sivasankaran Street
Kamarajar Puram, Ambattur
Chennai - 600 053

.. Respondents in
W.P. 16102 of 2011

1. The Registrar

Central Administrative Tribunal
Chennai

2. Union of India

rep. by its Secretary
Ministry of Social Justice & Empowerment
New Delhi

3. The Chairman Cum Managing Director

BSNL Corporate Office
Bharat Sanchar Bhavan
Harish Chandra Mathur Lane
Janpath, New Delhi - 110 001

4. General Manager (Personnel)

BSNL Corporate Office
Bharat Sanchar Bhavan
Harish Chandra Mathur Lane
Janpath, New Delhi - 110 001

5. The General Manager (Recruitment)

Corporate Office, Eastern Court
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7. V. Jayaraman

8. V. Nani

9. M. K. Veerapandian

10. B. Karunanithy

11.M.Ramalingam
12.M.Gopinathan
13.A.Kruba Sankar

.. Respondents in
W.P.26246 of 2011

Prayer in W.P.No.16102 of 2011: writ petition under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the first respondent relating to the order dated 24.06.2011 in O.A.No.1358 of 2010; to quash the same and to direct respondents 3 to 6 to implement O.M.36012/2/96-Estt.(Res) dated 02.07.1997 and prepare an updated post based roster before conducting Departmental Promotion Committee (DPC) for promotion of Junior Telecom Officer (JTO) to Sub-Divisional Engineer (Telecom) (SDE/T).

Prayer in W.P.No.26246 of 2011: writ petition under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the first respondent relating to the order dated 24.06.2011 in O.A.No.1358 of 2010; to quash the same and to direct respondents 3 to 6 to implement O.M.36012/2/96-Estt.(Res) dated 02.07.1997 and prepare an updated post based roster before conducting Departmental Promotion Committee (DPC) for promotion of Junior Telecom Officer (JTO) to Sub-Divisional Engineer (Telecom) (SDE/T).

For Petitioners
in all WPS

: Mr.V.Prakash, SC for
: Ms.Ramapriya Gopalakrishnan

For Respondent 2
in all WPS

: Mr.N.Ramesh, CGEC

For R3 to R6
in all WPS

: Mr.K.K.Rai, SC Assisted by
Mr.Rajnish Prasad &
Mr.M.Govindarraaj

COMMON ORDER

ELIPE DHARMA RAO, J.

These writ petitions have been filed to issue a writ of certiorarified mandamus calling for records relating to the order dated 24.06.2011 passed by the first respondent in O.A.No.1358 of 2010; to quash the same and to direct respondents 3 to 6 to implement O.M.36012/2/96-Estt.(Res) dated 02.07.1997 and to prepare an updated post based roster before conducting the Departmental Promotion Committee (DPC) for promotion of Junior Telecom Officer (JTO) to Sub-Divisional Engineer (Telecom) (SDE/T).

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2. The applicants in O.A.No.1355 of 2010 on the file of the Central Administrative Tribunal, Chennai, are the petitioners in these writ petitions. Aggrieved by the act of the respondents in not implementing the roster for reservation, the petitioners are before this court. Since the issue involved in both these writ petitions is one and the same, these writ petitions are disposed of by this common order.

3. The petitioner in W.P.No.26246 of 2011 is an association registered under the Societies Registration Act and it is the collective body of Graduate Engineers and Telecom Officers of Bharat Sanchar Nigam Limited, hereinafter referred to as "BSNL". The members of the said association include engineers directly recruited by BSNL as Junior Telecom Officers through an All India Competitive Examination having the same syllabus as specified by the Union Public Service Commission for Engineering Services Examination. They were recruited in service in accordance with JTO Recruitment Rules, 2001 and they were professionally qualified engineers even at the time of recruitment. The petitioner in W.P.No.16102 of 2011 is the Junior Telecom Officer of BSNL and he was also recruited on the same basis as that of the members of the said association.

