

BEFORE THE ANTI DOPING APPEAL PANEL  
Conference Room, Pragati Vihar Hostel  
Lodhi Road, New Delhi -110 003

Appeal No. ADAP/09/2012

IN THE MATTER OF

WADA	.....	APPELLANT
	Vs	
Ms. Sapna Devi	.....	RESPONDENT

CORAM: JUSTICE C. K. MAHAJAN, CHAIRMAN  
DR. RAJU VYAS, MEMBER  
MS. INDU PURI, MEMBER

Present: Mr. Rahul/Mr. Sukomal, Advocate, NADA representing WADA, Appellant  
Ms. Sapna Devi, the Respondent in person.

20.04.2012

ORDER

World Anti Doping Agency (WADA)- the appellant has filed the present appeal assailing the order of the National Anti Doping Disciplinary Panel dated 30.01.2012 and prayed that a sanction of two year period be imposed on the athlete for the doping offence in place of 10 month's sanction.

Briefly stated the facts are as follows.

The respondent is an athlete at the National level. Sample urine was collected on 04/3/2011 during In-competition (59<sup>th</sup> All India Police Games 2010) and she secured the bronze medal in her event (+78 kg- Judo). The sample A was tested on 18/03/2011, the analytical finding reported that the presence of Clenbutrol, Other Anabolic Agents. The B sample was tested on 12/05/2011 with the same finding as of sample A. The athlete/respondent admitted having taken treatment for painful menstrual cycle. There was thus a violation of the Anti Doping Rules (Article 2.1/WADA Code). Medical prescriptions and Laboratory reports were placed on record.

The matter was placed before the Disciplinary Panel. The Disciplinary Panel passed an order on 30.01.2012 violation of Anti Doping Rule 2.1 by Ms. Sapna Devi (Sports Discipline: Judo). The respondent was given an opportunity to present her case. The disciplinary panel was of the view that ground for elimination or reduction on the period of ineligibility was established.

WADA has assailed the impugned order before the appeal panel.

Athlete is responsible for any prohibited substances or its metabolites or markers found to be present in bodily specimens. It is not necessary that the intent, fraud, negligence or knowing use on the part of athlete be demonstrated in order to establish an anti doping rule violation under Article 2.1. Thus, the anti doping rule violation on the part of athlete stands established as the athlete has not obtained any TUE certificate prior to her taking the medicine which contained the prohibited substance.

The athlete has pleaded that she has taken prescription medicines. Furthermore, she has furnished the relevant prescriptions and the medicines prescribed therein. But she was unable to explain the Panel about how the banned substance entered into her body. Even, the medication prescription which she has shown to the Panel does not contain banned substance in any form. In her Doping Control Form she has mentioned that she was only taking tablet D'cold Total. Similarly, the disease from which she was suffering does not need to be treated by giving Anabolic agents.

Clenbutrol is an anabolic agent as on WADA prohibited list. The same is prohibited in competition as well as out of competition. Clenbutrol is not a specified substance. The analyzed sample shows the presence of Clenbutrol, thus establishing administration of exogenous anabolic agents. It was imperative for the respondent to have obtained TUE and having failed to do so, the respondent violated the Anti Doping Rules. It is contended on behalf of WADA that the respondent did not apply for therapeutic use exemption (TUE) in order to entitle her to take the prohibited drug. She also did not disclose the fact of medical treatment in respect of her treatment in the Dope Control Form. Therefore, the order of the disciplinary Panel is liable to be set aside and the respondent is liable to incur the period of ineligibility.

The respondent has opposed the appeal on various grounds. It was contended that she had under medical supervision taken treatment for painful

menstrual cycle. Detailed documentation is placed on record, which we have considered.

We have heard the parties at length.

After giving due consideration to the submissions made before us and the documents/materials placed before us, we conclude that the order passed by Disciplinary panel is liable to be set aside, as the violation of Anti Doping Rules is established. The disciplinary panel concluded that the respondent had successfully made out a case for grant of benefit of the no fault or negligence provisions under the regulations which provide that the period of ineligibility shall be eliminated.

In order to eliminate or reduce the period of ineligibility the respondent has to establish that she bears no fault or negligence for the violation of the Anti Doping Rules and if she is successful then the period of ineligibility shall be eliminated. We are unable to uphold this finding. The question that needs to be answered that whether the respondent bore no fault or negligence. The respondent admits during hearing that she took substances that caused adverse analytical finding in the test. Therefore we can safely conclude that the respondent would have discussed treatment therapy with her doctor and its effects in relation to the Anti Doping Rule violation. A sanction cannot be completely eliminated on the basis of no fault or negligence even when the administration of the prohibited substance has been done by the athlete's, physician/doctor without disclosure to the athlete. In order to benefit from an elimination of the period of ineligibility for no fault or negligence, the athlete must establish that she did not know or suspect and could not reasonably have known or suspected, even with the exercise of the utmost caution, that she had used or been administered the prohibited substance.

In the light of the reasons aforesaid the Appeal Panel concludes that the disciplinary panel erred in giving benefit of the no fault or negligence. Taking in to due considerations all the essential elements of this case and all the materials placed before the panel, **we consider it proper to impose a two years period of suspension in this case.**

We are further of the view that since the respondent was provisionally suspended by the NADA, In this circumstance the respondent no 1 is entitled to receive the credit for such period that she did not participate in any sporting

event and the **penalty imposed on her shall operate from the date of provisional suspension i.e. from 21/03/2011.**

The appeal is accordingly allowed to the extent aforesaid, and the order of the disciplinary panel is set aside.

Parties are to bear their own costs.

Sd/-

(Justice C. K. Mahajan) Chairman

(Dr. Raju Vyas), Member

(Ms. Indu Puri), Member