



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2006/A/1099 Singh v/Athletics Federation of India & IAAF

ARBITRAL AWARD

Pronounced by the

COURT OF ARBITRATION FOR SPORT

Sole Arbitrator: Mr Lin Kok, Loh, Advocate and Solicitor, Singapore

In the arbitration between:

NEELAM JASWANT SINGH

represented by Mr Sushil Dutt Salwan, Advocate, Supreme Court of India

- the Appellant -

and

ATHLETICS FEDERATION OF INDIA

represented by Mr Adille Sumariwalla, Associate Vice President

- the first Respondent -

and

INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS

represented by Mr Huw Roberts, Legal Counsel

- the second Respondent -

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1. INTRODUCTION

- 1.1 The International Association of Athletics Federations ("IAAF") is the world governing body for the sport of athletics. The IAAF has its seat in the Principality of Monaco.
- 1.2 The Athletics Federation of India ("AFI") is the national governing body for athletics in India and is a member of the IAAF.
- 1.3 Ms Neelam Jaswant Singh ("Ms Neelam") is an Indian athlete, whose particular athletic discipline is the discus. Ms Neelam has represented India in international athletics, including the Asian Games in Busan, South Korea in 2002 at which she won the Gold Medal in the Discus event.

2. IAAF RULES

- 2.1 At the time of the events which led to this appeal, the relevant IAAF Rules were in the following terms:

*"RULE 60**Disputes**General*

1. Unless otherwise stated in a specific Rule or Regulation (for example, in relation to disputes arising on the field of competition), all disputes arising under these Rules shall be resolved in accordance with the provisions set out below.

Disputes involving athletes, athlete support personnel and other persons

2. Each Member shall incorporate a provision in its constitution that, unless otherwise stated in a specific Rule or Regulation, all disputes involving athletes, athlete support personnel or other persons under its jurisdiction, however arising, whether doping or non-doping related, shall be submitted to a hearing before the relevant hearing body constituted or otherwise authorised by the Member. Such a hearing shall respect the following principles: a timely hearing before a fair and impartial hearing body, the right of the individual to be informed of the charge against him, the right to present evidence, including the right to call and question witnesses, the right to be represented by legal counsel and an interpreter (at the individual's expense) and a timely and reasoned decision in writing. Where such disputes arise in a non-disciplinary context, the relevant hearing body shall be constituted as an arbitration panel.

3. In the event of a breach of the anti-doping rule violations in Chapter 3 above, the Member shall apply the disciplinary procedures set out in Rule 38.

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The Member shall inform the IAAF in writing of the decision taken within 5 working days of the decision being made (and shall send the IAAF a copy of the written reasons for the decision in English or French).

4. *In the event of an alleged breach of Rule 22 above relating to Ineligibility for International and Domestic Competitions (other than in a case of breach of Rule 22.1(e)), the Member shall apply the disciplinary procedures set out below:*

- (a) *The allegation shall be reduced to writing and forwarded to the Member to which the athlete, athlete support personnel or other person is affiliated, which shall proceed in a timely manner to hold an investigation into the facts of the case.*
- (b) *If, following such investigation, the Member believes that there is evidence to support the allegation of ineligibility, the Member shall immediately notify the athlete or other person concerned of the charge to be brought and of his right to a hearing before any decision on ineligibility is made. If the athlete or other person fails to confirm in writing to the Member or other relevant body within 14 days of such notice that he wishes to have a hearing, he will be deemed to have waived his right to a hearing and to have accepted that he committed a breach of the relevant provision of Rule 22.*
- (c) *If the athlete or other person confirms that he wishes to have a hearing, all relevant evidence shall be given to the person whose eligibility is challenged and a hearing respecting the principles set out in Rule 60.2 above shall be held within a period of no more than 2 months following notification of the charge in Rule 60.4(b) above. The Member shall inform the IAAF as soon as a hearing date is set and the IAAF shall have the right to attend the hearing as an observer. The IAAF's attendance at the hearing in such capacity, or any other involvement in the case, shall not affect its right to appeal the decision to CAS in accordance with Rule 60.24 below.*
- (d) *If the relevant hearing body of the Member, after hearing the evidence, decides that the athlete or other person concerned is in breach of Rule 22, it shall declare the person ineligible from international and domestic competitions for a period set out in Guidelines produced by the Council (or the Member shall do so if the athlete or other person has waived his right to a hearing). In the absence of such Guidelines, the relevant hearing body shall determine the appropriate period of the person's ineligibility.*
- (e) *The Member shall inform the IAAF in writing of the decision taken within 5 working days of the decision being made (and shall send the IAAF a copy of the written reasons for the decision).*

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5. *Where a Member delegates the conduct of a hearing to any body, committee or tribunal (whether within or outside the Member), or where for any other reason, any national body, committee or tribunal outside of the Member is responsible for affording an athlete, athlete support personnel or other person his hearing under these Rules, the decision of that body, committee or tribunal shall be deemed, for the purposes of Rule 60.10 below, to be the decision of the Member and the word "Member" in such Rule shall be so construed.*

Disputes between a Member and the IAAF

6. *Each Member shall incorporate a provision in its constitution that, unless otherwise stated in a specific Rule or Regulation, all disputes arising between a Member and the IAAF shall be referred to the Council. The Council shall determine a procedure for the adjudication of the dispute depending on the circumstances of the case in question.*

7. *In the event that the IAAF seeks to suspend a Member for a breach of the Rules, the Member must have been sent prior notice in writing of the grounds for the suspension and must have been given a reasonable opportunity to be heard on the matter in accordance with the procedures set out in Article 14.10 of the Constitution.*

Disputes between Members

8. *Each Member shall incorporate a provision in its constitution that all disputes with another Member shall be referred to the Council. The Council shall determine a procedure for the adjudication of the dispute depending on the circumstances of the case in question.*

Appeals

9. *All decisions subject to appeal under these Rules, whether doping or non-doping related, may be appealed to CAS in accordance with the provisions set out below. All such decisions shall remain in effect while under appeal, unless determined otherwise (see Rules 60.23-24 below).*

10. *The following are examples of decisions that may be subject to appeal under these Rules:*

- (a) *Where a Member has taken a decision that an athlete, athlete support personnel or other person has committed an anti-doping rule violation.*
- (b) *Where an athlete accepts a Member's decision that he has committed an anti-doping rule violation but seeks a review of the Doping Review Board's determination under Rule 38.18 that there are no exceptional*

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circumstances in the case justifying a reduction of the period of ineligibility to be served.

- (c) Where a Member has taken a decision that an athlete, athlete support personnel or other person has not committed an anti-doping rule violation.*
- (d) Where testing has indicated the presence of a prohibited substance or the use of a prohibited method and, contrary to Rule 38.7, the Member has refused or failed to provide the athlete with a hearing within the relevant time period.*
- (e) Where the IAAF has taken a decision to deny an International-Level athlete a TUE under Rule 34.5(a).*
- (f) Where the IAAF has issued a sanction against a Member for a breach of the Rules.*
- (g) Where a Member has taken a decision that an athlete, athlete support personnel or other person has not committed a breach of Rule 22.*

11. In cases involving International-Level athletes (or their athlete support personnel), or involving the sanction of a Member by the Council for a breach of the Rules, whether doping or non-doping related, the decision of the relevant body of the Member or the IAAF (as appropriate) may be appealed exclusively to CAS in accordance with the provisions set out in Rule 60.25 – 60.30 below.

12. In cases which do not involve International-Level athletes (or their athlete support personnel), whether doping or non-doping related, the decision of the relevant body of the Member may (unless Rule 60.17 below applies) be appealed to a national-level review body in accordance with the rules of the Member. Each Member shall have in place an appeal procedure at national level that respects the following principles: a timely hearing before a fair, impartial and independent hearing body, the right to be represented by legal counsel and interpreter (at the appellant's expense) and a timely and reasoned decision in writing. The decision of the national review body may be appealed to CAS in accordance with Rule 60.16 below.

Parties entitled to appeal decisions

13. In any case involving International-Level athletes (or their athlete support personnel), the following parties shall have the right to appeal a decision to CAS:

- (a) the athlete or other person who is the subject of the decision being appealed;*

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- (b) *the other party to the case in which the decision was rendered;*
- (c) *the IAAF;*
- (d) *the IOC (where the decision may have an effect on eligibility in relation to the Olympic Games); and*
- (e) *WADA (in doping-related matters only).*

14. *In any case involving a decision by the Council to sanction a Member for a breach of the Rules, the Member affected shall have the sole right to appeal a decision to CAS.*

15. *In any case which does not involve International-Level athletes (or their athlete support personnel), the parties having the right to appeal a decision to the national-level review body shall be as provided for in the rules of the Member, but shall include at a minimum:*

- (a) *the athlete or other person the subject of the decision being appealed;*
- (b) *the other party to the case in which the decision was rendered;*
- (c) *the Member.*

The IAAF and WADA (in doping-related cases only) shall have the right to attend any hearing before the national-level review body as an observer. The IAAF's attendance at a hearing in such capacity shall not affect its rights to appeal the decision of the national-level review body to CAS in accordance with Rule 60.16 below.

16. *The following parties shall have the right to appeal the decision of the national-level review body to CAS:*

- (a) *the IAAF; and*
- (b) *WADA (in doping-related cases only).*

No decision may be appealed to CAS until the appeal procedure at national level has been exhausted in accordance with the rules of the Member.

17. *If, however, in cases not involving International-Level athletes (or their athlete support personnel), the rules of a Member provide for the right of the IAAF and WADA (in doping-related cases only) to appeal a decision direct to CAS rather than to the national-level review body as in Rule 60.15 above, provided the CAS appeal is conducted in accordance with the provisions of Rule 60 below, the CAS decision shall be final and binding upon the athlete, the*

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Member, the IAAF and WADA and no further appeal to CAS shall thereafter be made.

