

BEFORE THE ANTI DOPING APPEAL PANEL

(PROCEEDINGS CONDUCTED THROUGH VIRTUAL MODE)

Appeal No.- 37/ADAP/2023

IN THE MATTER OF:

Mr. Pankaj Mukheja

...APPELLANT

Versus

National Anti-Doping Agency

...RESPONDENT

Quorum: Mr. Abhinav Mukerji, Chairperson
Dr. Vivek Singh, Member
Ms. Prashanti Singh, Member

Present: Mr. Saurabh Mishra for the Athlete and the Athlete in Person.
Yasir Arafat Law Officer for NADA.

Date of Hearing: 07.03.2024

Date of Order: 08.04.2024

ORDER

1. That the Appellant Mr. Pankaj Mukheja (“**Athlete**”) has filed the instant Appeal against the order dated 25.10.2023 passed by the Anti – Doping Disciplinary Panel in Case No. – 133.ADDP.2023 (“**impugned order**”). By way of the impugned order, the Athlete has been declared ineligible for a period of 2 years w.e.f. 25.10.2023 on account of violation of Articles 2.1 and 2.2 of the National Anti – Doping Rules, 2021 (“**Rules**”).
2. The facts of the case are as follows:
 - a. On 15.04.2023 and 16.04.2023, the Doping Control Officer (“**DCO**”) of National Anti - Doping Agency collected urine samples of the Athlete during the selection trials (3 & 4) for Rifle and Pistol in Bhopal, Madhya Pradesh.

- b. The urine samples as collected were split in two parts – sample A (unique reference code 6502689) and sample B (unique reference code 6503428) (“**samples**”) and were tested at National Dope Testing Laboratory, Delhi.
- c. On 04.05.2023, the Athlete applied for Therapeutic Use Exemption (“**TUE**”) on the ground that he had been administering a substance “Propranolol”. In its decision dated 08.05.2023, the TUE Committee rejected the application of the Athlete by recording “*TUE is not granted as committee observed that more suitable and appropriate medications are available for the indication which are not prohibited*”.
- d. Upon being tested at the National Dope Testing Laboratory, Delhi in accordance with WADA’s International Standards for Laboratories, the sample of the Athlete returned with an Adverse Analytical Finding of “P1.Beta-blockers/Propranolol” (“**relevant substance**”).
- e. The relevant substance is a beta – blocker, also known as beta adrenergic blocking agents. The relevant substance is known for blocking the release of stress hormones (adrenaline and non-adrenaline) in different parts of the body. In view of the same, the relevant substance is listed under P1 of WADA’s 2023 list of Prohibited Substances.
- f. By way of a notification dated 19.05.2023, the Athlete was informed about the relevant substance found in his samples. The Athlete was also informed about his right to request for testing of sample B at his own cost if he was unwilling to accept the result of Sample A. On 25.05.2023, the Athlete informed that he did not wish to get his Sample B tested.
- g. In view of the aforesaid, a Notice of Charge dated 19.06.2023 was issued to the Athlete and a final opportunity to explain its conduct was granted to the Athlete up to 09.07.2023.
- h. On 26.07.2023, a notice was sent to the Athlete for initiation of disciplinary proceedings under Articles 2.1 and 2.2 of the Rules.
- i. By way of the impugned order, the Athlete was declared ineligible for a period of 2 years w.e.f. 25.10.2023 on account of violation of Articles 2.1 and 2.2 read with Articles 10.2.2 and 10.6.1.1 of the Rules. Hence, the present Appeal.

3. We have heard the parties at length.
4. Ld. Counsel for the Athlete submits that the Athlete has a history of panic attacks with palpitations, chest pain, heavy sweating and shortness of breath followed by increased heart rate. Ld. Counsel for the Athlete has relied on various prescriptions in support of this contention.
 - 4.1 Ld. Counsel for the Athlete further submits that the Athlete was prescribed Etivis Beta (“**relevant medicine**”), which contains the relevant substance. The Athlete was not aware that the relevant medicine was prohibited under the WADA Rules and the Athlete was consuming the same unintentionally.
 - 4.2 It is further submitted that the Athlete’s innocence is also evident from the fact that the Athlete duly mentioned the relevant medicine in his doping control form.
 - 4.3 Ld. Counsel for the Athlete submits that on 13.03.2023, the Athlete had visited Dr. Sandhya Pandey of Sports Authority of India and had produced before her the prescription given by a Doctor in which the relevant medicine was also prescribed to him. However, Dr. Sandhya Pandey did not advise him to stop taking that medicine.
 - 4.4 In view of the above, it is submitted that the Athlete is covered under “No Fault or Negligence” ambit in the facts and circumstances of the present case.
 - 4.5 It is submitted that multiple doctors, including doctors of Government Hospitals, never stopped him from taking the relevant medicine in spite of knowing that he is an Athlete. Therefore, this case comes within the ambit of “No Significant Fault or Negligence”.
 - 4.6 It is submitted that the Athlete, being a 12th pass 21 – year old boy without undergoing any formal education, cannot be expected to know the intricacies of the Rules including the procedure to apply for TUE. Along the same lines, the Ld. Counsel for the Athlete also submits that this is the first time the Athlete’s sample has returned positive.

