

Anti-Doping Disciplinary Panel

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To,

Ms. Anshula Rao
D/o Mr. Mohan Lal,
Mrignaini House,
Girls Hostel, LNIPE, Mela Road,
Gwalior, Madhya Pradesh 474002

Date: 31.05.2021

Subj: Decision of the Anti Doping Disciplinary Panel Case No.-05.ADDP.01.2020

NADA Vs. ANSHULA RAO

The order containing the decision of the Anti-Doping Disciplinary Panel dated 31.05.2021 in respect of final hearing of the above case held on 10.04.2021 & 19.05.2021 is enclosed.

Please note that according to Article 13.2.2 of Anti-Doping Rules of NADA 2021, **the time to file an appeal to the National Anti-Doping Appeal Panel shall be twenty one (21) days from the date of receipt of this decision by the appealing party.** The appeal may be filed at the abovementioned address.

Also please note that according of Article 10.7.1- (**Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations**)- Any period of Ineligibility imposed may be partially suspended if you assist NADA in uncovering and/or establishing an ADRV by another Athlete or Athlete Support Personnel pursuant to Article 10.7.1 ADR. Further, the athlete is subjected to doping control test during the ineligibility period, therefore, athlete is required to update his residential address as and when changed.

Copy of the NADA Anti-Doping Rules 2021 may be downloaded from NADA website at the following link: www.nadaindia.org/en/anti-doping-rule-of-nada

The receipt of this communication may be acknowledged.

Encl: 29 sheets.


Manish Yadav

Copy forwarded together with the copy of the order containing the decision of the Anti-Doping Disciplinary Panel for information and action deemed necessary:

1. Indian Olympic Association, Olympic Bhawan, B-29, Qutab Institutional Area, New Delhi- 110016.
2. World Anti-Doping Agency, Stock Exchange Tower, 800 Place Victoria (Suit 1700) P. O. Box 180, Montreal (Quebec), H4Z 1B7, Canada.
3. The Chairman, The Board of Control of Cricket in India, Cricket Centre, Wankhede Stadium, D-Road, Churchgate, Mumbai 400020
4. Manager, Medical & Anti Doping, International Cricket Council, Dubai, UAE.
5. National Anti-Doping Agency, J.L.N Stadium, 1st Floor, Hall No. 104, Lodhi Road, New Delhi, 110003.

BEFORE THE ANTI-DOPING DISCIPLINARY PANEL

In the matter of Ms. Anshula Rao for violation of Article 2.1 of the National Anti-Doping Agency Anti-Doping Rules, 2015

**Quorum: Mr. Gaurang Kanth, Chairman.
Dr. Rana Chengappa, Member.
Mr. Akhil Kumar, Member.**

Present: Ms. Rupam Sharma, Advocate for the Athlete, with Ms. Anshula Rao, Athlete-in-Person

Mr. Manish, Law Officer for NADA.

JUDGMENT
31.05.2021

1. The present proceedings before this Anti-Doping Disciplinary Panel ("**this Panel**") emanate from the Adverse Analytical Finding ("**AAF**") against Ms. Anshula Rao ("**the Athlete**"), who is stated to be 23 years of age at the time of sample collection. The Athlete is an accomplished player in the sport of Cricket and is stated to have represented Madhya Pradesh Cricket Association in various tournaments of BCCI from 2015-2016 onwards.
2. The brief facts necessary for the adjudication of the present case are that on 14.03.2020, National Anti-Doping Agency ("**NADA**") authorized Doping Control Officer ("**DCO**") collected 'out of

competition' urine sample of the Athlete from Vadodara, Gujarat in accordance with the rules and procedures of sample collection. The said sample was split into two separate bottles which were given reference numbers A 531765 ("**A-Sample**") and 531765 ("**B-Sample**"). In the Dope Control Form ("**DCF**"), the Athlete had not disclosed anything regarding any medication or food supplements consumed. The Athlete has mentioned 'V.GOOD' in the column of DCF which asks for the comments of the Athlete. The Athlete duly signed the DCF.

