



**Arbitration CAS 2016/A/4626 World Anti-Doping Agency (WADA) v. Indian National Anti-Doping Agency (NADA) & Mhaskar Meghali, award of 20 September 2016**

Panel: Prof. Christoph Vedder (Germany), Sole Arbitrator

*Weightlifting*

*Doping (methandienone)*

*Presence of a prohibited substance*

*Burden of proof regarding the athlete's lack of intent involving the use of a non-specified substance*

*Absence of reduction of the sanction if the athlete cannot explain how the prohibited substance entered his system*

- 1. According to the applicable anti-doping rules, the presence of a prohibited substance or its metabolites or markers in an athlete's sample constitutes an anti-doping rule violation (ADRV). Pursuant to the rules, sufficient proof of such ADRV is established by the presence of a prohibited substances or its metabolites or markers in the athlete's A-sample where the athlete waived the right to have the B-sample analysed.**
- 2. For an ADRV to be committed non-intentionally, the athlete must prove that, by a balance of probability, he did not know that his conduct constituted an ADRV or that there was no significant risk of an ADRV. According to established case-law of CAS the proof by a balance of probability requires that one explanation is more probable than the other possible explanation. For that purpose, an athlete must provide actual evidence as opposed to mere speculation.**
- 3. According to the anti-doping rules, where no specific substances or contaminated products are involved, the period of ineligibility may be reduced if an athlete establishes that he or she bears No Significant Fault or Negligence. However, the sanction cannot be reduced if the athlete cannot fulfil the precondition to any reduction in this respect i.e. explain how the prohibited substance entered his system.**

## **I. PARTIES**

- 1. The World Anti-Doping Agency (hereinafter: WADA or the Appellant), is a foundation established under Swiss private law with its seat in Lausanne, Switzerland, and its headquarters located in Montreal, Canada. WADA is an international organization established to promote, coordinate and monitor the fight against doping in sports. According to the WADA Code and the rules of the sports federations it exercises various doping-related responsibilities.**

2. The National Anti-Doping Agency (hereinafter: NADA or the First Respondent), was established by the Government of India with the objective of acting as the independent National Anti-Doping Organization for India.
3. Ms. Mhaskar Meghali (hereinafter: the Athlete or the Second Respondent), is a weightlifter under the jurisdiction of the Indian Weightlifting Federation.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

4. On January 14, 2015, the Athlete was submitted by NADA to a doping control on the occasion of the 1<sup>st</sup> Women All Indian Railway Weightlifting Championship in Kolkata, India.
5. The analysis of her A-sample with the code number 2966969 was performed by the WADA accredited National Anti-Doping Laboratory of New Delhi and, according to the Analytical Report dated February 6, 2015, revealed the presence of a metabolite of methandienone which is an exogenous anabolic androgenic steroid. Methandienone is listed under S1.1a of the 2015 WADA Prohibited List.
6. The Athlete waived her right to have the B-sample analysed.
7. The Athlete was provisionally suspended on February 9, 2015.

### **B. Proceedings before the NADA Anti-Doping Disciplinary Panel**

8. On December 7, 2015, January 14 and January 18, 2016, hearings took place before the NADA Anti-Doping Disciplinary Panel (ADDP).
9. In the course of these proceedings, the Athlete submitted medical records concerning a knee pain. According to these records, the Athlete was prescribed two medications. The first of these medications, prescribed on October 15, 2015, was Decaburabolin, the only active ingredient of which is nandrolone. Nandrolone is an exogenous anabolic androgenic steroid listed under S1.1a of the 2015 WADA Prohibited List. The second medication, prescribed on December 25, 2015, was Depomedol, which is a corticosteroid prohibited in-competition according to S9 of the 2015 WADA Prohibited List.
10. The Athlete, by letter of August 20, 2015, claimed that she did not dope and contended to be "*a victim of jealousy of other players*".
11. As late as March 30, 2016, the ADDP issued its decision. The ADDP found that the Athlete committed an Anti-Doping Rule Violation (ADRV) unintentionally and that she did not bear significant fault or negligence. Therefore, the ADDP imposed a one-year period of ineligibility on the Athlete commencing on February 9, 2015, i.e. the date of the beginning of the provisional

suspension. As a result, the period of ineligibility already had elapsed when the decision was pronounced.