4. The case of the petitioners is that, as per JTO Recruitment Rules, 2001, 50% of JTOs are to be filled up by direct recruitment and 50% through promotion. The post of Sub-Divisional Engineer, Telecom (SDE/T) is the promotional post for the post of JTO. As per SDE (T) Recruitment Rules, 2001, the post of Sub-Divisional Engineer is to be filled up by promoting 67% of JTOs on seniority cum fitness basis and 33% by conducting Limited Internal Competitive Examination. The respondents have failed to follow the mandatory instructions contained in O.M.No.36012/2/96-Estt (Res) dated 02.07.1997 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, which deals with the issue regarding maintenance of post based rosters and separate rosters for direct recruits and promotees as well as prescribes 15% reservation in respect of SC candidates and 7.5% in respect of ST candidates. Further, O.M.No.F.22011/5/86 - Estt.D dated 10.03.1989 issued by the Department, which prescribes the procedure to be followed by Departmental Promotion Committees, has also not been followed by the respondents while effecting promotions from the post of JTO to Sub-Divisional Engineer (T) and other higher cadres. It is also their case that, the non-circulation of updated roster until the formation of BSNL from DOT clearly shows that the respondents never followed the post based roster for promotion from the cadre of JTO to SDE. Since the respondents are not strictly adhering to the mandatory instructions contained in the said official memorandums, many Scheduled Caste / Scheduled Tribe candidates are deprived of their legitimate promotion to the higher grade of Sub-Divisional Engineer. Therefore, they approached the Central Administrative

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Tribunal by way of filing O.A.No.1358 of 2010 seeking to direct the respondents to implement O.M.No.36012/2/96-Estt (Res) dated 02.07.1997 by duly maintaining the ratio of 1 : 1 between direct recruits and promotee JTOs and to prepare an updated roster before conducting the Departmental Promotion Committee for promotion of Junior Telecom Officer to Sub-Divisional Engineer (SDE/T) and to publish the same. The petitioners also filed M.A.No.289 of 2011 seeking to grant an order of interim stay of all further proceedings consequent to the DPC like, transfer of SDE, etc., in lieu of the order passed by the Assistant General Manager (Personnel-II), Corporate Office bearing Ref.No.2-15/2001-Pers.II dated 31.03.2011 and also to stay the said order passed by the Assistant General Manager, until the disposal of the said original application. The Tribunal disposed of both the miscellaneous petition as well as the original application by order dated 24.06.2011. Challenging the said order, the All India Graduate Engineers and Telecom Officers' Association has filed W.P.No.26246 of 2011 and A.Kruba Sankar viz., the second applicant in the said original application, has filed W.P.No.16102 of 2011 before this court.

5. Respondents 3 to 6 have filed counter affidavit in both these writ petitions, wherein, it is stated that there is no provision in the respective Rules for maintaining the ratio of 1 : 1 while effecting promotions from the post of JTO to SDE (T) and promotion to the said post is done on the basis of All India Eligibility List in the cadre of JTOs. While preparing the eligibility list, JTOs, who were already promoted to the cadre of SDE through other streams viz., through Limited Departmental Competitive Examination or on account of reservation, have to be excluded and hence, the ratio of 1 : 1 between direct recruits and promotee JTOs, which existed in the gradation list of JTO cadre in a circle, may not be available in the eligibility list prepared at the corporate office for promotion to SDE cadre and it may differ, depending upon the availability of JTOs in a particular stream for the particular recruitment year. As per SDE (T) Recruitment Rules, posts have to be filled up by two streams viz., 67% through seniority quota and 33% through Limited Departmental Competitive Examination. As per various DOP & T guidelines, including the official memorandum dated 02.07.1997, the roster for both streams of promotion has been prepared / updated on 18.02.2011 upto the vacancy year 2009 - 2010 and subsequently, vacancies of SDE (T) for the year 2008 - 2009 were circulated, after observing the guidelines on the issue and promotions were made on roster based vacancies. In the absence of updated roster for the cadre of SDE (T), in respect of promotions made to all cadres earlier, due care was taken by the BSNL to provide the reservation of 15% and 7.5% in respect of SC and ST candidates respectively as per Government norms. They are adhering to all instructions and official memorandums strictly and it is not mandatory to circulate the roster, since there is no guideline to circulate the roster once in a year as per DOP & T instructions dated 31.12.1992.

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6. The petitioner in W.P.No.10102 of 2011 has also filed a rejoinder to the counter affidavit filed by respondents 3 to 6, wherein, he has reiterated the averments contained in the affidavit filed in support of the writ petition.