3. Both the samples were transported to NADA Office, New Delhi and further to DoCoLab Universiteit Gent-UGent in Belgium ("**the Laboratory**") a WADA accredited Laboratory. The Laboratory received both the samples on 20.03.2020 with the seal intact without any tampering and deemed it appropriate for analysis. After analysis of A-Sample in accordance with the procedures set out in WADA's International Standard for Laboratory, the Laboratory returned an Adverse Analytical Finding (**AAF**) for the following:

"GC/C/IRMS results are consistent with exogenous origin of 19-Norandrosterone. Delta 13C values: 19-NA= -25.28%, uc=0.61%;

Pregnanediol (PD)= -19.82%, uc= 0.66%-Anabolic Androgenic Steroids”.

4. 19-Norandrosterone is listed as an Anabolic Androgenic Steroids under S1 of WADA’s 2020 Prohibited list and is a non-specified substance.
5. In view of the aforesaid facts, vide the Notice of Charge dated 06.07.2020, NADA charged the Athlete with the commission of an anti-doping rule violation (“**ADRV**”) for the presence of 19-Norandrosterone-Androgenic Anabolic Steroids in the A-Sample. The Athlete was thus charged with violation of Article 2.1 of the NADA Anti-Doping Rules, 2015 (“**ADR,2015**”).
6. The Athlete had submitted her preliminary reply on 13.07.2020 and denied the charge and its consequences. She further asked for the A-Sample documentation package and requested for analysis of B-Sample. The Athlete however stated that the fee quoted by NADA for supply of the A-Sample documentation package and analysis of B-Sample is very exorbitant. She further stated that due to financial constraints and COVID-19 pandemic prevailing all over the world, it is not possible for her to travel

to Belgium for attending the B-Sample analysis and requested for an alternative.

7. Perusal of correspondences exchanged between the NADA and the Athlete, it is evident that NADA had clarified the following to the Athlete - (i) in case the Athlete requests for a B-Sample analysis, the requisite cost for the same is to be borne by the Athlete; and (ii) NADA has no authority over the charges levied by the Laboratory for supplying A-Sample documentation package and B-Sample analysis, as it is a policy decision. NADA further clarified to the Athlete that if she is not in a position to travel to Belgium, she can opt for opening & analysis of her B-Sample in the presence of her authorized representative or independent observer appointed by the Laboratory, as the case may be. In any case, the cost of the B-Sample analysis was still to be borne by the Athlete.
8. Accordingly, NADA asked the Athlete to give confirmation for B-Sample analysis. The Athlete vide her email dated 06.08.2020, clarified that she is ready to deposit the charges for the supply of A-Sample documentation package. However, it was also

stated that she was constrained to waive her right of B-Sample analysis due to financial distress. Further she reserved her right to challenge the Policy of NADA.

9. After the receipt of the A-Sample documentation package, the Athlete vide email dated 25.09.2020 sought two clarifications:

1. Details of sample collection kit received by the Laboratory viz, Berlinger, Versapak etc.
2. Declaration from the Laboratory about any condition observed upon Sample receipt that may adversely impact the integrity of the Sample.

10. NADA vide email dated 05.10.2020 communicated the clarifications provided by the Laboratory to the Athlete. The said clarification, inter alia, reads as follows:

- (i) Details of sample collection kit received by the Laboratory viz, Berlinger, Versapak etc.

Reply: The sample collection kit was from Versapak (most recent type, with transparent outerbox).

- (ii) Declaration from the Laboratory about any condition observed upon Sample receipt that may adversely impact the integrity of the Sample.

Reply: At sample receipt no unusual observations were made and nothing that might adversely impact the quality was registered.

11. The Athlete has not raised any further objection/queries with NADA or Laboratory regarding the A-Sample testing. Since the Athlete has already waived her right for B-Sample analysis, the matter has been referred to this Panel.

12. The Athlete filed a detailed Written Submission, raising objections as follows:

(i) Despite the repeated requests for reconsideration of its policy with respect to the demand of an unreasonable, arbitrary and unfair fees charged by the Laboratory, NADA did not provide any help. Hence, the Athlete was constrained to waive her right for B-Sample analysis.