RESPONDENTS to the CAS APPEAL

18. *Unless otherwise stated below, as a general rule, the respondent to a CAS appeal under these Rules shall be the party which has taken the decision which is the subject of the appeal.*

19. *In all references to CAS under Rules 60.10(a), (d) or (g), the relevant Member shall be respondent. If however, in an appeal under Rule 60.10(a), the appellant seeks a review of a determination made by the Doping Review Board on exceptional circumstances under Rule 38.17, the respondents to the appeal shall be the relevant Member and the IAAF and they shall jointly appoint an arbitrator. If there is any disagreement as to who the appointed arbitrator should be, the IAAF's choice of arbitrator shall prevail.*

20. *In all references to CAS under Rules 60.10(b), (e) or (f), the respondent shall be the IAAF.*

21. *In all references to CAS under Rule 60.10(c), the respondents shall be the relevant Member and the athlete.*

22. *In any case where the IAAF or the relevant Member is not a party to the appeal before CAS, it may nevertheless choose to participate at the CAS hearing if it considers it appropriate to do so.*

IAAF appeal of decision to CAS

23. *The decision by the IAAF as to whether a doping-related case should be appealed to CAS shall be taken by the Doping Review Board. The Doping Review Board shall, where applicable, determine at the same time whether the athlete concerned shall be re-suspended pending the CAS decision.*

24. *The decision by the IAAF as to whether a non-doping-related case should be appealed to CAS shall be taken by the Council. The Council shall, where applicable, determine at the same time whether the athlete concerned shall be suspended pending the CAS decision.*

The CAS Appeal

25. *Unless the Council determines otherwise, the appellant shall have 30 days from the date of communication of the written reasons of the decision to be appealed (in English or French where the IAAF is the prospective appellant) in which to file his statement of appeal with CAS. Within 15 days of the deadline for filing the statement of appeal, the appellant shall file his appeal brief with CAS*

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and, within thirty days of receipt of the appeal brief, the respondent shall file his answer with CAS.

26. *All appeals before CAS (save as set out in Rule 60.27 below) shall take the form of a re-hearing de novo of the issues raised by the case and the CAS Panel shall be able to substitute its decision for the decision of the relevant tribunal of the Member or the IAAF where it considers the decision of the relevant tribunal of the Member or the IAAF to be erroneous or procedurally unsound.*

27. *Where the appeal to CAS in a doping-related case is made pursuant to Rule 60.10(b), or is pursuant to Rule 60.10(a) and the athlete seeks as part of the appeal a review of the Doping Review Board's determination on exceptional circumstances, the hearing before CAS on the question of exceptional circumstances shall be limited to a review of the materials before the Doping Review Board and to its determination. The CAS Panel will only interfere with the determination of the Doping Review Board if it is satisfied:*

- (a) that no factual basis existed for the Doping Review Board's determination; or*
- (b) the determination reached was significantly inconsistent with the previous body of cases considered by the Doping Review Board, which inconsistency cannot be justified by the facts of the case; or*
- (c) that the determination reached by the Doping Review Board was a determination that no reasonable review body could reach.*

28. *In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Procedural Guidelines). In the case of any conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence.*

29. *In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitrations shall be conducted in English, unless the parties agree otherwise.*

30. *The CAS Panel may in appropriate cases award a party its costs, or a contribution to its costs, incurred in the CAS appeal.*

31. *The decision of CAS shall be final and binding on all parties, and on all Members, and no right of appeal will lie from the CAS decision. The CAS decision shall have immediate effect and all Members shall take all necessary action to ensure that it is effective. The fact of the referral to CAS and the CAS decision shall be set out in the next notice to be sent by the General Secretary to all Members."*

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- 2.2 In the "Definitions" Section in Chapter 3 entitled "Anti-Doping" the definition of International-Level athlete is in the following terms:
For the purposes of the Anti-Doping Rules (Chapter 3) and Disputes (Chapter 4), an athlete who is in the Registered Testing Pool for out of competition testing or who is competing in an International Competition under Rule 35.7.
- 2.3 Rule 31 spells out the **IAAF Anti-Doping Organisation**. The responsibilities of the IAAF Anti-Doping Administrator are in the following terms:
11. *The IAAF Anti-Doping Administrator is the head of the IAAF's Medical and Anti-Doping Department. He shall have responsibility for implementing the anti-doping programme which has been established by the Medical and Anti-Doping Commission under Rule 31.5 above. He shall report to the Medical and Anti-Doping Commission in this regard at least once a year at the time of the Medical and Anti-Doping Commission's annual meeting and, more regularly, if called upon to do so.*
 12. *The IAAF Anti-Doping Administrator shall have responsibility for the day to day administration of doping cases arising under these Anti-Doping Rules. In particular, the IAAF Anti-Doping Administrator shall be the person responsible, where applicable, for conducting the results management process in accordance with Rule 37 and for deciding upon the provisional suspension of athletes in accordance with Rule 38.*
 13. *The IAAF Anti-Doping Administrator may at any time in the course of his work seek an advisory opinion from the Chairperson of the Medical and Anti-Doping Commission, from the Doping Review Board or from such other person as he considers to be appropriate."*
- 2.4 Rule 32 is entitled "Anti-Doping Rule Violations". What concerns this appeal are the relevant parts in Rule 32.2(a) which read:
2. *Doping is defined as the occurrence of one or more of the following anti-doping rule violations:*
- 32.2(a)(i) – *it is each athlete's personal duty to ensure that no prohibited substance enters his body tissues or fluids. Athletes are warned that they are responsible for any prohibited substance found to be present in their bodies. It is not necessary that intent, fault, negligence or knowing use on an athlete's part be demonstrated in order to establish an anti-doping rule violation under Rule 32.2(a).*
- 32.2(a)(ii) – *except those prohibited substances for which a reporting threshold is specifically identified in the Prohibited List, the detected presence of any quantity*

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of a prohibited substance in an athlete's sample shall constitute an anti-doping rule violation.

32.2(a)(iii) – as an exception to the general application of Rule 32.2(a), the Prohibited List may establish specific criteria for the evaluation of prohibited substances that can also be produced endogenously.

2.5 Rule 33 provides for "Standards of Proof of Doping" in the following terms:

1. *The IAAF, the Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred under these Anti-Doping Rules.*
2. *The standard of proof shall be whether the IAAF, the Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing body, bearing in mind the seriousness of the allegation which is made. This standard of proof is greater than a mere balance of probability but less than proof beyond a reasonable doubt.*
3. *Where these Anti-Doping Rules place the burden of proof on an athlete, athlete support personnel or other person alleged to have committed an anti-doping violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.*
4. *Facts related to anti-doping rule violations may be established by any reliable means. The following standards of proof shall be applicable in doping cases:*
 - (a) *WADA-accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The athlete may rebut this presumption by establishing that a departure from the International Standard for Laboratories has occurred, in which case the IAAF, the Member or other prosecuting authority shall have the burden of establishing that such departure did not undermine the validity of the adverse analytical finding.*
 - (b) *A departure from the International Standard for Testing (or other applicable provision in the Procedural Guidelines) shall not invalidate a finding that a prohibited substance was present in a sample or that a prohibited method was used, or that any other anti-doping rule violation under these Anti-Doping Rules was committed, unless the departure was such as to undermine the validity of the finding in question. If the athlete establishes that a departure from the International Standard for Testing (or other*

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applicable provision in the Procedural Guidelines) has occurred, then the IAAF, the Member or other prosecuting authority shall have the burden of establishing that such departure did not undermine the validity of the finding that a prohibited substance was present in a sample, or that a prohibited method was used, or the factual basis for establishing any other anti-doping rule violation was committed under these Anti-Doping Rules.

2.6 Rule 34 is entitled "**The Prohibited List**". What concerns this appeal are the following:

1. *These Anti-Doping Rules incorporate the Prohibited List which shall be published and revised by WADA.*
2. *The IAAF will make the current Prohibited List available to each Member and it shall be available on the IAAF website. Each Member shall in turn ensure that the current Prohibited List is made available (either on its website or otherwise) to all athletes, athlete support personnel and any other relevant persons under its jurisdiction.*
3. *Unless otherwise stated in the Prohibited List and/or any revision to the Prohibited List, the Prohibited List and revisions shall go into effect under these Anti-Doping Rules three months after publication of the Prohibited List by WADA without requiring any further action by the IAAF. The IAAF may also request that WADA include additional substances or methods which have the potential for abuse in Athletics, as part of the WADA monitoring programme.*
4. *WADA's determination of the prohibited substances and prohibited methods that will be included on the Prohibited List shall be final and shall not be subject to legal challenge by any athlete or other person.*

2.7 Rule 35 is entitled "**Testing**". The relevant provision is in Rule 35.7 sub-titled "**In-competition testing**" which reads:

The IAAF shall have responsibility for initiating and directing in-competition testing at the following International Competitions:-

- (a) *World Championships;*
- (b) *World Athletics Series Competitions;*
- (c) *Golden League, Super Grand Prix, Grand Prix, Grand Prix II Meetings;*
- (d) *IAAF Permit Meetings; and*
- (e) *at such other International Competitions as the Council may determine on the recommendation of the Medical and Anti-Doping Commission.*

2.8 Rule 36 is entitled "**Analysis of Samples**". It is in the following terms:

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1. *All samples collected under these Anti-Doping Rules shall be analysed in accordance with the following general principles:*

Use of Approved Laboratories

- (a) *Samples for analysis shall be sent only to WADA-accredited laboratories or as otherwise approved by WADA. In the case of IAAF tests, samples shall be sent only to WADA-accredited laboratories (or, where applicable, to haematological laboratories or mobile testing units) which are approved by the IAAF.*

Substances subject to detection

- (b) *Samples shall be analysed to detect prohibited substances and prohibited methods on the Prohibited List and such other substances as may be directed by WADA pursuant to its monitoring programme.*

Research on samples

- (c) *No sample may be used for any purpose other than the detection of prohibited substances (or classes of prohibited substances) or prohibited methods on the Prohibited List, or as otherwise directed by WADA pursuant to its monitoring programme, without the athlete's written consent.*

International Standard for Laboratories

- (d) *Laboratories shall analyse samples and report results in conformity with the International Standard for Laboratories.*

2. *All samples provided by athletes in doping controls conducted under the responsibility of the IAAF shall immediately become the property of the IAAF.*
3. *If, at any stage, any question or issue arises concerning the analysis or interpretation of the results of a sample, the person responsible for the analysis at the laboratory (or haematological laboratory or mobile testing unit) may consult the IAAF Anti-Doping Administrator for guidance.*
4. *If, at any stage, any question or issue arises in relation to a sample, the laboratory (or mobile testing unit) may conduct any further or other tests necessary to clarify the question or issue so raised and such tests may be relied upon by the IAAF when deciding whether a sample has given rise to an adverse analytical finding.*
5. *Where an analysis indicates the presence of a prohibited substance or the use of a prohibited substance or prohibited method, the WADA-accredited laboratory shall immediately confirm the adverse analytical finding in writing, either to the IAAF, in the case of an IAAF test, or to the relevant Member in the case of a national test (with a copy to the IAAF). In the*

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case of a national test, the Member shall inform the IAAF of the adverse analytical finding and the name of the athlete promptly on receipt of the information from the WADA-accredited laboratory and, in all circumstances, within two weeks of such receipt.