7. We have heard the learned counsel appearing on either side and perused the entire materials available on record.

8. Learned senior counsel appearing for the petitioners submitted that, the respondents are not strictly adhering to the requirement of preparation of post based reservation roster as contemplated under O.M.No.36912/2/96-Estt (Res) dated 02.07.1997, as a result of which, many Scheduled Caste candidates have been deprived of their legitimate promotion to the post of Sub-Divisional Engineer (T). It is also his case that, directly recruited Scheduled Caste employees in the cadre of JTO are at a greater disadvantage than promotee JTOs in the matter of implementation of the reservation policy, since the seniority of direct recruits has not been properly fixed vis-a-vis promotee JTOs viz., the ratio of 1 : 1 between direct recruits and promotees is not maintained while effecting promotions from the post of JTO to SDE and higher cadres. As per JTO Recruitment Rules, 2001, 50% of JTO posts are required to be filled up by direct recruitment and 50% through promotion. Likewise, the post of Sub-Divisional Engineer (T), being promotional post for the post of JTO, 67% of the same should be filled up by promotion on the basis of seniority cum fitness basis and 33% through Limited Departmental Competitive Examination, as per the Sub-Divisional Engineer (T) Recruitment Rules, 2002. Further, if the roster is not periodically updated taking into account the number of vacancies arising due to the death / retirement / resignation of incumbents of the relevant posts, the exact position of posts for reserved candidates cannot be determined, which results in exclusion of such candidates from the zone of consideration. Further, it is mandatory on the part of the respondents to circulate the roster once in a year as per the DoP & T official memorandum dated 31.12.1992. According to the learned senior counsel appearing for the petitioners, since the above aspects had not been considered by the Tribunal, the order under challenge is liable to be set aside.

9. Learned counsel appearing for the respondents / BSNL submitted that the respondents are following the rules of reservation in letter and spirit viz., the percentage of 15% and 7.5% in respect of SC and ST candidates respectively, is maintained. He also submitted that the petitioners have no locus standi to file the present writ petitions since, some of the members of the petitioner association are already holding the post of Sub-Divisional Engineer (T) and some of the members are not coming within the zone of consideration for promotion to the post of Sub-

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Divisional Engineer (T). He also submitted that, as per the DoP & T instructions issued by the Department, including the official memorandum dated 02.07.1997, the roster for both streams of promotion viz., 67% through seniority quota and 33% through Limited Departmental Competitive Examination, were prepared / updated on 18.02.2011 upto the vacancy year 2009 - 2010 and subsequently, vacancies of SDE (T) for the year 2008-2009 were calculated, after observing the guidelines issued in that regard and promotions were made on roster based vacancies. Moreover, as per SDE (T) Recruitment Rules, 200 point rosters for the cadre was prepared separately viz., 67% through seniority quota and 33% through Limited Departmental Competitive Examination. He further submitted that there is no provision in the Sub-Divisional Engineer (Telecom) Recruitment Rules, 2002 to maintain the ratio of 1 : 1 while effecting promotions from the post of JTO to SDE. The respondents are strictly adhering to all instructions and official memorandums issued by the DoP & T and it is not mandatory to circulate the roster, since there is no guideline to circulate the same once in a year as per DoP & T instruction dated 31.12.1992. As far as the submission made by the learned senior counsel appearing for the petitioners that directly recruited Scheduled Caste employees in the cadre of JTO are at a greater disadvantage than promotee JTOs in the matter of implementation of the reservation policy is concerned, learned counsel appearing for the respondents submitted that the seniority issue and the roster in the cadre of JTOs are not relevant to the facts of the present case, which relates to the preparation of roster for the cadre of Sub-Divisional Engineer (T) in the BSNL. It is also his case that some of the directly recruited JTOs have filed O.A.No.36 of 2011 before the Central Administrative Tribunal seeking for fixation of seniority / preparation of gradation list in the cadre of JTOs; the Tribunal granted an order of stay of the operation of the eligibility list prepared to fill up the vacancies of SDE (T) against the vacancy year 2009-2010, subsequent to the vacancy year 2008-2009, for which, promotion order dated 30.03.2011 was issued after the completion of the process of preparation / updation of roster for the cadre of SDE (T) on 18.02.2011. Therefore, learned counsel appearing for the respondents submitted that the order under challenge cannot be interfered with in any manner.