(ii) Grave prejudice has been caused to the Athlete in light of (i) Exorbitant and unreasonable costs of Euro 2400 sought from the Athlete for the B-Sample analysis and for providing the A-Sample documentation package; and (ii) Time lapse of almost four (04) months between the dope test in March 2020 and the Notice of Charge in July 2020.

(iii) In the A-Sample documentation package, the chain of custody for the sample between 14.03.2020 (date of

sample collection) and 20.03.2020 (date of receipt of sample by the Laboratory) were not legible.

- (iv) As per the Dope Control Form, the specific gravity of the collected Sample was noted as 1.000, whereas, the specific gravity required for the analysis of a Sample is 1.005 as per WADA International Standards for Testing and Investigations (“ISTI”). The documentation package shows a different specific gravity and hence there is a fundamental inconsistency in the sample which is tested.
- (v) She has not consumed any prohibited substance with an intention to cheat. She is not in a position to either disprove the charge or identify the origin and demonstrate the degree of fault and lack of intent, due to (i) the non-testing of B-Sample; and (ii) time gap between the sample collection and notice of charge. Hence the Athlete’s valuable right of defense was prejudicially affected causing great prejudice to the Athlete.

The Athlete relied upon the following decisions:

- (i) CAS 2013/A/3327 Marin Cilic Vs International Tennis Federation (ITF) & CAS/2013/A/3335 International Tennis Federation (ITF) Vs Marin Cilic award dated 11.04.2014

- (ii) CAS 2014/A/3487 Veronica Campbell- Brown Vs Jamaica Athletics Administrative Association (JAAA) & International Association of Athletics Federations (IAAF) awards dated 10.04.2014
- (iii) Medipol Pharmaceutical India Pvt Ltd Vs Post graduate Institute of Medical Education & Research and Ors Civil Appeal No. 2903 of 2020 (Supreme Court of India).

In view of above said submissions, the Athlete prayed for the quashing of the Notice of Charge dated 06.07.2020 and reimbursement of cost of the A-Sample analysis documentation package along with the cost of the present proceedings.

13. NADA filed their reply refuting all the allegations of the Athlete. NADA contended that the sample was collected on 14.03.2020 and reached the Laboratory at Belgium within 6 days i.e. on 20.03.2020, which arguably is a reasonable time considering international transit of the sample. The sample has been transported to the Laboratory using the Sample Collection Authority's authorized transport method as per Article 9.3.2 of the ISTI, 2019.
14. NADA further contended that as per D.1 of ISTI 2019, the determination of suitability of the sample is the decision of the

Laboratory. Hence, failure to meet specific gravity for analysis and suitable volume of urine for analysis in no way invalidates the suitability of the sample for analysis. NADA also clarified that the DCO measures the specific gravity with lab sticks and comparatively it is less effective than refractometer which is used by the lab. Hence there is a discrepancy in the reading of the specific gravity. As per Article 3.2.2 of the NADA ADR Rules, 2015, there is a presumption in favour of the WADA Accredited Laboratories that they have conducted the sample analysis and custodial procedures in accordance with the International Standard for Laboratories (ISL).

15. NADA asserted that the Laboratory has charged for the B-Sample analysis and A-Sample documentation package as per agreement between NADA and the Laboratory. Further, it is the discretion of the Athlete to get her B-Sample analysed, which has not been exercised by her owing to the alleged exorbitant cost.
16. NADA further submitted that the Notice of Charge was issued after conducting the review as envisaged under Article 7.2.2 of the NADA ADR Rules, 2015. There is strict liability cast upon

every athlete under NADA ADR Rules, 2015 to demonstrate how the prohibited substance entered in his/her body. In the present case, the Athlete has miserably failed to discharge the said burden and hence mere bald allegations of prejudice or departure from International Standards does not absolve the Athlete from discharging her foremost duty. As per Article 10.2.1.1 of NADA ADR, 2015, there is presumption of intentional violation by the Athlete in case of non-specified substance. Since the Athlete failed to rebut the said presumption, NADA prays for the imposition of maximum ineligibility of four (04) years against the Athlete. NADA relied upon the following precedents:

