

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00986/2019

DATED THIS THE 13TH DAY OF FEBRUARY, 2020

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Sri Chandrashekar R Rathod
S/o late Ramasing Rathod
Aged about 43 years,
Working as: Tax Assistant
At & Post Kolur LT, Muddebihal Taluk
Vijayapur District 586 129

....Applicant

(By Advocate M/s Paanchajanya Associates)

Vs.

1. Union of India,
Represented by its Secretary
Ministry of Finance
Department of Revenue,
North Block, New Delhi 110 011

2. The Principal Chief Secretary of IT
Kalburgi And Goa Region
Bangalore Central Revenue Building
Twins Road, Bangalore 560 001

3. Principal Commissioner of Income Tax,
Kalburgi, Ayakar Sedam Road, Kalburgi 585 101

4. The Joint Commissioner of Income Tax
Kalburgi Range, Kalburgi 585 101

.....Respondents

(By Shri M.V. Rao and Shri N. Amaresh, Counsel for the Respondents)

O R D E R (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The matter is covered by any number of Hon'ble Apex Court rulings. Even though government service is not a contract, the moment one enters it and the moment one demits it, it is a contract, otherwise it is a status confirmed by the statute. Vide Annexure-A15, which we quote, it is noted at this point that this absence was regularized extraordinarily:

"F. No. 18-C.R. Rathod/JCIT/GR/GLB/2016-17 Dated: 08/08/2016

*To,
 The Pr Chief Commissioner of Income Tax,
 Karnataka & Goa, Bengaluru*

(Through proper channel)

Madam,

Sub: Unauthorized absence in the case of Sri Chandrashekar R. Rathod, Tax Assistant reg

Ref: 1. This office letter in F. No. 102-C.R. Rathod/JCIT/GR/GLB/2015-16 dated 12.07.2016

2. Letter in F. No. 34/DP/CRR-TA/Pr.CCIT/2016-17 dated 25.07.2016

Please refer to the above.

2. The above mentioned official has joined in this Range on 26.05.2014 consequent on Inter Charge Transfer from Tamilnadu Charge. Thereafter, the official has sent letter on 17.11.2014 requesting for Extra Ordinary Leave from 02.08.2014 to 31.03.2015 along with supporting medical bills. His unauthorized absence was regularized as Extra Ordinary Leave (EOL) by the CIT, Gulbarga for the above said period. After completion of Extra Ordinary Leave, the official did not report back to the office and was on unauthorized absence which was again regularized as extension of EOL from 01.04.2015 to 30.09.2015 by the CIT, Gulbarga after receipt of his letter for extension of EOL dated 23.03.2015. Though, after completion of this period the official has not reported back to the duty till date. The official has not responded to the letter sent by the JCIT,

Gulbarga Range, Gulbarga, dated 07.10.2015 regarding his unauthorized absence.

3. Further, a letter in F.No. 102-C.R. Rathod/JCIT/GR/GLB/2015-16 dated 12.07.2016 was addressed to the Pr. CCIT, Bengaluru intimating the unauthorized absence of the official. The copy of the same is enclosed herewith as Annexure-A. In response, the Pr. CCIT, Bengaluru has directed this office to initiate Disciplinary Proceedings against the official and submit a detailed action taken report at earliest. The copy of the same is enclosed herewith as Annexure-B.

4. In the meanwhile, as the official has not reported for duties, one more opportunity was given to the official vide this office letter in F. No. 102-C.R. Rathod/JCIT/GR/GLB/2015-16 dated 06.07.2016. The copy of the same is enclosed herewith as Annexure-C. In response, this office has received a letter from the official on 21.07.2016 submitting his resignation from the post of Tax Assistant, the copy of the same is enclosed herewith as Annexure-D.

5. In view of the above facts & circumstances, I am forwarding herewith the resignation submitted by the official for perusal, consideration, direction to this office and further action at the end of your kind self. The resignation of the official may be accepted.

*Yours faithfully,
Sd/-*

*(B.R. RAMESH)
Joint Commissioner of Income Tax,
Gulbarga Range, Gulbarga.”*

2. Thereafter, apparently he had submitted his resignation on 15.07.2016. Apparently this letter dated 15.07.2016 was not accepted by the department and he continued in the department. Thereafter on 08.08.2016 vide Annexure-A16, which we quote, he submitted a letter to the Commissioner of Income Tax regarding withdrawal of his later letter of resignation:

*“From
Chandrashekhar R Rathod
Tax Assistant
O/o Joint Commissioner of Income Tax
Gulbarga*

08/08/2016

To
The Commissioner of Income Tax
Gulbarga

Respected Madam,

Sub : Intimation regarding withdrawal of my resignation letter dated 15/07/2016 addressed to the Joint Commissioner of Income Tax, Gulbarga

With reference to the above, I request you to intimate the Joint Commissioner of Income tax Gulbarga regarding withdrawal of my resignation vide letter dated: 15/07/2016 which i have tendered citing mental illness.

