

Anti-Doping Disciplinary Panel

J.L.N Stadium, Gate No. 10 Hall No.103
1st Floor, Lodhi Road, New Delhi 110 003
Telefax : 011-24368274

To,

Date: 10.01.2024

Mr. Durgesh Kumar
R/o H. No. 0, Kardiha, Bilaspur,
Chattisgarh, India
Email: durgeshkumar446@gmail.com

Subj: Decision of the Anti Doping Disciplinary Panel Case No. 148.ADDP.2023

NADA Vs. MR. DURGESH KUMAR (ADAMS ID: - KUDUMA73789)

The order containing the decision of the Anti-Doping Disciplinary Panel dated 28.12.2023 in respect of final hearing of the above case held on 29.11.2023 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: 04 sheets.



(Yasir Arafat)

Sr. Prog. Associate (Legal)

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. World Anti-Doping Agency, Stock Exchange Tower, 800 Place Victoria (Suit 1700) P. O. Box 180, Montreal (Quebec), H4Z 1B7, Canada.
2. General Secretary, Amateur Kabaddi Federation of India E-386, Cabin B (Basement), Greater Kailash Part-1, New Delhi 110048.
3. International Kabaddi Federation, 2, Aakansha, Ajmer Road, Jaipur, Rajasthan.
4. 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 Mr. Durgesh Kumar (Sports-Kabaddi) for violation of Articles 2.1 and 2.2 of National Anti-Doping Rules, 2021.

(PROCEEDINGS CONDUCTED THROUGH VIRTUALMODE)

Quorum: Ms. Jyoti Zongluzu, Chairperson, ADDP
Dr. Manik S Ghadlinge, Member, ADDP
Mr. Abantika Deka, Member, ADDP

Present: Mr. Gourav Das, Counsel for NADA
Mr. Durgesh Kumar, Athlete in person

J U D G E M E N T

28.12.2023

1. The present proceedings before this Anti-Doping Disciplinary Panel (“**this panel**”) emanate from Anti-Doping Rule Violations (“**ADRV**”) by Mr. Durgesh Kumar (“**the athlete**”) of Articles 2.1 and 2.2 of the National Anti-Doping Rules. The athlete is a National Level Kabaddi Player and his date of birth as stated by him in the Dope Control Form (“**DCF**”), happens to be **10.02.2002**.
2. Brief Facts of the case are as follows:
 - 2.1 That Athlete namely “Mr. Durgesh Kumar” was selected for the Doping Control Test during out-competition at Patna, Bihar. The Sample Collection process was conducted on 12.05.2023 where the urine Sample of the Athlete was collected by NADA’s Dope Control Officer (DCO). The urine sample of the Athlete was separated into 2 parts A & B with the unique Code “6501432”.
 - 2.2 A Sample of the Athlete was tested at the National Dope Testing Laboratory (NDTL), Delhi in accordance with the procedures set out in WADA’s International Standard for Laboratories and was returned with an Adverse Analytical Finding (“**AAF**”) for *Sl. 1 Anabolic Androgenic Steroids (AAS)/Metandienone* being non specified substance under WADA Prohibited List of 2023.

2.3 That under Article 7.2.1 of ADR, the initial review of sample A showed that the Athlete did not have Therapeutic Use Exemption (TUE); there was no apparent departure from the International Standard for Testing and Investigations ('ISTI') or the International Standard for Laboratories ('ISL') that could undermine the validity of the AAF; and the AAF had not been caused by ingestion of the relevant Prohibited Substance through a permitted route.

2.4 That the Notification was issued by NADA on 09.06.2023 wherein, he was notified that he has been charged for violation of Rule Articles 2.1 & 2.2 of ADR. The Athlete was provisionally suspended on 09.06.2023 in accordance with the mandatory provision under Article 7.9.1 of the Rules as the prohibited substance is non-specified. In the aforesaid letter, the Athlete was also informed of his right to have his B sample specimen tested and the right to an impartial hearing by the Independent Anti-Doping Disciplinary Panel.

2.5 The Notice of Charge was issued to the Athlete on 18.07.2023 and the final opportunity to submit an explanation was granted to the Athlete.

3. The final hearing was held on 29.11.2023.

4. The submissions made by the Athlete are reproduced herein:

The Athlete submits that The Athlete further submits that he had not consumed any Prohibited Substance/drugs deliberately or with prior knowledge and urged that he is totally innocent to the best of his knowledge and belief. Further, it is said that he hails from a small village and he has no knowledge of the prohibited Substance.

5. Submissions by NADA

NADA during the ADDP proceedings submitted that under Article 2.1.1 of the Rules, it is the personal duty of each Athlete to ensure that no Prohibited Substance enters his/her body. Accordingly, it is not necessary that intent, fault, negligence, or knowing use on the part of the Athlete is to be demonstrated to establish a case of anti-doping rule violation under Article 2.1. In the said background, it is submitted by NADA that

the Athlete has failed to furnish any explanation as to how the prohibited substance came to be found in the Sample.

It is the submission on behalf of NADA that in the present case, the Athlete has not furnished any explanation or put forward any defense. Further, the Athlete has not even disclosed the said substance in the dope control form. It is the submission of NADA that the Athlete's conduct has been intentional and the anti-doping violation is liable to attract an ineligibility period of 4 years under Article 10.2.1.1.

Findings of the Panel

We have heard the arguments made by the Athlete and his Counsel, and arguments by NADA, and perused the available material on record shared with us.

6. It is undisputed that the Athlete's Sample has tested positive for Sl. 2 Anabolic Androgenic Steroids (AAS), *Anabolic Androgenic Steroids (AAS)/Metandienone* non-specified substances of the WADA Prohibited List of 2023.
7. Where a sample testing returns a positive finding, the onus is on the athlete to explain how the substance entered his/her body. Fault, negligence, or knowing use are not relevant considerations that need to be proved while making a case for anti-doping violation. The liability cast on the athlete is thus strict.
8. In view of the above facts taken as a whole, it is established that a violation under Article 2.1 of the Anti-Doping Rules has taken place. Once a violation of anti-doping rules has been established, Sanctions on Individuals as provided under Article 10 of the Anti-Doping Rules 2021 must ensue. The present case involves a non-specified substance and as per Article 10.2.1.1, the ineligibility period of 4 years is attracted unless the Athlete can establish that the doping violation was unintentional.
9. The Panel held that the Athlete has violated Articles 2.1 & 2.2 of the NADA ADR, 2021, **he is hereby sanctioned with an ineligibility of four (04) years from the date of provisional suspension i.e., 09.06.2023 under Article 10.2.1.1 of ADR, 2021. It**

shall be noted that the athlete has **failed to satisfy the panel that the ADRV was non-intentional as per Article 10.2.1.1 of the NADA ADR, 2021.**

10. We also direct that under Article 10.10 all other competitive results obtained by the athlete from the date of sample collection i.e., 12.05.2023 shall be disqualified with all resulting consequences including forfeiture of medals, points, and prizes.

The matter is disposed of, accordingly.



Ms. Jyoti Zongluju
(Chairperson)



Dr. Manik S Ghadlinge
(Member)



Ms. Abantika Deka
(Member)