2.9 Rule 37 is entitled "Results Management". The relevant provisions of Rule 37 are:

4. *If the initial review under Rule 37.3 above does not reveal an applicable TUE or departures from the International Standard for Testing (or other applicable provision in the Procedural Guidelines) or the International Standard for Laboratories such as to undermine the validity of the finding, the IAAF Anti-Doping Administrator shall promptly notify the athlete of:*
 - (a) *the adverse analytical finding;*
 - (b) *the anti-doping violation rule that has been breached or, in a case falling under Rule 37.5 below, a description of the additional investigation to be conducted to determine whether an anti-doping rule violation has occurred;*
 - (c) *the time limit within which the athlete is to provide the IAAF, either directly or through his National Federation, with an explanation for the adverse analytical finding;*
 - (d) *the athlete's right to request promptly for the analysis of the "B" sample and, failing such request, that the "B" sample shall be deemed to be waived. The athlete shall be advised at the same time that, if the "B" sample analysis is requested, all related laboratory costs shall be met by the athlete, unless the "B" sample fails to confirm "A", in which case the costs shall be met by the organization responsible for initiating the test;*
 - (e) *the date upon which the "B" sample analysis, if requested by the athlete, has been fixed, such date normally to be no later than 2 weeks after the date of notification of the adverse analytical finding to the athlete. If the laboratory concerned cannot subsequently accommodate the "B" sample analysis on the date fixed, the analysis shall take place at the earliest available date for the laboratory thereafter. No other reason shall be accepted for changing the date of the "B" sample analysis;*
 - (f) *the right of the athlete and/or his representative to attend the "B" sample opening procedure and analysis, if such analysis is requested; and*

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(g) *the athlete's right to request copies of the "A" and "B" sample laboratory documentation package which shall include the information required by the International Standard for Laboratories.*

5. *Following notification to an athlete under Rule 37.4(b) above, the IAAF Anti-Doping Administrator shall conduct any follow-up investigation that may be required. Upon the completion of such follow-up investigation, the IAAF Anti-Doping Administrator shall promptly notify the athlete of the results of the follow-up investigation and whether it is asserted that an anti-doping rule violation has been committed. If this is the case, the athlete concerned shall then be afforded an opportunity, either directly or through his National Federation, within a time limit set by the IAAF Anti-Doping Administrator, to provide an explanation in response to the anti-doping rule violation asserted.*
6. *An athlete may accept an "A" sample analytical result by waiving his right to the "B" sample analysis. The IAAF may however request the analysis of a "B" sample at any time if it believes that such analysis will be relevant to consideration of the athlete's case.*
7. *The athlete and/or his representative shall be allowed to be present at the "B" sample analysis and to attend throughout the analysis being carried out. A representative of the athlete's National Federation may also be present and attend throughout, as may a representative of the IAAF. An athlete shall remain provisionally suspended (see Rule 38.2 below) despite the fact that he has requested analysis of the "B" sample.*
8. *Once the analysis of the "B" sample has been concluded, a full laboratory report shall be sent to the IAAF Anti-Doping Administrator together, in due course, with a copy of all relevant data required by the International Standard for Laboratories. A copy of this report and all relevant data shall be forwarded to the athlete if so requested.*
9. *On receipt of the "B" sample laboratory report, the IAAF Anti-Doping Administrator shall conduct any follow-up investigation that may be required by the Prohibited List. Upon completion of the follow-up investigation, the IAAF Anti-Doping Administrator shall promptly notify the athlete regarding the results of the follow-up investigation and whether or not the IAAF asserts, or continues to assert, that an anti-doping rule has been violated.*

2.10 Rule 38 is entitled "Disciplinary Procedures". The relevant provisions of Rule 38 are:

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1. *Where it is asserted that an anti-doping rule violation has been committed under these Anti-Doping Rules, disciplinary procedures shall take place in the following three stages:*
 - (a) *provisional suspension;*
 - (b) *hearing;*
 - (c) *sanction or exoneration.*

Provisional Suspension

2. *If no explanation or no adequate explanation, for the asserted anti-doping rule violation is received from the athlete or his National Federation within the time limit set by the IAAF Anti-Doping Administrator in Rule 37(4)(c) or 37.11 above, the athlete shall be suspended, suspension at this time being provisional pending resolution of the athlete's case by his National Federation. In the case of an International-Level athlete, the athlete shall be suspended by the IAAF Anti-Doping Administrator. In all other cases, the National Federation of the athlete shall impose the suspension by written notification to the athlete. Alternatively, the athlete may accept a voluntary suspension provided that this is confirmed in writing to his National Federation.*

Hearing

5. *Every athlete shall have the right to request a hearing before the relevant tribunal of his National Federation before any sanction is determined in accordance with these Anti-Doping Rules. When an athlete has obtained affiliation status abroad under Rule 4.3 above, he shall have the right to request a hearing either before the relevant tribunal of his original National Federation or before the relevant tribunal of the Member whose affiliation has been obtained.*
6. *When an athlete is notified that his explanation has been rejected and that he is to be provisionally suspended in accordance with Rule 38.2 above, he shall also be told of his right to request a hearing. If the athlete fails to confirm in writing to his National Federation or other relevant body within 14 days of such notice that he wishes to have a hearing, he will be deemed to have waived his right to a hearing and to have accepted that he committed the anti-doping rule violation in question. This fact shall be confirmed in writing to the IAAF by the Member within 5 working days.*
7. *If a hearing is requested by an athlete, it shall be convened without delay and the hearing held within 2 months of the date of notification of the athlete's request to the Member. Members shall keep the IAAF fully informed as to the status of all cases pending hearing and of all hearing*

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dates as soon as they are fixed. The IAAF shall have the right to attend all hearings as a observer. However, the IAAF's attendance at a hearing, or any other involvement in a case, shall not affect its right to appeal the Member's decision to CAS pursuant to Rule 60.23 below.

8. *The athlete's hearing shall take place before the relevant hearing body constituted or otherwise authorised by the Member. The relevant hearing body shall be fair and impartial and the conduct of the hearing shall respect the following principles: the right of the athlete to be present at the hearing and to present evidence, including the right to call and question witnesses, the right to be represented by legal counsel and an interpreter (at the athlete's expense) and a timely and reasoned decision in writing.*
 9. *At the hearing of the athlete's case, the relevant tribunal shall consider first whether or not an anti-doping rule violation has been committed. The Member or other prosecuting authority shall have the burden of proving the anti-doping rule violation to the comfortable satisfaction of the tribunal (see Rule 33.2 above).*
 10. *If the relevant tribunal of the Member considers that an anti-doping rule violation has not been committed, this decision shall be notified to the IAAF Anti-Doping Administrator in writing within 5 working days of the decision being made (together with a copy of the written reasons for such decision). The case shall then be reviewed by the Doping Review Board which shall decide whether or not it should be referred to arbitration before CAS pursuant to Rule 60.23 below. If the Doping Review Board does so decide, it may at the same time re-impose, where appropriate, the athlete's provisional suspension pending resolution of the appeal by CAS.*
- 2.11 Rule 40 is entitled "Sanctions against Individuals". It provides sanctions for the anti-doping rule violation of the presence of a prohibited substance or its metabolites or markers in an athlete's body tissues or fluids. The sanction for a first violation is ineligibility for a minimum period of two (2) years from the date of hearing providing for ineligibility. A period of provisional suspension prior to the determination of ineligibility is to be deducted from the period of ineligibility.
- 2.12 Rule 42 provides for "Sanctions against Members". The relevant provisions of Rule 42 spell out examples considered to be a breach of a Member's obligation under Anti-Doping Rules including a failure to hold a hearing for an athlete within two (2) months of being requested to do so having reference to Rule 38.7 and the sanctions provided for such breaches range from suspension to any other sanction as the Council of the IAAF may deem to be appropriate.

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- 2.13 It is unnecessary to set out in detail the provisions of the "Procedural Guidelines for Doping Control" except to state that elaborate procedures and safeguards are provided for In-competition Testing in Section 3.