12. WADA was notified with the file of the case including the decision of March 30, 2016, on May 11, 2016.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

13. WADA filed a Statement of Appeal, dated June 1, 2016, against the NADA and the Athlete with the CAS, with respect to the decision rendered by the ADDP on March 30, 2016. Together with its statement of appeal, the Appellant requested the appointment of a sole arbitrator.
14. WADA filed its Appeal Brief on June 13, 2016.
15. By letter of June 14, 2016, to the Parties, the CAS Court Office invited the Respondents to submit, within 20 days from the receipt of the letter, their respective Answers pursuant to Article R55 of the Code of Sports-related Arbitration (the "Code"). The Respondents were notified that the Panel or the Sole Arbitrator may nevertheless proceed with the arbitration and render an award even in the event they failed to file an answer within the prescribed deadline.
16. On June 20, 2016, the CAS Court Office informed the Parties that the President of the Appeals Arbitration Division, in the absence of any objection from the Respondents to the Appellant's request, had decided to submit the arbitration to a sole arbitrator.
17. By letter of July 5, 2016, the CAS Court Office acknowledged receipt of the Appellant's payment of its share of the advance of costs for the proceedings and notified the Parties that Christoph Vedder, Professor of Law, Munich, Germany, was appointed Sole Arbitrator.
18. In a letter dated July 11, 2016, the CAS Court Office noted that it had not received any answer or any other communication from the Respondents in this respect. Furthermore, the Parties were invited to declare whether they preferred a hearing to be held or for the Sole Arbitrator to render an award based solely on the written submission. The Parties were advised that, pursuant to Article R57 of the Code, the Sole Arbitrator shall decide whether to hold a hearing or not.
19. By e-mail of July 18, 2016, WADA informed the CAS Court Office that it would prefer to proceed without a hearing. With no response received from the Respondents within the prescribed deadline, the CAS Court Office, by letter of July 20, 2016, notified the Parties that the Sole Arbitrator, according to Article R57 of the Code, had decided to render an award without holding a hearing.
20. On July 21, 2016, the CAS Court Office circulated the Order of Procedure to be signed and returned by the Parties by July 28, 2016. On July 22 and 28, 2016, respectively, the CAS Court Office received the Order of Procedure signed by the Appellant and First Respondent.
21. On July 26, 2016, the CAS Court Office received an "affidavit" from the Athlete dated July 19, 2016.

#### IV. SUBMISSIONS OF THE PARTIES

22. In its Appeal Brief dated June 13, 2016, WADA submits that the appeal against the decision rendered by the ADDP is admissible. The NADA Anti-Doping Rules (NADA Rules) were applicable and, pursuant to Article 13.2.3 of the same, WADA has the right to appeal. According to Article 13.1.3 of the NADA Rules, WADA was entitled to appeal the contested decision without having to exhaust other internal legal remedies.
23. Since WADA received the case file related to the appealed decision on May 11, 2016, its Statement of Appeal, dated June 1, 2016, was lodged within the 21-day time limit set forth by Article 13.7.1 of the NADA Rules.
24. According to WADA, there is no doubt that the Athlete committed an ADRV. An ADRV pursuant to Article 2.1 of the NADA Rules and Article 2.1 of the International Weightlifting Federation Anti-Doping Regulations (IWF ADR) is established by the presence of a prohibited substance or its metabolites or markers in the Athlete's body. The analysis of the Athlete's A-sample revealed the presence of a metabolite of methandienone which is an exogenous anabolic androgenic steroid listed under S1.1a of the 2015 WADA Prohibited List. Methandienone is prohibited both in- and out-of-competition. The Athlete waived her right to have her B-sample analysed.
25. WADA mainly contends that the ADDP made erroneous findings and conclusions with regard to the determination of the sanction. According to Article 10.2.1 of the IWF ADR, the period of ineligibility shall be four years unless the Athlete can establish that the ADRV was not intentional.
26. Contrary to the findings of the ADDP, WADA is of the view that the Athlete did not discharge her burden of establishing that the ADRV was not intentional which included that the Athlete should have proven how the substance entered her system. With reference to established case law of the CAS and other anti-doping bodies, WADA contends that it is not sufficient for an athlete to make protestations of innocence or mere suggestions that the substance must have entered her body inadvertently from nutrition supplement, medication or other products which the athlete took during the relevant time. In essence, the origin of the substance must be proven, by a balance of probability, by actual evidence.
27. WADA concludes that, in the present case, the Athlete did not even provide an explanation as to how the substance entered her body. None of the products mentioned in the list of medications prescribed to her for the knee pain which she presented before the ADDP contained methandienone. Since the Athlete failed to provide any explanation as to how the substance found entered her body, WADA contends that the ADRV is to be deemed intentional and the Athlete should be sanctioned with a period of ineligibility of four years.
28. Furthermore, again contrary to the findings of the ADDP, WADA contends that the Athlete could not benefit from the mitigating circumstances of no significant fault or negligence because, for that purpose, it is required that the athletes first have to establish how the

prohibited substance entered his or her body. According to the WADA, the Athlete has not provided any explanation about the origin of the substance found in her A-sample.

29. Finally, WADA states that methandienone has been the prevalent prohibited substance used in the sport of weightlifting as shown by many decisions and is manifestly performance-enhancing in this particular sport.