- 4.7 It is further submitted that had Dr. Sandhya Pandey performed her duty properly, she could have prevented the Athlete from taking a medicine which contained the relevant substance.
- 4.8 It is submitted that the Athlete was undergoing medication prescribed from different doctors and was diligently following the medications prescribed by them.
- 4.9 It is also submitted that before the Athlete received a notice of charge on 19.06.2023, he had applied for TUE as soon as he became aware of the fact that the relevant medicine which he was consuming contained the relevant substance.
- 4.10 Ld. Counsel for the Athlete also submits that unlike some of the other competitions wherein the Athlete regularly participates, the competition wherein his sample returned positive was not a significant competition but rather just a memorial tournament. Therefore, there was no occasion for the Athlete to enhance his performance.
- 4.11 It is also submitted that the Athlete had satisfied the balance of probabilities and had also satisfied that the burden of convincing the occurrence of circumstances on which the Athlete relies is more probable than their non – occurrence.
- 4.12 It has also been argued by the Athlete’s counsel that when the Athlete visited the Rajindra Hospital, Patiala for a treatment, he had duly informed the doctors there that he is a sportsperson. However, even then, doctors at the Rajindra Hospital prescribed him the relevant medicine.
- 4.13 It is submitted that the Athlete’s conduct comes at the lowest level of the spectrum of “No Fault or Negligence” ambit and thus the Athlete does not deserve to be rendered ineligible.
- 4.14 Without prejudice, the Ld. Counsel for the Athlete has submitted that the period of ineligibility be applied from the date of sample collection as there have been delays in the proceedings which are not attributable to the Athlete.
- 4.15 In support of his arguments, the Ld. Counsel for the Athlete relies on the CAS 2013/A/3327 *Marin Cilic v. International Tennis Federation*, CAS Anti-

Doping Division (OG PyeongChang) AD 18/004 International Hockey Federation, CAS 2005/A/830 S. v. FINA and CAS 94/129 USA Shooting & Q./UTI.

5. On the other hand, Ld. Counsel for NADA has submitted that no ground has been made out by the Athlete to interfere with the impugned order.
 - 5.1 Ld. Counsel for NADA submits that the initial burden of proof has been established by NADA as the tests have confirmed the presence of the relevant substance which attracts punishment under Article 10.2 of the Rules.
 - 5.2 It is further submitted that under Article 2.1.1 of the Rules, an Athlete is duty – bound to ensure that no prohibited substance, such as the relevant substance, enter his/her body.
 - 5.3 It is also submitted that the Athlete has not taken any reasonable care to consult a medical practitioner and has also failed to carry out due diligence.
 - 5.4 It is lastly submitted by the mere consuming / administering a prohibited substance without obtaining TUE is enough for sanctioning an Athlete ineligible.
6. Having considered the arguments advanced and on a perusal of the record, we are of the view that no case has been made out by the Athlete to interfere with the impugned order.
7. Article 2.1.1 of the Rules mandates *“It is the Athletes’ personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1”*.
8. Further, Article 2.1.2 of the Rules stipulates that *“Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following:*

presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample."

9. Article 10.6.1.1 of the Rules mandates *"Where the anti-doping rule violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Athlete's or other Person's degree of Fault."*
10. The Rules also define the terms "No Fault or Negligence" and "No Significant Fault or Negligence".
11. No Fault or Negligence is defined as: *"The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system."*
12. No Significant Fault or Negligence is defined as: *"The Athlete or other Person's establishing that any Fault or negligence, when viewed in the totality*

of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.”

13. We take note of the fact that under 22.1 of the Rules, it is incumbent upon the Athlete to be knowledgeable of and comply with the Rules. In the instant case, the Athlete is an international level Athlete and admittedly a 12th pass student. The Athlete has participated in so many competitions / tournaments. In light of the same, the Athlete cannot claim ignorance of the Rules, including procedure pertaining to TUE.
14. It is also noted that given the Athlete has a history of panic attacks with palpitations, chest pain, heavy sweating and shortness of breath followed by increased heart rate, it was more so incumbent upon him to understand what kind of medication(s) would be appropriate for him. A 12th pass student and an Athlete of international level is required to possess this much level of awareness.
15. We agree with the finding in the impugned order that while the Athlete's case regarding the medical prescriptions might not be entirely unbelievable, an international level Athlete, such as the Appellant herein, is duty bound to ensure that whatever medical treatment he receives is in accordance with the Rules. The Athlete cannot blame the doctors and cover up his mistake of not being in compliance with the Rules.
16. Even in the prescription dated 13.03.2023 of Dr. Sandhya Pandey, no medicine containing prohibited substance was mentioned. We are informed that the TUE application was also rejected on the ground that better options were available to treat the Appellant medically without the use of prohibited substance. There has also been no challenge to the TUE rejection.

17. The Athlete has cited multiple CAS decisions in order to buttress his arguments. However, all the decisions are distinguishable on facts and none of them are authorities on the proposition that an Athlete cannot be rendered ineligible where he has been found to be in ignorance of the Rules.
18. Therefore, we do not find any merit in the Appeal and the same is dismissed. The sanction of 02 years imposed vide impugned order dated 25.10.2023 passed by the Anti – Doping Disciplinary Panel in Case No. – 133.ADDP.2023 is upheld. As observed by Anti – Doping Disciplinary Panel, this period shall commence from 25.10.2023. While the Ld. Counsel for the Athlete has submitted that the period of ineligibility be applied from the date of sample collection as there have been delays in the proceedings which are not attributable to the Athlete, we note that this is factually incorrect. We also direct that under Article 10.10 of the Rules, all other competitive results obtained by the Athlete from the date of incident, i.e., 12.05.2023, shall be disqualified with the resulting consequences including forfeiture of medals, points and prizes. A copy of the order be uploaded on the website of NADA and a copy be sent by registered post to the postal address of the Athlete and also emailed to his registered email address and sent to his counsel.



(Prashanti Singh)
Member



(Dr. Vivek Singh)
Member



(Abhinav Mukerji)
Chairman