

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT, PESHAWAR  
[JUDICIAL DEPARTMENT]

**Writ Petition No.308-P/2023**

*Musawar Gul*

**versus**

*Director General (Admin) Directorate General Health  
Services, Khyber Pakhtunkhwa, Peshawar & 2 others*

Date of hearing: **07.11.2023.**

**Petitioner by:** *Ms. Ayesha Malik, Advocate.*

**Respondents by:** *Syed Asif Jalal, AAG.*

**JUDGMENT**

**SHAKEEL AHMAD. I.-** This writ petition has been instituted on behalf of the petitioner, seeking issuance of direction to the respondents to accord sanction to the claim of the petitioner for reimbursement of his medical charges amounting to Rs.4,00,000/- (rupees four lakh).

**02.** To appreciate the controversy so raised, it is appropriate that relevant facts may be stated at the outset. It is said that the petitioner is a Pump Operator, who is serving in the Department of Public Health Engineering, Khyber Division. Due to sudden and acute heart problem, he was taken to the nearest hospital (*Rehman Medical Institute, Hayatabad, Peshawar*), in emergency, on 07.12.2019, and on the same day, his surgery was conducted in Cardiac Emergency. He remained admitted in the said hospital till 22.12.2019. During his stay in the hospital, he spent

Rs.4,00,000/- (rupees four lakh) on his medical treatment from his own pocket. After recovery, when he submitted his claim for reimbursement of his medical expenses before the Competent Authority, which was sent to the Director General, Health Services, Khyber Pakhtunkhwa, Peshawar for accord of sanction and allocation of fund, but, it was denied on the ground that, his claim is not covered under the Government Policy. Being aggrieved of the same, the petitioner has filed the instant petition.

03. Pursuant to the order of this Court, the respondents submitted their para-wise comments, raising therein, many legal and factual objections.

04. Heard both sides and record perused.

05. It is an admitted fact that status of the petitioner as *Civil Servant* is not denied. On 07.12.2019, all of a sudden, the petitioner received heart attack, in order to save his life, he was taken to the nearest hospital i.e. Rehman Medical Institute for treatment and emergent medical aid, he was admitted there, and on the same day, his *Cardiac Surgery* was conducted and he was discharged from the said hospital on 22.12.2019. It will be appropriate to reproduce the medical

TO WHOM IT MAY CONCERN:

CONTINUED WITH MURDER 444-444.

ONE TO RM) EMERGENCY WITH

SEVERAL OTHERS PAIN IN 17/12/2019.

HE WAS OPERATED IN THE MORNING

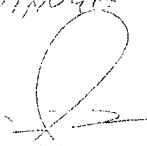
NEXT DAY. HIS FOOT OF SPANRY


WAS UNRECOVERED. & WAS PRESENT

ALICE DAI 22/12/2019

HE IS ADVISED TO CONTINUE

HIS MEDS.



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*[Signature]*

*"4. Referral.---(1) If the Authorized Medical Attendant is of opinion that the case of a patient is of such a serious or special nature as to require medical attendance or treatment, as the case may be, by another medical attendant, he may-*

(a) send the patient to the nearest Government hospital, where in his opinion, medical attendance or treatment, as the case may be, is required for the patient, or in case of

*serious or life threatening conditions, to the place in the Province or Country, as the case may be, where such medical attendance or treatment is available. The referral has to be to Government hospital in the first instance, and if not available, then he may refer the patient to private hospital with full justification and with prior approval of Director General:*

*Provided that the approval or otherwise of the Director General, for such referral, shall be communicated within seven (07) working days of such referral request; or*

*(b) request such specialist or other medical officer, to attend upon the patient, if the patient is unable to travel due to illness.*

*(2) The Casualty Medical Officer shall be authorized medical attendant in serious cases, needing immediate referral, if there is no such hospital as mentioned in sub-rule (1), to such hospital in the Province as may, in the opinion of such Authorized Medical Attendant, provide the necessary medical attendance or treatment, as the case may be.*

*(3) In any exceptional case where the Authorized Medical Attendant is of the opinion that the necessary medical attendance or treatment, as the case may be, is available only in a hospital outside the Province, he may with the prior approval of Director General, refer the patient for such medical attendance or treatment, as the case may be, in such hospitals:*


*Provided that the approval or otherwise of the Director General, for such referral, shall be communicated within seven (07) working days of such referral request".*

**07.** It will also be beneficial to reproduce the definition of emergency as provided under rule 2(e), as under: -

***"Emergency case"** means and includes road traffic accidents, myocardial infarction, burns/scalds, blast, poisoning, head injury or any other medical or surgical emergency of equivalent nature as determined by the Authorized Medical Attendant.*

08. A plain reading of Clause (a) of rule 4 reveals that under the said clause, if Authorized Medical Attendant (as defined in clause (a) of rule 4) is of the opinion that ailment of the patient is serious or of special nature as to require medical attendance or treatment, as the case may be, by another medical attendant, he may refer the patient to Government Hospital in the first instance, and if not available, then he may refer a patient to private hospital by giving full justification and with prior approval of the Director General. In our view, this rule does not cater the cases of acute emergency like the present one. Petitioner has no previous history of ailment, as per record, his cardiac shock was so sudden that he was taken to Rehman Medical Institute, which was the nearest hospital, where, he was admitted in critical condition, and he was subjected to cardiac surgery. No doubt, he was not taken to the Government Hospital, and rightly so, because his disease was so dangerous that he was taken to nearest hospital for emergency treatment. In case of emergency, like the present one, the

petitioner needed emergency treatment, he cannot be placed at the mercy of Medical Attendant, putting him on wait for getting prior approval from the Director General, Health for referral to a private hospital, after going through a lengthy departmental process, as the procedural delay in getting prior approval, or searching for Government Hospital may result into death or harm to a human being, on one hand, and may devastate the object of such relief to be granted to the civil servant. In such a situation, the low-paid government employee/ government servant always spends money on his treatment from his own pocket, and under these circumstances, ex-post facto sanction can be accorded.

 09. In our view, the Department and Director General, Health Services, Khyber Pakhtunkhwa without taking into consideration the above aspect of the case, rejected the claim of the petitioner, thus, failed to appreciate the need of the petitioner.

10. For what has been discussed hereinabove, we hold that rejection of the claim of the petitioner for reimbursement of his medical charges was not justified under the attending circumstances of the case. Consequently, this petition is admitted and

allowed. The respondents are directed to reimburse the claimed medical charges of the petitioner, spent by him on his medical treatment with immediate effect. There shall be no order as to costs.

**Announced**  
**07.11.2023.**

  
**JUDGE**
  
**JUDGE**

DB

Hon'ble Mr. Justice Ijaz Anwar  
 Hon'ble Mr. Justice Shakeel Ahmad

Himayat.CS