Yours faithfully,
Sd/-
(Chandrashekar R. Rathod)"

Thereafter, on 09.08.2016, he submitted one more letter to the Joint Commissioner of Income Tax intimating withdrawal of his resignation, i.e., within one day.

3. Anyway in the meanwhile there were interaction between the applicant and the department and in paragraph 4 the respondents would say that before his resignation he had not produced any medical certificates regarding bipolar disorder which was supposed to be the reason for him submitting a resignation and thereafter for his withdrawal. Apparently they would say that applicant had never claimed CGHS benefits nor claimed reimbursement for medical expenses. This is explained as since he was suffering from a mental disorder it was not thought appropriate by him or his relatives to illuminate this fact. However when this matter came up we had discussed with the learned counsels and had sent the matter for

examination by the most premier institute of mental health in the country, NIMHANS at Bangalore. The report they provided is quoted herewith:

**“NATIONAL INSTITUTE OF MENTAL HEALTH & NEURO SCIENCES
BENGALURU 560 029
(Institute of National Importance)**

No: NIMH/HOS/MS/Med Board/2019-20

Date: 07-01-2020

MEDICAL BOARD PROCEEDINGS

PATIENT'S NAME	Mr Chandrashekar R Rathod		
FATHER'S NAME	<i>Mr Rama singh Rathod Late</i>	Date of Board	<i>07-01-2020</i>
AGE	<i>43 yrs</i>	PLACE OF BOARD	<i>NIMHANS</i>
SEX	<i>MALE</i>	MRD NO	<i>P440765</i>
UNIT	<i>UNIT V</i>	UHID NO	<i>20190159588</i>
DIAGNOSIS	<i>Nil</i>		

The Board after examining Mr. Chandrashekar R Rathod having gone through all available medical records and after discussion during the medical board meeting opines that, Mr Chandrashekar R Rathod had received treatment for complaints of low mood and inability to work about 5 years ago. As he has been doing well without any medicines or treatment for the past 3 years and as he has no psychopathology cross sectionally, he is deemed fit to resume his duties.

*Sd/-
Medical Superintendent
Chairman*

*Sd/-
Dy. Medical Superintendent,
Member*

*Sd/-
Prof & HOD Psychiatry
Member*

*Sd/-
Prof & HOD Neurosurgery
Member*

*Sd/-
Prof & HOD Neurology
Member*

Consultant In charge of Case

*Sd/-
Dr. Jagadisha Thirthalli,
Professor of Psychiatry”*

4. From the report it is clear that applicant had been suffering from a mental disorder for some time and therefore has not been in his correct senses. Therefore the resignation even otherwise also even if it was not withdrawn also cannot be acted upon. Therefore, we hereby declare that it will be deemed as applicant has not resigned at all.

5. Shri M.V. Rao, learned counsel for the respondents, raises a question as to what will happen to the applicant in the interregnum period as he has not worked. This is a correct ground taken by the department. We hold that applicant will not be entitled for any backwages or any service benefits. Since the medical board had cleared him that he is fit to resume duties, we direct the respondents to take him back to service within the next one month without back wages.

6. The OA is allowed as above. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00986/2019

Annexure A1	Copy of the order of transfer dated 02.05.2014
Annexure A2	Copy of the communication dated 22.09.2014
Annexure A3	Copy of the leave application dated 17.11.2014
Annexure A4	Copy of the communication dated 31.03.2015
Annexure A5	Copy of the communication dated 28.04.2015
Annexure A6	Copy of the order dated 30.04.2015
Annexure A7	Copy of the communication dated 07.10.2015
Annexure A8 Series	Copy of the copy of the series of representations
Annexure A9	Copy of the reimbursement dated 26.04.2016
Annexure A10	Copy of the communication to report the duty dated 06.07.2016
Annexure A11	Copy of the communication dated 12.07.2016
Annexure A12	Copy of the reply by the applicant dated 15.07.2016
Annexure A13	Copy of the request letter dated 20.07.2016
Annexure A14	Copy of the communication dated 25.07.2016
Annexure A15	Copy of the communication dated 08.08.2016
Annexure A16	Copy of the representation dated 08.08.2016
Annexure A17	Copy of the representation dated 09.08.2016
Annexure A18	Copy of the communication dated 23.09.2016
Annexure A19 to A21	Copy of the representations
Annexure A22 & A23	Copy of the communication dated 09.12.2016 and 19.12.2016
Annexure A24 Series	Copy of the communication dated 05.01.2017
Annexure A25	Copy of the communication dated 03.01.2017
Annexure A26	Copy of the representation dated 06.03.2017

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