10. It is seen from the order under challenge that two reservation rosters viz., one dated 31.03.2009 and the other dated 31.03.2010 in respect of SDE (T) cadre under 67% seniority quota stream and 33% competitive quota stream, were prepared by the respondents and the same were produced before the Tribunal. The Tribunal, after perusing the said rosters, found that the respondents have indicated the number of entries in respect of promotee quota and competitive quota and the number of vacancies available. The Tribunal also found that rosters were prepared as per the guidelines stipulated in the official memorandum dated

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02.07.1997. Since eligible candidates are available or not, could not be ascertained from the post based rosters, the Tribunal held that, if eligible candidates are available, the respondents should hold the DPC meeting for filling up the vacancies. The relief sought for in the original application was for a direction to the respondents to prepare the post based roster in accordance with the procedure and the Tribunal found that the same had been complied with by the respondents. However, the Tribunal, considering the request made on behalf of the applicants that a number of reserved candidates are still awaiting for promotions, exercising the provisions contained under Rule 24 of the CAT Procedure Rules, 1987, gave the following directions to the respondents to fill up the vacancies:

(a) It must be ascertained from the post based roster as to how many SC candidates have been accommodated by virtue of their merit position against OC post.

(b) The candidates as in (a) above should not be included for the purpose of calculating 15% and 7.5% reservation for SC / ST candidates.

(c) After ascertaining the number of SC & ST candidates, the same should be compared with the minimum ceiling of 15% and 7.5% respectively for SC & ST candidates, to find out whether there is any deficiency or excess of reservation.

(d) If there is any shortfall, the same should be treated as backlog. Instead, if representation is more, adjustments against reserved points by accommodating OC should be resorted to.

The Tribunal also held that, after completing the above exercise, the exact vacancy position should be ascertained and after referring to the seniority list, those who are eligible for promotion should be considered against the vacant posts.

11. In the light of the above facts, we analysed the entire materials available on record, to find out whether the relief sought for by the petitioners still survives for consideration of this court. Though it is the case of the petitioners that the ratio of 1 : 1 between direct recruits and promotees in the cadre of JTOs is to be maintained while effecting promotions from the post of JTO to SDE (T) and higher cadres, yet, from a perusal of the documents available before court, it is clear that there is no provision in the Sub-Divisional Engineer (Telecom) Recruitment Rules, 2002 to maintain the said ratio while effecting promotions from the post of JTO to SDE. As per SDE (T) Recruitment Rules, posts have to be filled up by two streams viz., 67% through seniority quota and 33%

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through limited competitive departmental examination and as per the guidelines issued by the DoP & T dated 02.07.1997, the roster for both streams was prepared / updated on 18.02.2011 upto the vacancy year 2009 - 2010. Further, the vacancies in respect of SDE (T) cadre for the year 2008 - 2009 were calculated, after observing the guidelines on the issue and promotions were made on roster based vacancies and in respect of all promotions made to the cadre of SDE (T) earlier, due care was taken by the BSNL to maintain 15% and 7.5% reservation in respect of SC and ST candidates respectively as per Government norms. Though the process of preparation and updation of roster in respect of SDE cadre could not be undertaken / completed since there were nearly 25000 candidates in the said cadre throughout the country and the central process of updating the roster from corporate office involved intense coordination with all telecom circles throughout the country, yet, the same was completed on 18.02.2011 upto the vacancy year 2009 - 2010. Moreover, as per SDE (T) Recruitment Rules, 200 point roster for the cadre was prepared separately viz., 67% through seniority quota and 33% through Limited Departmental Competitive Examination. Admittedly, as could be seen from the Recruitment Rules relating to JTO cadre and SDE cadre, the ratio of 50 : 50 viz., 50% through direct recruitment and 50% through promotees, cannot be maintained since, such roster can be prepared only in respect of JTO cadre and not in respect of SDE cadre. The respondents themselves have admitted that the roster for SDE (T) cadre was prepared / updated on 18.02.2011 upto the vacancy year 2009 - 2010, and in the absence of updated roster in respect of promotion from JTO to SDE grade against vacancy years 2006 - 2007, and 2007 - 2008, with the approval of DPC / Appointing Authority viz., the Director (HRD), BSNL, due reservation as per Government norms viz., 15% and 7.5% in respect of SC & ST candidates respectively, was extended. The rosters maintained by the respondents were produced before the Tribunal. The Tribunal, after analysing the entries available in the said rosters, came to the conclusion that the same were prepared as per the requirement contained in the official memorandum dated 02.07.1997.