3. **JURISDICTION AND APPLICATION FOR INTERVENTION BY IAAF**

- 3.1 This appeal by Ms Neelam is brought pursuant to IAAF Rule 60.9 read with Rule 60.10(a) against the AFI and is also brought pursuant to IAAF Rule 60.13(a) by virtue of Ms Neelam being an International-Level athlete. The IAAF chose to participate in the appeal in accordance with the provision of Rule 60.22. After Ms Neelam had filed her Statement of Appeal on 2 June 2006, the IAAF, after consultation with its Doping Review Board, filed an application for intervention dated 20 June 2006 from Monaco under the provision of CAS R41.3 listing ten (10) grounds to support its application.
- 3.2 The Sole Arbitrator who was appointed on 6 September 2006 by virtue of the parties' agreement under CAS R.54 allowed the IAAF's application for intervention on 20 September 2006 on the reasons following.
- 3.3 Under IAAF Rule 35.7, the IAAF shall have responsibility for initiating and directing in-competition testing in certain designated competitions including the World Championships [IAAF Rule 35.7(a)].
- 3.4 In this case, Ms Neelam's urine sample given on 7 August 2005 in the World Championships held at Helsinki, Finland tested positive. Ms Neelam though she did not finish in the first three (3) placings in the women discus event that she participated in was selected for testing on a random basis in accordance with IAAF Rule 35.8(a).
- 3.5 The World Championships is the IAAF's most prestigious and important competition held biennially. In terms of importance, it is only comparable to the Olympic Games.
- 3.6 The moment the IAAF carried out its responsibility, it follows that if an athlete is tested positive, the IAAF would expect its Member Federations to carry out their part of responsibility in seeing through the management of the positive test to an outcome that is fair and satisfactory to all parties including the IAAF.
- 3.7 Obviously, the IAAF has a vested interest in making sure that the results arrangement and the disciplinary process are in order and if there should be an appeal to the CAS, be it by the athlete or the Member Federation involved, the IAAF has the right to intervene in the appeal to the CAS in order to ensure that its views are properly heard and considered. If the IAAF is not allowed to intervene, it would render the IAAF's responsibility in the first instance of initiating and directing in-competition testing meaningless if the matter is not properly handled thereafter.

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3.8 Further and importantly, by virtue of IAAF Rule 60.13(c) and/or IAAF Rule 60.16(a), the IAAF has the right to appeal in this matter and had in fact intimated that it would do so if necessary after the AFI Disciplinary Tribunal had rendered its decision, the Sole Arbitrator is of the view that these (2) provisions for appeal by IAAF read with IAAF Rule 60.22 gave IAAF the right to intervene to participate with full party status in the CAS hearing. Moreover, the application by IAAF for intervention was made in a timely manner pursuant to CAS Rule 41.3.

4. **APPLICATION TO STAY THE AFI'S ORDER OF SUSPENSION DATED 24 APRIL 2006**

4.1 In Ms Neelam's Statement of Appeal dated 2 June 2006, she also applied for a stay of the two year suspension with effect from 12 August 2005 ordered against her for an anti-doping rule violation found by the AFI Disciplinary Tribunal on 24 April 2006.

4.2 Ms Neelam contended that the life span of an athlete is limited and being out of competition for a fairly long period of two years, her instinct as an athlete would be scuttled and virtually killed. She also asserted that she was likely to succeed in her appeal, that the balance of convenience lied in her favour and that she was suffering an irreparable loss which could not be quantified in monetary terms.

4.3 On the other hand, the IAAF contended that Ms Neelam only made mere assertions which in themselves were insufficient. IAAF pointed out that on the balance of convenience test, the integrity of results that Ms Neelam obtains if she were allowed to participate meanwhile and later ruled ineligible, will be affected and this has to be weighed against the loss of opportunity to compete if Ms Neelam were disallowed to participate but later found to be innocent of such charge. This balance of convenience test, the IAAF contended, would have to be looked at in the background of the fact that that particular period of time happened to be the closed athletic season with the hearing of Ms Neelam's appeal coming up for adjudication soon.

4.4 The Sole Arbitrator took into account CAS jurisprudence on stay of execution cases to the effect that as a general rule, when deciding to stay the execution of the decision appealed from, it is necessary to consider whether the measure is useful to protect the Appellant from irreparable harm, the likelihood of success on the merits of the appeal and whether the interests of the Appellant outweigh those of the opposite party.

4.5 The Sole Arbitrator was of the view that Ms Neelam had failed to show what irreparable harm that she would suffer from if the application was disallowed, rather the Sole Arbitrator observed that she had only made mere assertions. Ms Neelam had not shown that she had some important competitions for her to work

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towards to in the near future. She had not shown that there were some important events domestically at that time of the year end in India that required her participation, be it for sponsorship purpose or for enhancement of her own image.

- 4.6 The period of time after the appointment of the Sole Arbitrator on 6 September 2006 was the off season period. There were no important athletic activities to be carried out, let alone competitions to take part in.
- 4.7 The Sole Arbitrator tried after his appointment to fix an early hearing which finally happened on 26 January 2007 in Lausanne. In any event, all parties ought to know that the matter would have to be concluded expeditiously.
- 4.8 In the circumstances, the Sole Arbitrator found that Ms Neelam would not suffer from irreparable harm if she was not allowed to participate and also the balance of convenience did not lie in Ms Neelam's favour. Accordingly, the Sole Arbitrator on 13 October 2006 dismissed Ms Neelam's application for a stay of execution of the 2 year suspension imposed on her by the AFI Disciplinary Tribunal on 24 April 2006.

5. APPLICABLE LAW TO GOVERN THE PROCEEDINGS

- 5.1 According to CAS R58, 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 and in the latter case, the Panel shall give reasons for its decision.
- 5.2 The IAAF and Ms Neelam could not agree as a matter of choice on the applicable law to decide the dispute with Ms Neelam insisting that the applicable law should be the laws of India while the IAAF relied on IAAF Rule 60.28 and 60.29. IAAF also contended that it is totally impractical for national laws to be the applicable law for deciding such disputes as IAAF has 212 Members.
- 5.3 Both written submissions beforehand and oral arguments were tendered by the parties at the commencement of the hearing.
- 5.4 Having considered the various submissions, the Sole Arbitrator ruled that the Panel shall decide the dispute according to the IAAF Rules & Regulations and Procedural Guidelines for Doping Control (as amended from time to time), that is, the Sole Arbitrator decided to invoke the 3rd limb of CAS R58 and would now give his reasons for having so decided.
- 5.5 There is no doubt that Ms Neelam is a member of AFI otherwise she would not have been allowed to participate in international competitions including the World

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Championships in question at Helsinki, Finland. As for the AFI, it is clear that it is a Member of the IAAF by its application for affiliation as well as by its yearly payment of affiliation fees and therefore both parties are subject to IAAF rules and regulations and under the ambit of IAAF Rule 60.28 and 60.29. The rights and obligations of Members are spelt out in Article 4.8 of the Constitution of the IAAF in particular Article 4.8(b) which is to comply with all applicable Rules and Regulations. Further, AFI's Constitution in Rule XXX(C)(i) entitled "Doping Rules" has this to say, "Amateur Athletic Federation of India will be guided by the rules of International Amateur Athletic Federation and amendments, if any, made to such rules from time to time".

5.6 Also, Ms Neelam had herself signed the Declaration on the Doping Control Form dated 7 August 2005 before she submitted to doping control in the World Championships at Helsinki, which contained words in the following terms, "I accept that all disputes howsoever arising from this doping control shall be resolved in accordance with IAAF Arbitration Rules." This would suggest that Ms Neelam had agreed to subscribe to IAAF rules and regulations which would enable the Sole Arbitrator to find that there was an implied choice of law by Ms Neelam in the first instance. However, having regard to the objection by Ms Neelam later over the wording of Section 7 entitled "Law applicable to the merits" in the Order of Procedure to be executed by the parties just before the hearing and her contention at that stage that the applicable law should be the law of India, leading to disagreement between the parties on the applicable law, the Sole Arbitrator decided to invoke the 3rd limb of CAS R58.

5.7 There is also the provision of IAAF Rule 30.1 which supports the above proposition as it reads:

"These Anti-Doping Rules shall apply to the IAAF, its Members and Area Associations and to athletes, athlete support personnel and other persons who participate in the IAAF, its Members and Area Associations by virtue of their agreement, membership, affiliation, authorisation, accreditation or participation in their activities or competitions."

5.8 In the course of oral arguments, IAAF Legal Counsel abandoned the IAAF's position on the possible application of Monégasque law on the facts of the dispute.

6. THE FACTS

6.1 Except for what had happened in India with regard to the disciplinary hearing process and what had happened in the Helsinki Laboratory with regard to the testing process, most of the facts of this case are not in dispute. In this Section of the Award, the Sole Arbitrator will set out both the undisputed and disputed facts, and state the Sole Arbitrator's findings in relation to the two main areas of disputed facts.

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THE COLLECTION OF URINE PROCESS

- 6.2 On 7 August 2005, Ms Neelam provided an in-competition urine sample at the IAAF World Championships in Helsinki, Finland after she had taken part in the Women's Discus event. The urine sample which was given sample number 691673 was sent for analysis to the World Anti-Doping Agency (WADA) accredited laboratory in Helsinki on the same day.

THE ANALYSIS PROCESS OF "A" SAMPLE

- 6.3 On 9 August 2005, the Helsinki Laboratory reported to the IAAF by its Certificate of Analysis-2005-D0113 entitled Adverse Analytical Finding that urine sample code 691673 contained pemoline which is a prohibited substance under IAAF Rules and listed in S 6 (Stimulants) of the Prohibited List in force for the 2005 World Championships.