30. WADA submits the following requests for relief:

*“1. The Appeal of WADA is admissible.*

*2. The decision dated 30 March 2016 rendered by the Anti Doping Disciplinary Panel of NADA in the matter of Mhaskar Meghali is set aside.*

*3. Mhaskar Meghali is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Mhaskar Meghali before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.*

*4. All competitive results obtained by Mhaskar Meghali from and including 14 January 2015 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*

*5. WADA is granted an award for costs”.*

35. While NADA did not make any submission before the Sole Arbitrator, the Athlete, in her “affidavit” claims that (i) she refused to take anabolic steroids, (ii) “other people” may have “mixed drugs in my edibles in All India Weight-lifting Championship where we stay in a single room”, (iii) she did not know that the medications administered against her knee pain contained banned substances, (iv) she “did not take any illegal supplements intentionally”, and (v) she participated in the Championships only upon request of her coach for the benefit of the team. No specific requests for relief were made. Even though such submission was made outside the time-limit of Article R55 of the Code and should be declared inadmissible, the Sole Arbitrator decides to admit the Athlete’s submission in the file in fairness.

## V. JURISDICTION

31. Article R47 of the Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.*

32. According to Article 13.2.2 in conjunction with Article 13.1.3 of the NADA Rules, WADA has the right to appeal the decision of the ADDP directly without being required to exhaust the internal remedies available under the same rules.

33. Therefore, CAS has jurisdiction to hear the present case.

## **VI. ADMISSIBILITY**

34. According to Article R49 of the Code:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.*

By virtue of Article 13.7.1 of the NADA Rules which are the rules applicable to the present case (see below), WADA is entitled to appeal the decision of the ADDP within *“twenty-one days after WADA’s receipt of the complete file relating to the decision”*.

35. WADA received the file on May 11, 2016. The Statement of Appeal was lodged with the CAS on June 1, 2016, i.e. within the 21-day time limit. The Appeal is therefore admissible.

## **VII. APPLICABLE LAW**

36. Article R58 of the Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

37. WADA challenges the correctness of the appealed decision. The decision of the ADDP was rendered in application of the NADA Rules 2015. According to Article 1.3.1.1 of the NADA Rules, these rules apply

*“to all athletes ... who are members or licence-holders of any National Federation in India, or any member, or affiliate organization of any national federation in India (including clubs, teams, associations or leagues”.*

38. The NADA Rules are applicable to the Athlete who is under the jurisdiction of the Indian Weightlifting Federation and the appealed decision was based on these rules. The NADA Rules therefore constitute the applicable rules for the dispute before the Sole Arbitrator.

39. As a subsidiary, the Sole Arbitrator considers that Indian law shall be applicable.

## **VIII. MERITS**

### **A. Anti-Doping Rule Violation**

40. WADA requests to set aside the decision of March 30, 2016, mainly because, in its view, the ADDP came to erroneous conclusions relating to the length of the period of ineligibility to be imposed on the Athlete. However, even in the absence of an objection, the Sole Arbitrator must satisfy himself of the occurrence of an ADRV.

41. According to Article 2.1 of the NADA Rules, “*the presence of a prohibited substance or its metabolites or markers in the Athlete’s sample*” constitutes an ADRV. Pursuant to Article 2.1.2 of the NADA Rules, sufficient proof of such ADRV is established by the presence of a prohibited substances or its metabolites or markers in the Athlete’s A-sample where the Athlete waived the right to have the B-sample analysed.
42. The analysis of the Athlete’ A-sample revealed an Adverse Analytical Finding (“AAF”) of the presence of a metabolite of methandienone which is an exogenous anabolic androgenic steroid prohibited under S1.1a of the 2015 WADA Prohibited List, both in- and out-of-competition. Therefore, the Athlete committed an ADRV in the sense of Article 2.1 of the NADA Rules. The ADDP concurred in this conclusion.

## **B. Determination of the sanction**

43. For an ADRV under Article 2.1, Article 10.2.1 of the NADA Rules provides for a regular sanction of a four-year period of ineligibility where the ADRV does not involve a Specific Substance “*unless the Athlete ... can establish that the (ADRV) was not intentional*”. If Article 10. 2. 1 does not apply, the period of ineligibility shall be two years.
44. Methandienone is not a Specific Substance. Thus, the length of the period of ineligibility to be imposed on the Athlete depends on whether she established that the ADRV was “*not intentional*”. Article 10.2.3 of the NADA Rules defines the term “intentional”:  
  