12. Though a contention was raised by the learned senior counsel appearing for the petitioners that it is mandatory on the part of the respondents to circulate the rosters until the formation of BSNL from DoT and that they never followed the post based roster for promotion from the cadre of JTO to SDE, yet, from the materials produced by the respondents, we find that they are strictly adhering to all instructions and official memorandums and it is not mandatory to circulate the roster, since there is no guideline to circulate the roster as per DoP&T instructions dated 31.12.1992. As contended by the petitioners, the respondents were not able to undertake / complete the process of updation of roster in respect of SDE cadre initially due to the huge strength in the said cadre spread throughout the country and the central process of updating

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the roster from corporate office involved intense co-ordination with all telecom circles throughout the country, yet, the same was subsequently undertaken and completed on 18.02.2011 upto the vacancy year 2009 - 2010, which is borne out by records. As already stated, as per SDE (T) Recruitment Rules, 200 point roster for the cadre was prepared separately viz., 67% through seniority quota and 33% through Limited Competitive Departmental Examination and not 50% by direct recruitment and 50% by promotion as contended by the petitioners, since such rosters can be prepared only in respect of JTO cadre and not in respect of SDE cadre as per the Recruitment Rules relating to both cadres. There is no direct recruitment in the post of SDE and the petitioners are creating a cloud before court to mislead the case by connecting the roster for two different cadres viz., JTO and SDE. AE rightly pointed out by the respondents, the relief sought for by the petitioners had already been granted by the Tribunal. However, the petitioners have filed the present writ petitions with an ulterior motive to stall the promotion of eligible Scheduled Caste officials. The present writ petitions are in the nature of execution petitions to execute the order of the Tribunal in favour of the petitioners, by depriving the legitimate rights of promotee officers, who are admittedly seniors to them. Further, by delaying the promotions of senior SC / ST officials, the petitioners are trying to frustrate their rights. It is also seen from the materials available on record that, at present, no DPC for promotion from JTO to SDE cadre is scheduled to be convened by the respondents, as the operation of eligibility list for the same is under challenge before the Central Administrative Tribunal in O.A.No.36 of 2011, which has been filed as a Public Interest Litigation, without any cause of action. The relief sought for by the petitioners before the Tribunal in the present original application was to direct the respondents to prepare the post based roster in accordance with the procedure. The Tribunal itself had recorded that two rosters maintained by the respondents were produced before it viz., one in respect of SDE cadre under 67% seniority quota and the other in respect of the said cadre under 33% competitive quota as on 31.03.2009 and 31.03.2010 respectively and that the same were prepared as per the requirement contained in the official memorandum dated 02.07.1997. On re-appreciation of the entire materials available on record, we also find that the rosters were prepared in accordance with the guidelines stipulated in the said official memorandum. In addition to the above, respondents 3 to 6 have filed an affidavit dated to the following effect viz., the review of reservation in promotion to SDE cadre is being undertaken in accordance with the official memorandum dated 10.08.2010 in two phases; in the first phase, the review covers promotions to SDE (T) cadre made by DoT for the period from 02.07.1997 to 2004 i.e., prior to the absorption of Group B Executive in BSNL; the second phase of review covers promotions to SDE (T) cadre made by BSNL from September 2004 onwards; the review of reservation for promotions to SDE (T) cadre made by BSNL for the

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second phase is under progress; in view of the interim injunction granted by this court against the implementation of the order dated 24.06.2011 passed by the Tribunal, they are prohibited from implementing the said order and that they are seriously engaged in implementing the same within the time stipulated under the said order. In addition to the above, it is seen from the materials available on record that the petitioners, who are not aggrieved and who do not fall within the zone of consideration for promotion to the post of Sub-Divisional Engineer (T), have filed the present writ petitions without any legal right. Therefore, as rightly contended by the learned counsel appearing for the respondents, the petitioners have no locus standi to file the present writ petitions.

13. In view of the facts noted above, we see no reason to interfere with the order under challenge. Consequently, the order under challenge is sustained and the writ petitions are dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

F. Ramesh
Sub Asst. Registrar.

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To

1. The Registrar
Central Administrative Tribunal
Chennai
2. The Secretary
Union of India
rep. By its Secretary
Ministry of Social Justice & Empowerment
New Delhi
3. The Chairman Cum Managing Director
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5. The General Manager (Recruitment)
Corporate Office, Eastern Court
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6. Chief Liaison Officer (SCT)
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Janpath, New Delhi - 110 001

2 ccs to Mr.N. Ramesh, Advocate, Sr. 18955, 18956

W.P.NOS.16102 OF 2011

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26246 OF 2011

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