EXPLANATION BY THE ATHLETE

- 6.4 By a letter dated 10 August 2005 from its Anti-Doping Administrator, Dr Gabriel Dolle, the IAAF notified the AFI of Ms Neelam's adverse analytical finding of pemoline and that this finding constituted an anti-doping rule violation under IAAF Rule 32.2(a) over the presence of a prohibited substance in the athlete's body tissues or fluids. In accordance with IAAF Rules, the AFI was requested to conform with IAAF Rule 37 particularly to notify the athlete to provide a written explanation for the adverse finding by close of business on 12 August 2005 and of her right to request the analysis of the "B" sample and if she wishes to exercise such right, the "B" sample analysis shall take place on 12 August 2005 commencing at 10 am.
- 6.5 On 11 August 2005, Ms Neelam provided a 2 page handwritten explanation. In it, she simply denied having taken such a substance and that she had never come across the name of such substance in the dietary supplements which she had listed in the Doping Control Form and which she could produce physically whenever it is desired for testing.
- 6.6 Ms Neelam's explanation also confirmed an oral statement that she made to Dr Dolle and one Dr Alonso in the same evening of 11 August 2005 that she wished that the "B" sample be tested. Then there was some disagreement over the fact of the appointment of her representative who was picked by the IAAF, one Dr Hannele Hohtari. Ms Neelam in her testimony at the hearing claimed that she did not know anything about the appointment of Dr Hohtari as she had no time to do the appointment having to leave for Ukraine the same night of 11 August 2005. The Sole Arbitrator was of the view that this is not a material disagreement on facts as it does not go to the integrity of the "B" sample testing. In any event, Ms Neelam had requested orally and in writing for the "B" Sample to be tested and

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the IAAF, as a safeguard of the interest of the athlete, picked an independent person to be her representative in which process, the IAAF could not be said to have breached IAAF Rule 37.4(f).

"B" SAMPLE ANALYSIS

- 6.7 Having received Ms Neelam's confirmation on the "B" sample testing, Dr Dolle confirmed the "B" sample testing to the Helsinki Laboratory by fax in the morning of 12 August 2005 and that Ms Neelam would be represented by Dr Hannele Hohtari at the opening procedure of the "B" sample.
- 6.8 On 12 August 2005, the "B" sample of urine sample No.691673 was opened in the presence of Dr Antti Leinonen, the Technical Director of the Helsinki Laboratory, Dr Hannele Hohtari, Ms Neelam's representative and Dr Martial Saugy, the IAAF's representative. After testing, the "B" sample analysis confirmed the "A" sample result that urine sample number 691673 contained pemoline. The Helsinki Laboratory by its Certificate of Analysis – 2005 D 0134 entitled "B" Sample Analysis dated 12 August 2005 reported that the result was in good agreement with the data of "A" analysis.

PROVISIONAL SUSPENSION OF THE ATHLETE

- 6.9 On the same day, 12 August 2005, the IAAF Anti-Doping Administrator, Dr Dolle wrote amongst other things in the following terms to the AFI:
- (i) The "B" sample analysis performed that morning had confirmed the "A" sample result.
 - (ii) That since Ms Neelam's explanation was unacceptable, Ms Neelam was provisionally suspended in accordance with IAAF Rule 38.2 from competition (both nationally and internationally) pending the resolution of her case.
 - (iii) That Ms Neelam was to be informed of her provisional suspension and that she has the right to request for a hearing before the relevant disciplinary tribunal of AFI, such right to be exercised within 14 days of the notification.
 - (iv) The AFI must ensure that the hearing must be held as soon as possible and, in any event, within 2 months of the athlete's request (see IAAF Rule 38.7).
 - (v) The AFI must further ensure that the provisions of IAAF Rule 38.8 are complied with, particularly the right of the athlete to be present at the hearing, the right to legal counsel and the right to a timely and reasoned decision in writing.

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(vi) If, after hearing the evidence, the tribunal considers that an anti-doping rule violation has not been committed, the decision must be notified to the IAAF in writing within 5 days of the decision being made, together with a copy of the written reasons for the decision in English (Rule 38.10).

- 6.10 On 16 August 2005, the AFI through its Secretary, Dr Lalit Bhanot, wrote to Ms Neelam to notify her of her provisional suspension and that she has a right to request for a hearing within 14 days of the receipt of the notification. This letter was copied to the IAAF.
- 6.11 Pursuant to a request by Ms Neelam, the IAAF provided the AFI on 14 September 2005 with the Full Documentation Package of the "A" and "B" sample analysis of Ms Neelam's urine sample.

THE DOMESTIC HEARING PROCESS

- 6.12 The AFI constituted a Disciplinary Tribunal (DT) on 7 September 2005 and empanelled four persons including a medical doctor. The four persons are Mr Davaram (Chairman), Mr Randhawa, Dr Tyagi and Mr Adille J Sumariwalla, who with the agreement of the parties and being AFI's Associate Vice President represented AFI at the hearing in Lausanne and also gave oral evidence on behalf of AFI.
- 6.13 In the DT's first report dated 13 March 2006 (hereinafter called "13 March Report"), the DT stated that it commenced its sitting on 26 September 2005 and thereafter was supposed to sit on 15 October 2005 to enable Ms Neelam's counsel to prepare the defence, the DT having found that there was a prima facie case for the athlete to meet.
- 6.14 On 15 October 2005, as Ms Neelam's counsel requested for more time, the hearing was rescheduled to 7 November 2005, on which day, the DT heard submissions by Ms Neelam's counsel. The hearing was then adjourned to the next day of 8 November 2005 which was also taken up by Ms Neelam's counsel's submissions.
- 6.15 The hearing on 8 November 2005 was then adjourned to 28 November 2005 for written submissions to be filed for further hearing. On 28 November 2005, the hearing was adjourned on the ground that the "A" and "B" samples documentation packages were in Finnish language and therefore needed translation. Then there was a long unexplained static period of three (3) months as the DT next convened on 28 February 2006.
- 6.16 On 28 February 2006, written submissions were considered by the DT and oral arguments were heard from Ms Neelam's counsel at the end of which day, the hearing was adjourned to 13 March 2006 at New Delhi.

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- 6.17 Finally on 13 March 2006, the DT met again and exonerated Ms Neelam by a majority of three to one on the ground that there were discrepancies and shortcomings in the processes analysis and laboratory report and since the DT could not say with conviction that this report was accurate, it therefore could not accept the findings of the laboratory in Toto. The DT said that it gave the benefit of doubt to Ms Neelam Jaswant Singh and recalled the order of suspension against her.
- 6.18 It is to be noted that in the 13 March Report, while three members signed it unconditionally, the 4th member, Mr Randhawa wrote above his signature the following words, "I am not fully convinced with the report and attach my observation" being he annexed his letter also dated 13 March 2006 to the report with contents of the following, "On the reports submitted, I have dissents on certain issues. Although there are doubts about certain issues raised by the Athlete, it is difficult to reach at any conclusion without getting proper clarifications from IAAF."
- 6.19 The 13 March Report was submitted to the AFI immediately together with the dissenting view of Mr Randhawa for the AFI's necessary action which the DT in its concluding paragraph remarked "The report of the Tribunal is being submitted to the Secretary, AFI with advice that a copy of the report is forwarded to IAAF, within 5 days, as contemplated under rules" which would appear to give the impression that IAAF Rule 38.10 was being complied with. In the same 13 March Report, at pg 1 of the eight pages report, the DT was of the view that the proceedings could take longer than 2 months to conclude and the DT actually took more than six months to complete its work since its constitution on 7 September 2005, having met altogether seven (7) times on 26 September, 15 October, 7, 8 and 28 November 2005, 28 February and 13 March 2006. The Sole Arbitrator will come back to this delay later.
- 6.20 While the DT was carrying on with its work, IAAF's Anti-Doping Administrator in accordance with his duties spelt out in IAAF Rule 31.11 to 31.13 was obviously concerned about the undue delay of the AFI to conclude the matter after the IAAF had been informed by the AFI on 23 September 2005 that the DT was starting work on 26 September 2005. On 31 January 2006, the IAAF was informed by the AFI that the DT was "in the process of hearing Ms Neelam Jaswant Singh and her advocate" and that, they needed some more time to complete information regarding certain technical doubts and that it was understood that AFI Disciplinary Tribunal will be able to send their findings to IAAF within the next two weeks. On 21 February 2006, the AFI informed the IAAF that the DT had met on five occasions and that the hearing concluded on 6 February 2006 with 28 February 2006 scheduled to discuss the final draft which will be submitted to the AFI which in turn will forward it to the IAAF.

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- 6.21 On 6 March 2006, the AFI sent an e-mail to the IAAF in which the AFI conveyed that "still there are certain differences amongst the members. They (DT) need your (IAAF) advice to clear certain doubts. Kindly inform if Chairman, AFI tribunal can seek your opinion telephonically/fax. Next meeting is scheduled on 13 March 2006 in Delhi".
- 6.22 When the IAAF did not receive further communication from the AFI or the DT concerning assistance to be rendered by the IAAF to AFI/DT, on 14 March 2006, Dr Gabriel Dolle wrote on behalf of the IAAF to the AFI to draw the AFI's attention to the undue delay in concluding Ms Neelam's case and that this situation was unacceptable. In this same letter, Dr Dolle wrote in the following terms, "The issue of non-compliant Member Federations already raised at the last Council meetings in Doha and Helsinki will be again heavily debated at the next Council meeting in Osaka on 28 - 29.03.06. It was already agreed by all concerned that the IAAF should strictly in future sanction Federations who failed to comply with their anti-doping obligations under the rules. I will not fail to report the AFI's failure to conclude the above case within reasonable delay and will recommend sanctions to be taken should you postpone again the conclusion of the case" and "In the light of the above, I would strongly enjoin the AFI to put to an end this unacceptable situation and to convene a fair conclusion in Ms Singh's case as a matter of utmost urgency."
- 6.23 On the same day of 14 March 2006, the IAAF was sent a copy of what the Secretary of AFI described it to be the final report submitted by AFI Disciplinary Tribunal.
- 6.24 On 15 March 2006, the Secretary of AFI, Mr L Bhanot, sent Dr Dolle an e-mail further to the telephonic conversation between Dogra/Dolle earlier in the day. Mr ML Dogra appears to be the Administrative Director of AFI. The e-mail drew attention to Mr Randhawa's dissent in the DT's findings that he i.e. Randhawa expressed his inability to come to a conclusion on the shortcomings of the processes highlighted by the Athlete and that AFI felt that the report given by the Tribunal which was by majority decision must be technically evaluated and in case the IAAF felt that the issues raised in the report were not genuine, IAAF's views could be sent to the AFI who could explain them to the Tribunal who, if need be, could review the matter.
- 6.25 In response to the AFI's request, the IAAF, having worked in conjunction with its scientific advisers in a technical review of the findings of the DT's report of 13 March 2006, sent by e-mail on 6 April 2006, a two page covering letter from Dr Dolle with an accompanying 9 pages document entitled "IAAF Response to So-Called Technical Breaches". This report covered completely each of the technical breaches identified by the Athlete. In the covering letter, Dr Dolle pointed out the disappointment entertained by the IAAF in the outcome of the case, the more so when it had taken the AFI more than 7 months to investigate and conclude and that the so called technical breaches have no substance to them and did not cast

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doubt on the reliability of the finding in the case. Amongst other things, Dr Dolle finally conveyed to the AFI in the following terms, "The deadline for the IAAF to submit its Statement of Appeal to CAS is next Thursday, 13 April 2006. This letter therefore provides you with a final opportunity to amend your Federation's decision and to conclude a doping violation in this case in accordance with IAAF Rules. Should you fail to do so by written notification to the IAAF by no later than Wednesday, 12 April 2006, the IAAF will have no option but to proceed to:

refer the case to CAS;

should the IAAF be successful, seek recovery from your Federation of the entirety of the IAAF's legal costs in prosecuting the case before CAS;

consider whether to refer the conduct of your Federation in this case to the IAAF Council for consideration at its next meeting in Beijing in August."