- (i) Arbitration CAS 2017/A/5016 Ihab Abdelrahman v. Egyptian Anti-Doping Organization (EGY-NADO) & CAS 2017/A/5036 World Anti-Doping Agency (WADA) v. Ihab Abdelrahman & EGY-NADO, award of 18 December 2017
- (ii) Arbitration CAS 2019/A/6195 WADA Vs NADA & Inderjeet Singh
- (iii) Arbitration CAS 2010/A/2296 Simon Vroemen v. Koninklijke Nederlandse Atletiek Unie (KNAU) & Anti-Doping Autoriteit Nederland (ADAN), award of 12 September 2011
- (iv) Ravi Kumar Vs NADA decided on 24.09.2020 (ADAP Panel)

17. That the Athlete filed her rejoinder and reiterated her submissions in the Preliminary reply/detailed reply.
18. The hearing was held on 19.05.2021 through video conferencing. The Athlete represented through Counsel appeared before the Panel and reiterated the submissions made in the preliminary reply dated 13.07.2020 as also the detailed written submissions filed before this Panel. The Law Officer representing NADA vehemently opposed the contention of the Athlete and reiterated the submissions made in written reply filed by NADA before the Panel.
19. We have heard the arguments advanced on behalf of the Athlete as well as NADA and perused the available material on record.
20. At the outset, it is noted that the constitutional validity of Article 7.3 of the NADA ADR, 2015 is under challenge before the Hon'ble Delhi High Court in W.P (C) No. 616/2020 titled as Abhijeet Gaurav Vs NADA. Hence, with the consent of both the parties, the Panel decided not to examine the correctness of the policy decision of NADA/Laboratory asking the Athlete to pay costs for

conducting B-Sample Analysis and for providing documentation packages. The Panel, is thus examining only the alleged ADRV committed by the Athlete on the basis of the available material and facts on record.

21. As per Article 2.1.1 of NADA ADR, 2015, it is the personal duty of each athlete to ensure that no prohibited substance enters his/her body. Hence, each athlete is responsible for any prohibited substance or its metabolites or markers present in his/her sample. Further as per Article 2.1.2, in a case where the athlete waives his or her right of B-Sample analysis and the B-Sample is not analysed even after the A-Sample analysis establishes the presence of prohibited substance, the same can be considered as a sufficient proof of an ADRV under Article 2.1.
22. As per Article 3 of the NADA ADR 2015, the burden is on the NADA to prove that ADRV has occurred. In order to discharge the said burden, NADA placed on record the AAF Test report for A Sample issued by the Laboratory which shows the presence of 19-Norandrosterone, an Androgenic Anabolic Steroid in the Athlete's urine sample. The said prohibited substance is a non-specified substance under S-1 of WADA's 2019 prohibited list.

23. The Athlete did not accept the charge and its consequences. She obtained the documentation package of A-Sample analysis upon due payment and raised certain objections regarding A-Sample analysis. It is her contention that due to her financial constraints, she was forced to waive her limited right to conduct B-Sample Analysis available under NADA ADR, 2015. Hence, the entire doping test must be disregarded.
24. NADA ADR, 2015 guarantees two valuable rights to the Athlete (i) right to request for the B-Sample analysis; and (ii) right to attend the B-Sample opening and testing. According to the landmark decisions by the Court of Arbitration for Sport (**CAS**), an athlete's right to attend the opening and analysis of their B-Sample is fundamental in nature, and if not respected, the B-Sample results must be disregarded (**Ref: CAS 2008/A/1607, CAS 2010/A/2161, CAS 2012/A/2922**). Hence the said right is not merely procedural in nature but will definitely have an impact in deciding even the validity of the testing procedure itself.

