

**FORM NO. 4****(See Rule 11 (1))  
IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH****ORDER SHEET**

15.

**O.A. No. 97 of 2012****Girindra Kumar Pathak****.....Petitioner****Versus****Union of India & Ors.****.....Respondents****For petitioner:** Petitioner in person.**For respondents:** Mr. Anil Gautam for Mr. Ankur Chhibber, Advocate.**CORAM:****HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.****HON'BLE LT. GEN. S.S. DHILLON, MEMBER.**

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
29.10.2012	Order passed vide separate order sheet, is placed on record. Petition is dismissed with no order as to costs.

**A.K. MATHUR  
(Chairperson)****S.S. DHILLON  
(Member)****New Delhi  
October 29, 2012  
dn/pd**

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI  
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**O.A. No. 97 of 2012**

**Girindra Kumar Pathak**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Petitioner in person..

**For respondents:** Mr. Anil Gautam for Mr. Ankur Chhibber, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.**

**HON'BLE LT. GEN. S.S. DHILLON, MEMBER.**

**ORDER**  
**29.10.2012**

1. Petitioner by this petition has prayed that the order i.e. Air HQ/41002/46/10/Sgt/PA-III dated 15<sup>th</sup> October 2010 may be declared as null and void and quashed. He has also prayed that the RMB proceedings may be quashed and the disability of the Petitioner may be declared as having contracted in service and aggravated by service. He has further prayed that the Respondents may be directed to grant disability pension to the Petitioner for 30% disability or as applicable since his discharge from service by holding good the opinion given by the first Medical Board.

2. Petitioner was enrolled in the Indian Air Force on 11<sup>th</sup> August 1989 in the trade of Radio Technician after having declared medically fit in medical category 'A' and sent for training at Bangalore. On completion of training, he was posted from Bangalore to 363 SU, AF (Bikaner). While performing his duties diligently at Bikaner, the Petitioner was diagnosed with heart ailment i.e. RHD MS (Rhematic Heart

Disease) Mitral Stenosis in the month of January 1995. By that time he had completed six years of service. Because of this disability he was brought before the duly constituted Medical Board and the first Medical Board dated 15<sup>th</sup> March 1995 held at Bikaner, while downgrading the medical category of the Petitioner from category 'A' to 'C', considered the entire facts and service conditions under which the disability was contracted and held that the disability was not directly attributable to service, however, the disability was contracted in service and was aggravated by the service. The first Medical Board had manifestly specified the stress and strain of service as specific conditions for aggravating the disability. He served the organisation and then he was subjected to Release Medical Board. At the time of discharge from service on completion of his tenure, the Release Medical Board has assessed the disability of the Petitioner at 30% for life but held that the disability was neither attributable to nor aggravated by service. Then he filed an appeal against the Release Medical Board on 6<sup>th</sup> July 2010 bringing out the entire facts relating to the disability and its aggravation and the same was rejected mechanically by the order dated 15<sup>th</sup> October 2010 passed by Respondents. Then he filed a second appeal on 22<sup>nd</sup> November 2010 but no response was received. Therefore, he filed the present petition seeking the aforesaid reliefs.

3. A reply was filed by the Respondents and the Respondents have taken the position that on fulfilling the condition of his enrolment, the Petitioner has rendered 20 years and 13 days of qualifying service and he has been released from service. The first appeal was rejected because of the fact that the disability from which he has been suffering was neither attributable to nor aggravated by the military service

and same was intimated to Petitioner on 15<sup>th</sup> October 2010. Then he preferred a second appeal and was also rejected and following reasons have been given:

“On perusal of the documents, it is evident that in December 1994 at Bikaner (Peace Station), the specialist had opined on initial presentation that he had been symptomatic for a year when he reported for medical care at the age of 22 years. The onset hence was with five years of his enrolment into the IAF. Rheumatic Heart Disease (RHD) is a long term sequel of Acute Rheumatic Fever (ARF). ARF is mainly a disease of children aged 5-14 years. Initial episode becomes less common in older adolescents and young adults and are rare in persons aged >30 years. This pattern contrasts with the prevalence of RHD, which peaks between 25 & 40 years. It takes several years for RHD to develop from the time of onset of ARF. In the instant case, onset of RHD was when the individual was 21 years old. It is reasonable to assume that ARF was contracted a few years prior to his enrolment. Hence, his ID is conceded not attributable to service. Onset occurred in a peace station, he was diagnosed and treated on time with appropriate measures including surgical correction of his valvular problem and he was given sheltered appointments ever since. The remarks of the Commanding Officer in Part-III of the AFMSF-16 do not reveal any stress or strain due to service (Para 83, Chap VI, GMO 2002 and amendment 2008 refers)”.

4. In this background, the Petitioner has submitted that since he has suffered this disease because of stress and strain of service as observed by Medical Board, there was no reason for the Release Medical Board, first appeal Medical Board or the second appeal Medical Board to take a different view of the matter. In the copy of first Medical Board which has been supplied by the Respondents, there is an

overwriting and 'No' has been written by making a circle that whether this disease is because of stress and strain of the service. To what extent it is correct or not we are not going into that but the Petitioner has already been examined by the Release Medical Board in 2009 and thereafter the same has been examined by the first appellate authority and by the second appellate authority and all have come to the same conclusion that the disease by which Petitioner is suffering is not aggravated by the military service. Thus there is no reason for us to go back to 1994 Medical Board report. May be by this time he has fully recovered. But the subsequent Medical Boards i.e. Release Medical Board, first and second Medical Board are consistently of the view that the disease by which Petitioner is suffering is neither attributable to nor aggravated by the service. There is no reason to dispute all subsequent medical reports.

5. Hence, in these circumstances, we do not find any merit in this petition and same is dismissed. Accordingly, the petition is dismissed with no order as to costs.

**A.K. MATHUR**  
**(Chairperson)**

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**October 29, 2012**  
dn/pd