- 6.26 On 12 April 2006, Dogra of the AFI wrote to the IAAF to explain the misunderstanding over the current stage in the procedure (before the DT) making reference to AFI's e-mail to the IAAF of 15 March 2006 enumerated in paragraph 6.24 above, that due to some doubts existing amongst the members of the DT when considering the Athlete's case, the AFI expressly requested the IAAF for technical assistance which since have been forwarded to the DT for their reconsideration in a reconvened hearing before taking a final decision. Dogra stated that the 13 March Report was a preliminary report and asked the IAAF to desist from taking any action in this matter in the meantime.
- 6.27 On 20 April 2006, the AFI by e-mail provided the IAAF with a copy of the formal Notice dated 17 April 2006 that the DT would hold a meeting on 20 April 2006 at New Delhi to finalise and take decision in the case of Ms Neelam Jaswant Singh as per the advice of the IAAF.

DECISION OF AFI DISCIPLINARY TRIBUNAL

- 6.28 On 24 April 2006, the AFI sent a covering letter from its Secretary to the IAAF stating that the revised report of the DT was enclosed. The decision of the DT dated 24 April 2006 (hereinafter called 24 April Report) was very short and comprised only three (3) paragraphs which read:

"The AFI Disciplinary Tribunal met from 20th to 24th April 2006 and also perused the letter dated 6 April 2006 of IAAF, with reference to the earlier findings of the Committee. As per the observations of IAAF, the Technical breaches in the Lab procedure cannot come in way to reverse the analytical findings conducted on the A and B Samples of the Athlete, Ms Neelam Jaswant Singh at Helsinki.

In view of this aspect, the matter was reviewed by the Disciplinary Tribunal. The Tribunal feels that giving credence to the technical aspects of the athlete's

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submission may not be appropriate. In view of the observations of IAAF and therefore without going further into the intricacies of the matter, it is suggesting withdrawal of its earlier recommendations of the observations made in its report dated 14 March 2006 and consequently recommending suspension of the Athlete for a period of two years.

However, the Committee strongly recommends that a lenient view may kindly be taken by the IAAF, in view of the facts and circumstances explained above."

- 6.29 On 25 April 2006, the IAAF received by e-mail a copy of a letter dated 25 April 2006 from the Secretary of AFI addressed to Ms Neelam, the contents of which are the following:

"Pursuant to this office letter No.F.7-4/AFI/05/MC/120-121, dated 16 August 2005, wherein you were provisionally suspended for the presence of Pemoline in your bodily specimen collected at Helsinki on 7 August 2005 during the IAAF World Athletics Championships.

As per the decision of AFI Disciplinary Tribunal, your provisional suspension is confirmed as suspension for two years with effect from the said letter i.e. 12 August 2005. In accordance with IAAF anti-doping rule 40.1, you are not allowed to participate in any State, National or International Competition in Athletics during the period of sanction."

- 6.30 The above facts were not in dispute. What were disputed were that Ms Neelam maintained in her testimony that she did receive the 13 March Report whereas the AFI denied ever sending her that Report. Ms Neelam denied having received the 24 April Report whereas the AFI maintained that she was sent a copy. When challenged by the IAAF to show proof like producing a covering letter from the AFI sending her the 13 March Report, she was unable to provide any proof but for her insistent assertion. Be that as it may, the exoneration in the 13 March Report went to the public domain as the media published it. The Sole Arbitrator however concluded that Ms Neelam was not sent a copy of the 13 March Report having regard to the dissent of Mr Randhawa whose dissent provoked an instantaneous response from the AFI which then immediately deemed it fit to seek the IAAF's expertise to evaluate the technical aspects of Ms Neelam's case as shown in the e-mail of 15 March 2006 from AFI to the IAAF enumerated in paragraph 6.24 above. As for the 24 April Report, there was no reason why a copy was not extended to Ms Neelam as it contained a decision that finally suspended her as opposed to the provisional suspension handed out on 12 August 2005 enumerated in paragraph 6.10 above and on which decision, she has a right of appeal.

- 6.31 As for the 13 March Report, Mr Adille Sumariwalla who testified on AFI's behalf, said that the three members who decided by majority to exonerate Ms Neelam were aware of Mr Randhawa's dissent enumerated in paragraph 6.18

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above and to this dissent, they respected and forwarded the 13 March Report to AFI for whatever the AFI may decide on or act on.

- 6.32 As for the 24 April Report, Ms Neelam testified that she and her counsel were not invited to the five days further hearing from 20 – 24 April 2006. The Sole Arbitrator found this to be a domestic irregularity which will be addressed to later.
- 6.33 With regard to the exchange of correspondence between the IAAF and the AFI particularly over the letter dated 6 April 2006 from the IAAF to the AFI containing the 9 pages document entitled "IAAF Response to So-Called Technical Breaches" and the hearing process, Ms Neelam severely criticised the Anti-Doping Administrator and the IAAF alleging strenuously and using very strong words like the Anti-Doping Administrator had over-stepped his boundary without any authority from the IAAF or the Council, IAAF had called upon the AFI to review the decision when it was open to the IAAF to have taken the remedy available under the rules which was to file an appeal against the decision of the DT of 13 March 2006, pressure exerted by the IAAF which traversed all norms of justice, it was open to the IAAF to participate in the hearing of the domestic tribunal and that there had been a complete abuse of process of law and procedure by the IAAF.
- 6.34 Finally, Ms Neelam alleged that many departures from the International Standard for Laboratories had occurred in the procedures of the testing process like the following:
- (i) The practice of laboratories to group together a number of samples for analysis from different reception batches was criticised with the suggestion that the additional reference numbers raised serious doubts about the validity and authenticity of the documentation and test reports.
 - (ii) Sample "A" Worklist was not in accordance with documentation.
 - (iii) A page (pg 24) of the Laboratory Documentation package had been replaced.
 - (iv) Tampering of Worklist J 2394 by someone unauthorised and that someone also did not have the authority to interpret findings either. Further, the Worklist chain of custody form was tampered with.
 - (v) For the "B" sample, there was absence of screening procedure in that the screening and confirmation procedure was postulated into the "B" sample analysis as it was never carried out.
 - (vi) Manipulation and interpolation of record for the "B" sample in that there had been a manipulation and interpolation of the record by employees of

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the Helsinki Laboratory involving writing over of entries and persons having forged the initials of others.

- (vii) Improper process of laboratory coding to Samples "A" and "B" and reliability of codes for audit in that the athlete contended that each time that a sample was handled, there should be a new laboratory accession code or sub-code to ensure that there is a complete audit trail for the sample in question and that in such absence, it is poor laboratory practice and this lopsided process of investigation casts serious doubt on the laboratory's findings and that its conclusions were therefore erroneous.
- (viii) Improper statement regarding laboratory code for Sample "A" and "B" in that the "B" sample summary mentioned only that the "B" sample was given laboratory code number 0511335 and since the "A" sample was not given the same code as well, therefore there was contortion of the facts.
- (ix) Erroneous process adopted for thawing Sample "B" in that there was prolonged storage of a sample at high temperature and this would have caused deterioration in the sample.
- (x) Improper protocol in that the order in which the control samples were actually run during the "A" and "B" sample analysis were different from the order in which they were presented in the Laboratory Documentation packages.
- (xi) Error in documentation of Sample "B" in the stamp "AL 21.07.05" which was a date 22 days prior to the "B" Sample testing date.
- (xii) Absence of a witness' (Tuula Ahonen) signature in "B" sample opening and corrections not being countersigned.
- (xiii) Errors in Standard Operating Procedures mentioned in Sample "A" and Sample "B" documentation.
- (xiv) Alleged discrepancies in the analytical material /documentation of Sample "A" and Sample "B".
- (xv) No evidence as to who had given the interpretation to various laboratory readings and records.

6.35 Ms Neelam made much of the above in the hearing process in India. IAAF answered them in the "Response to So-Called Technical Breaches" contained in IAAF's letter of 6 April 2006 to the AFI. At the hearing, the IAAF called three (3) expert witnesses, namely, Dr Antti Leinonen, the Technical Director of the Doping Control Laboratory in Helsinki, Professor Christiane Ayotte, the Head of the WADA-accredited Laboratory in Montreal, Canada and Dr Olivier Rabin, the

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Science Director of WADA, to testify in addition to their witness statements submitted earlier. Dr Leinonen testified in person and was extensively cross examined by Ms Neelam's counsel, so were Professor Ayotte and Dr Rabin who testified by telephone conferencing from Montreal and London respectively.