25. In the present case, B-Sample analysis was not done as the Athlete expressed her inability to bear the cost of the B-Sample analysis. In this regard, it is important to examine the Notice of Charge dated 06.07.2020 issued by NADA. The Notice of Charge, reads, inter alia, as follows:

'Please note that if you request the analysis of the B Sample and that analysis confirms the AAF made in relation to the A Sample, you will be required to pay the cost of that analysis in advance in favour of the Doping Control Laboratory, Belgium, which is Euro 1500, cost of B Sample Analysis (See article 7.3 ADR). If the B Sample analysis does not confirm the AAF, then you will not have to pay the costs of that analysis.'

Hence it is evident that if the B-Sample analysis confirms the AAF, then Athlete has to bear the expenses, however if the B-Sample analysis does not confirm to AAF, then the Athlete need not pay for it.

26. NADA, being the Result Management Authority in India, on its own can also ask for the B-Sample analysis. Article 7.3.2 of the NADA ADR, 2015, reads as follows:

"Where requested by the Athlete or NADA, arrangements shall be made to analyze the B Sample in accordance with the International Standard for Laboratories. An Athlete may accept the A Sample analytical results by waiving the requirement for B Sample Analysis. NADA may nonetheless elect to proceed with the B Sample analysis."

As per the WADA Code and NADA ADR Rules, 2015, NADA has the responsibility for the results management. One cannot lose sight of the fact that the B-Sample analysis is the fundamental right of the Athlete in view of which NADA ought to have provided the financial support to the Athlete for conducting the B-Sample analysis subject to claim reimbursement of cost if the same confirms the A-Sample analysis. NADA could have sought the assistance of the Athlete's Federation in this regard. There are many incidents where the Result Management Authority had provided financial aid to the Athlete for conducting the B-Sample analysis (**Ref. CAS 2016/O/4454**). Even though the Athlete also did not take any active steps to approach her Federation for financial support for B-Sample analysis, it cannot be ignored that in the present case, NADA, also miserably failed to extend any sort of financial support to the Athlete. Since the constitutional validity of Article 7.3 of the NADA ADR, 2015 is under challenge before the Hon'ble Delhi High Court in W.P (C) No. 616/2020 titled as Abhijeet Gaurav Vs NADA, the Panel is not examining the policy decision of the NADA in this regard. However, the Panel records the great displeasure in the conduct

of NADA in not providing the financial assistance to the Athlete for conducting the B-Sample analysis.

27. Be that as it may, now the Panel proceeds to examine the effect of non-analysis of the B Sample of the Athlete. As per Article 2.1.2, if an athlete waives his/her right for the B-Sample analysis, that will be considered as a sufficient proof for the ADRV. In the present case, the Athlete's waiver of her right for B-Sample analysis was due to financial constraints. Hence the said waiver of the B Sample analysis should be considered in view of the CAS Panel decision in Arbitration **CAS 2002/A/385 T /International Gymnastics Federation (FIG), award of 23 January 2003**. In this case, A-Sample analysis showed the presence of prohibited substance 'Furosemide'. Subsequently, B-Sample was also tested positive for the same substance, however the Athlete or her Federation was not informed about the opening of B Sample and hence denied of an opportunity to participate in the B Sample opening. The Athlete challenged the procedure adopted by the authorities before the CAS and prayed for the invalidation of the testing procedure itself. While examining the said issue, CAS observed, inter alia, as follows:

“34. In conclusion, the Panel is inclined to view the procedural error committed in this case as compromising the limited rights of an athlete to such an extent that the results of the analysis of the B-sample and thus the entire urine test must be disregarded.

35. However, the Panel can leave the question discussed above undecided because for the Panel's decision as to whether the Respondent established the objective elements of a doping offence, it is irrelevant whether the breach of the right to attend the opening of the B-sample weighs so heavily in this case that the entire doping test evidence cannot be used. Even if this was the case, the Panel is still convinced that the other evidence presented by the Respondent establishes the objective requirements of a case of doping.”

29. The Panel is in respectful agreement with the legal proposition as laid down in CAS 2002/A/385. Even though the Panel in strong words criticizes the conduct of the NADA in not providing the financial help to the Athlete to conduct her B-Sample analysis, it still needs to be examined whether the said breach alone would cast doubts over the entire process of sample analysis. The Panel has to examine whether the NADA in the present case, has established the objective elements of a doping offence to the comfortable satisfaction of the Panel.