*“... the term “intentional” is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete ... engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk”.*
45. For an ADRV to be committed non-intentionally, the Athlete must prove that, by a balance of probability, she did not know that her conduct constituted an ADRV or that there was no significant risk of an ADRV. According to established case-law of CAS (e.g. CAS 2014/A/3820, par. 77 et seq.) the proof by a balance of probability requires that one explanation is more probable than the other possible explanation. For that purpose, an athlete must provide actual evidence as opposed to mere speculation (CAS 2014/A/3820, par. 79).
46. As a matter of fact, the following was stated in the appealed decision: In the course of the proceedings before the ADDP, the Athlete submitted that she suffered from knee pain and had taken medicines as prescribed by Dr. Bharat B. Rathod. She produced the medical advice for pain in her right knee as well as prescriptions. On October 15, 2014, she was prescribed an intramuscular injection of Decadurabolin which is an anabolic steroid. On December 25, 2014, she received an intralesional injection of Depomedrole 80. The Athlete, in her “affidavit” dated July 19, 2016, repeatedly admitted these administrations.
47. According to the leaflets and product information produced by WADA, Decadurabolin contains nandrolone, decanoate, and Depomedrole is a corticosteroid and both are prohibited substances, too. However, none of the two medications contain methandienone and, therefore,

cannot be the source of the AAF. Furthermore, the Athlete did not mention these medications in her Doping Control Form nor was she in the possession of a TUE. Hence, the Athlete did not even offer an alternative possible explanation for the finding of methandienone in her system.

48. The Athlete's submission made before the ADDP and repeated in her "affidavit" that she was a victim of jealousy of other competitors who may have mixed drugs in her edibles during the Championships is pure speculation with no evidentiary weight.
49. Thus, the Sole Arbitrator concludes that the Athlete did not establish that the ADRV was "*not intentional*".
50. On the contrary, the ADDP, without further reasoning, came to the view that, because "*the Athlete was prescribed intramuscular injections of Decedurabolin (an anabolic steroid) which is supported by medical prescription*", the ADRV was "*not intentional*" and hence the period of ineligibility should be two years. This conclusion is not supported by the requirement laid down in Article 10.2.1.1 of the NADA Rules and is therefore erroneous.
51. Based on the foregoing, the Sole Arbitrator concludes that, according to Article 10.2.1 of the NADA Rules, the period of ineligibility to be imposed on the Athlete shall be four years.
52. According to Article 10.5.2 of the NADA Rules, where no specific substances or contaminated products are involved, the period of ineligibility may be reduced "*if an athlete establishes that he or she bears No Significant Fault or Negligence*".

As stated in the Definition of No Significant Fault or Negligence in the Appendix 1, "*for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system*".

53. As already determined in relation to the question of the non-intentional use of a prohibited substance, the Athlete, in the proceedings before the ADDP, did not even explain how the prohibited substance, i.e. the metabolite of methandienone, entered her system. Therefore, the sanction cannot be reduced under Article 10.5.2 of the NADA Rules. In the appealed decision, the ADDP did not examine this requirement at all, and thus came to an erroneous conclusion. In her submission dated July 19, 2016, the Athlete just reiterated what she already had submitted before the ADDP and did not provide new insights on how the prohibited substance entered her system. Therefore, no reduction can be applied to the Athlete's period of ineligibility.

### **C. Commencement of the Ineligibility Period**

54. As a general rule, according to Article 10.11 of the NADA Rules, the period of ineligibility shall start on the date of the final decision providing for ineligibility, that is the day of the rendering the present award. However, pursuant to Article 10.11.3.1 of such rules, any period of provisional suspension served by the Athlete, i.e. the period as of February 9, 2015, must be credited against the period of ineligibility imposed.



**D. Disqualification of results**

55. Pursuant to Article 9 of the NADA Rules, in the event of an in-competition test, the result obtained in that competition is automatically disqualified. In addition to that, according to Article 10.8 of the NADA Rules, all other competitive results obtained by the Athlete from the date of the sample collection, whether in- or out-of-competition, i.e. January 14, 2015, through the commencement of the provisional suspension, i.e. February 9, 2015, shall be disqualified including forfeiture of medals, points and prizes.

**ON THESE GROUNDS**

**The Court of Arbitration for Sport rules that:**

1. The appeal filed by WADA on June 1, 2016, against the decision rendered by the NADA Anti-Doping Disciplinary Panel on March 30, 2016, is upheld.
2. The decision rendered by the NADA Anti-Doping Disciplinary Panel on March 30, 2016, is set aside.
3. Ms. Mhaskar Meghali is found to have committed an Anti-Doping Rule Violation in the sense of Article 2.1 of the NADA Anti-Doping Rules and thus, according to Article 10. 2. 1 of such rules, is imposed a period of ineligibility of four years from the date of the present award.
4. All previous period of ineligibility already served by Ms. Mhaskar Meghali shall be deduced from the above four-year period of ineligibility.
5. All competitive results, if any, obtained by Ms. Mhaskar Meghali from and including January 14, 2015, through February 9, 2015, are disqualified with all resulting consequences including forfeiture of medals, points and prizes.
6. (...).
7. (...).
8. All other motions or prayers for relief are dismissed.