- 6.36 On the other hand, Ms Neelam's expert witness, Dr Surnedha Sahni only tendered a witness statement on or around 5 February 2007 and was not subject to cross-examination.
- 6.37 Ms Neelam though she did not tender a witness statement, gave an oral statement about the events that happened at the World Championships in August 2005 in Helsinki. The statement was given in Hindi. With the express agreement of the parties, the Sole Arbitrator allowed Mr Adille Sumariwalla who was AFI's representative at the hearing to act as the interpreter. She said that she had been tested many times before without incident and that she knew nothing about this substance known as pemoline. In fact, she said that she has absolutely no idea about this substance.
- 6.38 The Sole Arbitrator received various submissions from the parties including documents, expert witness statements and issued several procedural orders. A hearing was held on 26 January 2007 in Lausanne. An additional procedural order was issued at the hearing accepting the admission of the witness statement of Ms Neelam's expert witness at a late stage as Dr Sahni was unable to give evidence at the hearing by telephone conferencing from Dubai owing to illness. The Sole Arbitrator also received a post hearing reply submission by the IAAF.

7. THE ISSUES AND DECISION

7.1 The issues that arise on the above facts are:

- (a) Was the Disciplinary Tribunal of the AFI permitted to review its recommendation/order once it had been given on 13 March 2006? That is, does the doctrine of *functus officio* apply? Which is, once the DT of AFI had issued its purported exoneration in its 13 March Report, it became a final and binding award and the DT became *functus officio*, that is, its authority to act had ceased as its reference had terminated.
- (b) Was there abuse of process by the IAAF?
- (c) Did Ms Neelam commit an anti-doping rule violation?
- (d) If Ms Neelam did commit such a violation, what is the sanction?

7.2 In the light of the evidence given, the Sole Arbitrator can set out his conclusions on these issues as follow.

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- 7.3 The Sole Arbitrator concludes that the DT of AFI is permitted to review its own recommendation/order of 13 March 2006 in the light of Rule XXVIII entitled "Disciplinary Committee" in the Constitution of the AFI which reads "The AAFI will appoint Disciplinary Committee from among the members of the Executive Council not exceeding five to deal with all matters pertaining to disciplinary regulations and the committee will submit its report or findings to the Executive Council. The decision of the Executive Council will be put up for ratification of Assembly".
- 7.4 Under this Rule in the Constitution of the AFI, the Sole Arbitrator is of the view that any report or finding of the subordinate body is not in finality until and unless accepted by the Executive Council who will then forward it for ratification by the supreme body being the Assembly who may still reject such report or finding and send it back to the subordinate body for review or reconsideration. Though the process may be cumbersome and much time is required to go through the process, it is not for the Sole Arbitrator to question AFI's structure against the timely decision that should be adhered to according to IAAF Rules 38.8 and 60.2 though the exact time line for concluding a hearing is not specifically spelt out either in IAAF Rule 60.2 or in Rule 38.8.
- 7.5 Further, Mr Adille Sumariwalla testified that the three majority members though they exonerated the athlete, actually left it to the AFI to decide what they should next do if called upon. The DT did not have any direct dealing with IAAF and could not be coerced by Dr Dolle or the IAAF. It dealt only with AFI in that once its task had been performed, they would hand over their findings and report to AFI for it to see through the matter. Similarly, the Czech Disciplinary Committee in the case of CAS 2002/A/362 of IAAF vs. Czech Athletic Federation (CAF) and Roman Zubek did not deal direct with IAAF, rather it only dealt with the CAF and this Czech Disciplinary Committee kept on exonerating the athlete in spite of the correspondence from IAAF to the CAF.
- 7.6 Two issues that the Sole Arbitrator would have to decide were that of the domestic irregularity of Ms Neelam and her counsel not being invited to the reconvened hearing from 20 – 24 April 2006 and was the decision of 24 April 2006 a timely and reasoned decision in writing.
- 7.7 The Sole Arbitrator concludes that though the failure to invite Ms Neelam and her counsel to the re-convened hearing may well be regarded as a domestic irregularity, however the Sole Arbitrator is in agreement with the proposition enunciated in CAS 94/129 of USA Shooting and Q vs. International Shooting Union cited by IAAF Legal Counsel that a CAS Panel is not required to consider any "due process" arguments on appeal because even if the first instance decision was procedurally deficient, the availability of the CAS appeal cured any deficiency (see CAS R57).

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- 7.8 Further, there is the availability of IAAF Rule 60.26 which has almost similar purport to CAS R 57.
- 7.9 As to whether the 24 April Report was a timely decision, the Sole Arbitrator finds that it was not timely having regard to the unexplained long lapse of three (3) static months from 28 November 2005 to 28 February 2006 enumerated in paragraph 6.15 above.
- 7.10 As to whether it was a reasoned decision, the DT made reference in its Report to the IAAF material in the Response by IAAF to So-Called Technical Breaches which may be deemed to be part of the Report and with the reasons therein, the 24 April Report could be said to be a reasoned decision. Even if it is not, however, together with the undue delay in rendering its report, the deficiencies may be cured by CAS R57 and IAAF Rule 60.26 which the Sole Arbitrator has no hesitation to invoke for the Sole Arbitrator to look at the facts of the dispute afresh.
- 7.11 In conclusion in this area, the Sole Arbitrator in any event finds that the doctrine of *functus officio* did not apply.
- 7.12 With regard to the allegation of abuse of process by the IAAF in its handling of the matter principally by its Anti-Doping Administrator, the Sole Arbitrator has no hesitation to conclude that there was no bad faith or abuse of process on the part of the IAAF. Apart from the right of the IAAF to attend a domestic hearing contained in IAAF Rule 60.4(c) and 38.7, the IAAF is also entitled to "any other involvement in a case" and to this, if the IAAF Anti-Doping Administrator who has the responsibility for the day to day administration of doping cases arising under IAAF's Anti-Doping Rules pursuant to Rule 31.12, chose to try to avoid the appeal process, which can be time consuming and a long drawn out process, he may do so in the exercise of his discretion instead of referring the matter straightaway, after receipt of the 13 March Report, to the Doping Review Board under IAAF Rule 60.23 for a decision to appeal to the CAS. The Sole Arbitrator is in agreement with the spirit of the words in paragraph 28 in the case of CAS 2002/A/362 of the Czech Athletic Federation which reads:

"Finally, the Tribunal notes the important policy issues involved in this decision. Acceptance of the CAF's argument would discourage co-operation between international federations and national associations. In this case, the IAAF worked to respect the CAF's decision making process. Rather than bring appeals of the earlier decisions (which it could have done), the IAAF continued discussion in the hope of making an appeal unnecessary. Acceptance of the CAF's argument would promote hasty and perhaps unnecessary appeals. Here, the IAAF proceeded deliberately in order to make sure that all relevant information was considered".

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- 7.13 Further, in this dispute, the IAAF had not acted out of line as they were simply responding to a request for evaluation of technical breaches contained in AFI's e-mail of 15 March 2006 to the IAAF enumerated in paragraph 6.24 above.
- 7.14 It was urged upon the Sole Arbitrator by Ms Neelam that in the IAAF's response of 6 April 2006, the IAAF was intimidating, if not brow beating the AFI into submission to change its' decision of 13 March 2006 by using words like "refer the conduct of your Federation in this case to the IAAF Council..." (see paragraph 6.25 above).
- 7.15 The Sole Arbitrator rejects this submission. The letter of Dr Dolle of 6 April 2006 cannot be read in isolation, rather it has to be read with the message that Dr Dolle was trying to convey to the AFI in his letter of 14 March 2006 enumerated in paragraph 6.22 above that the issue of non-complaint Member Federations with anti-doping obligations under IAAF Rules will be again heavily debated at the next Council meeting and the IAAF should strictly sanction in future such Federations (including AFI) and he would not fail to report the AFI's failure to conclude the case within reasonable delay and would recommend sanctions to be taken should AFI postpone again the conclusion of the case.
- 7.16 The Sole Arbitrator therefore finds that there was no abuse of process on the part of the IAAF as alleged by Ms Neelam.
- 7.17 The Sole Arbitrator is in no doubt that Ms Neelam committed an anti doping rule violation. The Sole Arbitrator is comfortably satisfied that Ms Neelam committed an anti-doping rule violation because the mere presence of pemoline which is a prohibited substance in Ms Neelam's urine sample is sufficient to constitute an anti-doping rule violation under IAAF Rule 32.2(a)(ii). There is no WADA reporting threshold for pemoline since pemoline cannot be produced by the body endogenously. Ms Neelam did not challenge this rather she chose to challenge on possible departures in the procedures of the testing process in their technical aspects.
- 7.18 The Sole Arbitrator considered the witness statements of the three (3) IAAF expert witnesses listed out in paragraph 6.35 above and had the opportunity to listen to them as witnesses. The Sole Arbitrator also considered the witness statement of the expert witness of Ms Neelam. Having so considered, the Sole Arbitrator prefers the testimony of the IAAF's three (3) expert witnesses to that of Ms Neelam's expert witness on the reasons hereunder.
- 7.19 The Sole Arbitrator concludes that Ms Neelam's technical objections in her attempt to establish breaches of procedures by the Helsinki Laboratory did not rebut the presumption in IAAF Rule 33.4(a). Ms Neelam has not established that a departure from the International Standard for Laboratories had occurred.