30. In the present case, the Athlete is charged with the ADRV as her A-Sample tested positive for the presence of 19-

Norandrosterone, an Anabolic steroid. The analysis was carried out at WADA Accredited Laboratory in Belgium. As per Article 3.2.2, there is a rebuttable presumption in favour of WADA-accredited laboratories to the effect that custodial procedures have been followed and sample analysis has been conducted in accordance with the ISL. In order to rebut the said presumption, the Athlete needs to establish a departure from the ISL which could have reasonably resulted in AAF (**Ref: CAS 2010/A/2296 Simon Vroemen Vs KNUN & ADAN**).

31. The sample in present case was collected on 14.03.2020 and received by the Laboratory on 20.03.2020. The Laboratory vide subsequent email, clarified to the Athlete that the sample collection kit was from most recent type- Versapak with transparent outer box and upon receipt of sample. It was further clarified that no unusual observations were made which might adversely impact the quality of the Sample. The Athlete has not objected to the said position.
32. The Panel examined the A-Sample documentation package carefully which is placed on record. In the said documentation

package, the Laboratory has explained the sample receipt & internal chain of custody (Fig.3, 7 &11), external chain of custody as received from NADA (Fig.4), and the analysis and confirmation tests conducted by the Laboratory (Fig.6) etc. in detail. It is further seen that based upon the initial testing procedure results, a confirmation procedure was requested. It is noted in the Laboratory documentation package, inter alia, as follows:

“.....The confirmation method ANAL-73 was performed by M. Polet (IRMS sample preparation, instrumental analysis and instrumental GC-C-IRMS analysis). A summary of the procedure is given in Fig 13.

Additional tests were performed. Based upon the initial testing results according to ANAL-10 (0.5 ml urine) and the one-point calibration (blank urine spiked at 15 ng/ml) a semi-quantification was done according to procedure ANAL-03 (0.25 ml urine) as given in Fig 8 and Fig 10 respectively. The absence of neither Norethisterone M1 nor M2 has been demonstrated during the ITP (ANAL10). The hCG analysis ANAL-34 was performed in order to exclude pregnancy as given in Fig 11.

The GC-MS/C/IRMS results of sample 20-2912 are consistent with the administration of 19-Norandrosterone (Fig. 8 to Fig 26). The list of names and initials of laboratory staff involved in the analysis of sample 20-2912 leading to the adverse analytical finding is given in Fig. 28.”

33. The Athlete raised an objection to the effect that in the A-Sample documentation package, the chain of custody for the sample for the period 14.03.2020 to 20.03.2020 is not legible (Fig.4 on page 9 of the documentation package). The Panel has carefully and minutely examined the said page. Though prima facie it appears to be illegible, however, on enlarging the size, it can be read easily. Hence, in our considered opinion it is not correct to say that Fig. 4 on page 9 of the documentation package is not legible. Further the said objection has been raised by the Athlete for the first time in her written submission filed before this Panel. There was enough time and ample opportunity for the Athlete to ask for another copy of the particular page from the NADA/Laboratory if the same is not legible according to her. However, record reveals no such attempt was ever made by the Athlete. In addition, as per ISTI-2019 a detailed procedure is prescribed for the sample collection, preservation and transportation. The Athlete failed to point out any departure from the standard as prescribed in the ISTI-2019 w.r.t the chain of custody.

34. The Panel has carefully examined the chain of custody as explained in the documentation package and is comfortably satisfied that the same is in accordance with the international standard and there is no deviation from ISTI-2019.

35. The Athlete has raised another objection that the DCO at the time of sample collection, recorded the specific gravity of the Sample as 1.000, whereas the documentation package records the specific gravity of the Sample as 1.005. Hence, there is a fundamental inconsistency which makes the Sample dubious. NADA in their reply clarified this point by stating that the DCO measures the specific gravity with lab sticks whereas refractometers are used in the laboratories. Hence, the minor discrepancy is due to the use of different apparatus. Since the Panel has already examined the chain of custody and is satisfied about its authenticity, the Panel is comfortably satisfied that the minor variation in the specific gravity as recorded by the DCO in the DCF and the documentation package does not materially affect the result of the testing procedure. Further as per ISTI-2019, the failure of a sample to meet the suitable specific gravity/ volume requirements for analysis in no way invalidates

the suitability of the Sample for analysis. The determination of a Sample's suitability for analysis is the decision of the relevant laboratory. In the present case, the Laboratory was satisfied with the suitability of the Sample and conducted the analysis recording its finding on the sample analysis **(Ref: CAS 2019/A/6155 WADA Vs Inderjeet Singh & Ors, Para 104-116)**.

36. In view of the above discussion, the Panel is satisfied that there is no deviation from ISL in the A-Sample Analysis, and the A-Sample Analysis of the Athlete itself is sufficient to prove the ADRV under Article 2.1.1. Hence, the Panel is of the considered view that the presence of the prohibited substance in the urine sample of the Athlete is established beyond doubt. Therefore, it is held that the NADA has successfully proved beyond doubt that the Athlete is in violation of Article 2.1 of the NADA ADR, 2015.
37. That as per Article 10.2, the period of ineligibility for a violation of Article 2.1 is subject to the potential reduction as per Article 10.4 (No fault or Negligence), 10.5 (No significant fault or Negligence) or 10.6 (For reasons other than fault).

38. As per the settled proposition of law in various CAS judgments, except in cases of minors, an Athlete must establish how the prohibited substance entered into his/her body in order to discharge the burden of establishing the lack of intention. To establish the origin of prohibited substance, it is not sufficient for the Athlete to merely profess their innocence. The standard of proof is the balance of probability. As per **CAS 2016/A/4377, WADA Vs IWF (Para 51 & 52)** ;

“51. The Athlete bears the burden of establishing that the violation was not intentional within the above meaning, and it naturally follows that the athlete must also establish how the substance entered her body. The Athlete is required to prove her allegations on the “balance of probability”. This standard, long established in the CAS jurisprudence, requires the Athlete to convince the Panel that the occurrence of the circumstances on which the Athlete relies is more probable than their non-occurrence. E.g., CAS 2008/A/1515, at para. 116.

52. To establish the origin of the prohibited substance, CAS and other cases make clear that it is not sufficient for an athlete merely to protest their innocence and suggest that the substance must have entered his or her body inadvertently from some supplement, medicine or other product which the athlete was taking at the relevant time. Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question.

39. In the present case, the Athlete is alleging that due to delay of approximately four (04) months from the date of sample collection and the notice of charge, she lost her opportunity of tracing the origin of the prohibited substance in a timely manner. The Athlete further stated that even though she was '*convinced*' that she has not taken any prohibited substance with the intention to cheat, she is not in a position to explain exactly how the said substance entered in her body.
40. The sample was collected on 14.03.2020 and received by Laboratory on 20.03.2020. The A-Sample analysis result was uploaded on ADAMS on 30.06.2020. Thereafter, NADA issued the notice of charge to the Athlete on 06.07.2020. From the Laboratory documentation package, it appears that there were various Analysis and additional Analysis including GC/C/IRMS conducted by the Laboratory before reporting the AAF. No time frame is prescribed by WADA for the Laboratories to complete the testing procedure, however, it is expected to be done in a reasonable time. The WADA Accredited Laboratories are required to report the confirmed results after conducting the tests in accordance with the ISTI. In the present case, the

Laboratory took approximately three (03) months time to report the AAF. Considering the analysis and additional analysis conducted by the Laboratory, the Panel is of the considered view that there is no unreasonable delay. NADA notified the AAF to the Athlete immediately thereafter, after completing their review as envisaged under Article 7.2.2 NADA ADR, 2015. Hence there is no delay on the part of NADA also in notifying the charges to the Athlete.