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- 7.20 Of the IAAF's three (3) expert witnesses, Dr Antti Leinonen whose laboratory was directly involved gave clear explanations to each of Ms Neelam's technical objections. For example, he admitted that he had mistakenly used an old stamp which had the wrong date on it. He then immediately rectified the situation by adding the word "korj" in Finnish which meant corrected and initialed against it (see paragraph 6.34(xi) above).
- 7.21 On manipulation and interpolation of the records in paragraph 6.34(vi) above of the word "Krisse" having been overwritten on the page, Dr Leinonen averred that the only WADA requirement in Section 5.2.6.2 of the International Standard for Laboratories to be complied with was to ensure that each step of testing is traceable to the staff person in question after he had accepted that one Ms Majasaari had completed the initials of another staff known as Tuula Ahonen as Ms Ahonen had actually carried out the step in question.
- 7.22 In answer to the allegation of the absence of interpretation of test results in paragraph 6.34(xv) above before the adverse finding was reported, Mr Leinonen and one Ms Leena Savonen, both of whom are listed as certifying scientists for the purpose in the List of Laboratory Staff carefully reviewed the "A" Sample screening and confirmation results, so did Professor Ayotte before the "A" Sample result was reported to the IAAF. The level of review fully met with the review requirement of the International Standard for Laboratories.
- 7.23 Dr Leinonen concluded in his witness statement that none of the allegations that have been raised by the athlete concerning breaches of procedure by the Helsinki Laboratory were substantiated and even if minor breaches of procedure did occur which he did not admit, they can cast no doubt on the reliability of what was a clear finding for pemoline in the case.
- 7.24 In fact, Professor Ayotte's Laboratory at Montreal was the founder of the test used to detect pemoline in the urine of humans. She stated that pemoline cannot be produced endogenously by the body nor can it be found in everyday foodstuffs and that there is no WADA reporting threshold for pemoline. It was she who pointed out to Dr Leinonen that there was an error in a page of the "A" sample Laboratory Documentation Package (see 6.34 (iii) above) after which it was replaced by Dr Leinonen who explained that there was a typographical error in the replaced paper. She was of the view that there was no apparent departure from the International Standard for Laboratories by the Helsinki Laboratory that could in any way undermine the validity of the finding. Professor Ayotte referred to the Athlete's Defence submitted to her by IAAF Counsel and gave explanations to the various points. In her opinion, the only explanation for the positive finding is that the athlete took the prohibited substance, pemoline.
- 7.25 Dr Olivier Rabin in his witness statement stated that the methods and procedures applied to these samples by the Helsinki Laboratory were in accordance with the WADA International Standards in force at the time of the analysis. He observed

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no departures from the rules or philosophy of the International Standard for Laboratories in the analysis conducted on the Sample A-691673 and B-691673 as reported in their respective document packages, which would undermine the validity of the results reported by the Helsinki Laboratory.

7.26 To Ms Neelam's technical objections, Dr Rabin observed that it has to be noted that in the document signed by Ms Neelam labelled Written submission, it frequently referred to departures from the WADA Standards. However quite unusually, no reference was made to which specific WADA rules that were not respected by such alleged departures, leading to the overall impression that those alleged departures identified by the defence were not relevant facts.

7.27 On the other hand, Ms Neelam's expert witness, Dr Sahni, apart from the fact that she has no WADA related experience (in fact she stated in her witness statement that she did not pretend to be an expert in Anti-Doping procedures and analytical processes) had this to say in the two (2) concluding paragraphs in her witness statement:

"Having been apprised of all the facts related to the case as well as having perused the named documents as well as certain correspondence, I wish to state that there appear to be several inconsistencies in the records supporting the analysis of the "A" and "B" samples of the athlete, beginning with a seemingly innocuous scoring out of a twelfth sample at the Doping Control Station.

Those of us who have been associated with Testing protocols and processes will agree that the attention for small details are indicators of the attitude to the larger ones. Unfortunately, too, the presence of several inconsistencies cast some doubt about the accuracy of handling of critical activities that may compromise specimen identity or integrity and therefore, erroneously assign a result to a sample to which it might not belong. Whereas the proficiency of the Laboratory in the field in which it operates is very evident. It is to be hoped that there has been no uncontrolled process that may result in a wrong and unfair result given to the athlete."

7.28 Dr Sahni at the hearing for the very short while that she spoke by telephone conferencing had admitted that she has the witness statements of all three (3) IAAF experts but she made no reference at all to their testimony, explanations or opinions in her witness statement. The Sole Arbitrator observes that the departures that she referred to were almost exactly the same as those technical objections raised by Ms Neelam at the domestic hearing and in this appeal but for a new one on Documentation of Shipping of the Samples re Chain of Custody Form on the transportation of Ms Neelam's urine sample from the competition ground to the Helsinki Laboratory. She was concerned about a twelfth sample identification code having been scratched out unprofessionally at the Doping Control Station thereby compromising the security of the samples at the Doping Control Station. However, the recipient of the samples at the Helsinki

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Laboratory, one Ms Palomaki found everything to be in order when she received the transport bag containing eleven (11) samples of urine. The Sole Arbitrator accepts the IAAF's argument that it was not for Ms Palomaki to inquire as to what had transpired at the Doping Control Station.

- 7.29 The Sole Arbitrator finds that Dr Sahni was very general in arriving at her perceived concerns that she thought were departures from good laboratory practices. In most of the nineteen (19) instances raised by her in her 12 pages witness statement, Dr Sahni had not identified specifically which particular provision of the International Standard for Laboratories had been breached. This has to be read with the criticism by Dr Rabin of the technical objections of Ms Neelam enumerated in paragraph 7.26 above.
- 7.30 The Sole Arbitrator also concludes that Dr Sahni had applied the wrong test in arriving at her findings. She applied the wrong test of relying on the several inconsistencies apparently found by her to cast some doubt (on the adverse analytical finding) as opposed to the test provided for in IAAF Rule 33.4(a) of the athlete rebutting a presumption whereby by IAAF Rule 33.3, the standard of proof shall be by a balance of probability. It is for Ms Neelam to rebut the presumption triggered by IAAF Rule 33.4(a) that the Helsinki Laboratory is presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories. Be that as it may, Dr Sahni being an expert had not also asked herself whether such departures, if they did occur, could have undermined the validity of the adverse analytical finding in the way Professor Ayotte and Dr Rabin did.
- 7.31 Even if the criticisms of Ms Neelam or Dr Sahni may be considered as departures from the International Standard for Laboratories, the Sole Arbitrator is of the view that they were only minor in nature and did not invalidate the finding that a prohibited substance was present in Ms Neelam's sample as the departures were not such as to undermine the validity of the adverse analytical finding of pemoline in the urine sample of Ms Neelam. The Sole Arbitrator certainly could not agree with Ms Neelam's various allegations of tampering, manipulation, interpolation, obliteration and even forgery as it is hard to imagine that a WADA-accredited laboratory, in this case, the Helsinki Laboratory would resort to such measures when they did not know at all the identity of the athlete concerned.
- 7.32 Even Ms Neelam's counsel finally accepted in his closing submission at the hearing that there was no obliteration in page 16 of the package known as "Documentation for B Sample 691673" that he had alleged in his cross-examination of Dr Leinonen as he said that he accepted the explanation from IAAF Legal Counsel that the mark in page 16 of what he ie Ms Neelam's counsel thought to be an obliterated entry occurred in other pages also perhaps because of the photostating process.

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7.33 On the aforesaid, the Sole Arbitrator finds that on 7 August 2005, Ms Neelam committed an Anti-Doping rule violation in contravention of IAAF Rule 32.2(a)(ii).

8. SANCTION

8.1 The Sole Arbitrator has found that Ms Neelam was in breach of IAAF Rule 32.2(a)(ii). By IAAF Rule 40.1(a), the minimum sanction for a first violation is a minimum period of two years' ineligibility from the date of hearing providing for ineligibility. A period of provisional suspension prior to being declared ineligible shall be credited against the total period of ineligibility to be served as imposed by the relevant Panel, in this case, the CAS.

8.2 Ms Neelam was provisionally suspended on 12 August 2005 (see paragraph 6.10 above). As the Sole Arbitrator has found that Ms Neelam was not extended a copy of the 13 March Report purportedly at that time to exonerate her, rather the AFI had resorted to the IAAF for technical assistance after which the 24 April 2006 was released, Ms Neelam continued to be provisionally suspended until 24 April 2006 when the Disciplinary Tribunal of AFI recommended suspension for a period of two years whereby she received such notification on 25 April 2006 (see paragraph 6.29 above). As Ms Neelam's application for stay of execution of the suspension was dismissed on 13 October 2006 (see paragraph 4.8 above), Ms Neelam remained suspended from 12 August 2005 to the date of hearing in Lausanne on 26 January 2007.

8.3 Accordingly, the Sole Arbitrator will impose a period of two (2) years' ineligibility on Ms Neelam from 12 August 2005 to 11 August 2007.

9. COSTS

9.1 The IAAF made no application for costs against Ms Neelam should it succeed in the appeal. Neither did the AFI.

9.2 CAS R 65 is entitled "Disciplinary Cases of an International Nature Ruled in Appeal". The present appeal falls within the ambit of CAS R 65. CAS R 65.1 states that "Subject to CAS R 65.2 and CAS R 65.4, the proceedings shall be free" and further, "The fees and costs of the arbitrators ... are borne by the CAS."

9.3 CAS R65.3 is in the following terms "The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties."

9.4 By IAAF Rule 60.30, the CAS Panel may in appropriate cases award a party its costs, or a contribution to its costs, incurred in the CAS appeal.

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- 9.5 Having regard to the circumstances of the case and taking into account the financial resources of Ms Neelam Jaswant Singh as opposed to that of the IAAF and AFI, the Sole Arbitrator orders that each party is to bear its own costs.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by the athlete, Ms NEELAM JASWANT SINGH on 2 June 2006 against a decision of the ATHLETICS FEDERATION OF INDIA is dismissed.
2. Ms NEELAM JASWANT SINGH committed an anti-doping rule violation in contravention of Rule 32.2(a)(ii) of the INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS Rules and is declared to be ineligible for a period of two (2) years from 12 August 2005 to 11 August 2007.
3. The award is rendered without costs, except for the CAS Court Office fee of CHF 500 (Five Hundred Swiss Francs) which had already been paid by Ms NEELAM JASWANT SINGH and which is retained by the CAS.
4. Each party is to bear its own costs.

Done in Lausanne, Switzerland, 2 July 2007

THE COURT OF ARBITRATION FOR SPORT



LIN KOK, LOH
Sole Arbitrator