41. The CAS Panel had an occasion to examine a similar issue in **Arbitration CAS ad hoc Division (OG Rio) 16/023 Ihab Abdelrahman v. Egyptian NADO**. In this case, the Athlete, who was an international-level athlete qualified to compete in XXXI Olympiad in Rio de Janeiro (“**Rio-2016**”) in the javelin throw event. The athlete therein was subjected to an out of competition dope test on 17.04.2016 and was notified of the AAF on 20.07.2016. The Athlete was provisionally suspended forthwith barring him from participating in the Rio-2016 and he was imposed with a provisional suspension. Pending his B Sample analysis, the Athlete challenged his provisional suspension before the CAS Panel. Among other grounds, the Athlete also

alleged that there was a delay in processing the out of competition sample by the Authority and the delay has prevented him from challenging the results in a timely fashion, denying him the opportunity to compete at Rio 2016. While examining the said aspect, the CAS Panel held, inter alia, as follows:

“The Panel also finds that the substantial delay between the date of OOC (Out Of Competition) testing and the communication of the results, while unfortunate for the Athlete, is not unusual in view of the case load of the various laboratories and the complexity of the analysis. Even though it is preferable that the time between the taking of the sample and its analysis be a short one, the Panel also notes that the Athlete was able to compete during that time period. The Panel does not ignore that the specific time line in this case (notification of the AAF shortly before the Rio Olympic Games) made it difficult for the Athlete to defend his case. However, this aspect in relation to the competition schedule and the delay in the analysis of the sample, in and of itself, is not a sufficient reason to stay or suspend the mandatory provisional suspension. “

42. Regarding the prejudice as claimed by the Athlete, the Panel finds it difficult to accept the said contention. NADA ADR, 2015 casts an extra responsibility on the Athlete to ensure that no prohibited substance enters his/ her body. The Athlete should always be very careful about the medicines/supplements/food etc., they are consuming. It is the personal duty of the Athlete to

ensure that no prohibited substance enters her body. Once athletes are subjected to a dope test, it is expected from the responsible athletes to preserve the balance of the medicines/supplements etc., consumed by them during the said period for some reasonable time. Hence the Panel is of the considered view that in the present case the Athlete failed to explain how the prohibited substance entered in her body and hence she failed to take the reasonable care as expected from an Athlete.

43. In the present case, the Athlete's sample tested positive for a non-specified substance- 19-Norandrosterone, an Anabolic Steroid. The Athlete failed to adduce any evidence to explain how the prohibited substance entered into her body. Therefore, in the absence of any cogent evidence, it is not acceptable to believe that the prohibited substance entered into her body without her knowledge. Therefore, the Panel is comfortably satisfied that the Athlete consumed the prohibited substance knowingly and intentionally to enhance her performance.

44. As per Rule 10.2 of the NADA ADR, 2015, for an ADRV under Article 2.1, the ineligibility shall be four (04) years in cases where (i) non-specified substances are involved; and (ii) the Athlete failed to show that the Antidoping violation was not intentional.

45. Hence in view of the discussion herein above, it is held that the Athlete is in violation of Article 2.1 of NADA ADR, 2015 and she consumed the prohibited substance knowingly and intentionally. Since there exist no mitigating circumstances to reduce the penalty, the Athlete is hereby sanctioned with an ineligibility of Four (04) years under Article 10.2 NADA ADR, 2015 from the date of final hearing decision. However, the Athlete is entitled for the credit of period of provisional suspension (Article 10.11.3) already undergone. Accordingly, the Panel hereby directs that the Athlete be given credit of period of her provisional suspension which she had already undergone for calculating her total period of ineligibility of Four (04) years. There is no order as to cost, parties to bear their respective cost.

The matter is disposed of, accordingly.



Gaurang Kanth
Chairman

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CHENGAPPA

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Rana Chengappa
Member

Akhil Kumar
Member

The matter is disposed of, accordingly.

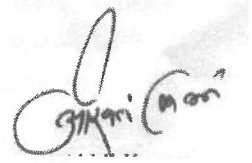


Gaurang Kanth
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Rana Chengappa
Member



Akhil Kumar
Member