

## Anti-Doping Disciplinary Panel

J.L.N Stadium, Gate No. 10 Hall No.103  
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Telefax : 011-24368274

To,

Date: 18.04.2022

Mr. Rakesh Pandey  
S/o Shri Ramanand Pandey  
House No-263, Sector-13  
Sonipat, Haryana-131001  
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**Subj: Decision of the Anti-Doping Disciplinary Panel Case No.- 174.ADDP.2021**

**NADA Vs. Mr. Rakesh Pandey**

The order containing the decision of the Anti-Doping Disciplinary Panel dated 18.04.2022 in respect of final hearing of the above case held on 05.04.2022 is enclosed.

Please note that according to Article 13.2.2 of Anti-Doping Rules of NADA 2021, **the time to file an appeal to the National Anti-Doping Appeal Panel shall be twenty one (21) days from the date of receipt of this decision by the appealing party.** The appeal may be filed at the abovementioned address.

Also please note that according of Article 10.7.1- (**Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations**)- Any period of Ineligibility imposed may be partially suspended if you assist NADA in uncovering and/or establishing an ADRV by another Athlete or Athlete Support Personnel pursuant to Article 10.7.1 ADR. Further, the athlete is subjected to doping control test during the ineligibility period, therefore, athlete is required to update his residential address as and when changed.

Copy of the NADA Anti-Doping Rules 2021 may be downloaded from NADA website at the following link:-[www.nadaindia.org/en/anti-doping-rule-of-nada](http://www.nadaindia.org/en/anti-doping-rule-of-nada)

The receipt of this communication may be acknowledged.

Encl: 15 sheets.

**(Yasir Arafat)**  
**Law Officer**

Copy forwarded together with the copy of the order containing the decision of the Anti-Doping Disciplinary Panel for information and action deemed necessary:

1. World Anti-Doping Agency, Stock Exchange Tower, 800 Place Victoria (Suit 1700) P. O. Box 180, Montreal (Quebec), H4Z 1B7, Canada.
2. The Paralympic Committee of India Jaisalmer House, 26 Mansingh Road, New Delhi-110011
3. International Paralympic Committee Unit No.1 Level 29 Naza Tower No.10 Persiaran KLCC50088 Kuala Lumpur, Malaysia.
4. National Anti-Doping Agency, J.L.N Stadium, 1<sup>st</sup> Floor, Hall No. 104, Lodhi Road, New Delhi, 110003

**BEFORE THE ANTI-DOPING DISCIPLINARY PANEL**

In the matter of Mr. Rakesh Pandey for violation of Article 2.1 of the National Anti-Doping Agency Anti-Doping Rules, 2021

**Quorum: Mr. Gaurang Kanth, Chairman.  
Dr. D.S Arya, Member.  
Mr. Akhil Kumar, Member.**

**Present: Ms. Priyanka Arora, Law Officer for NADA.  
Mr. Pawan Kaushik, Advocate with Mr. Rakesh Pandey  
Athlete**

**JUDGMENT**  
**18.04.2022**

1. The present proceedings before this Anti-Doping Disciplinary Panel (“**this Panel**”) emanate from the Adverse Analytical Finding (“**AAF**”) against Mr. Rakesh Pandey (“**the Athlete**”), who is stated to be 42 years of age at the time of sample collection. The Athlete is in the sport stream of Badminton-Para Badminton.
2. The brief facts necessary for the adjudication of the present case are that on 03.07.2021, authorized Doping Control Officer (“**DCO**”) of National Anti-Doping Agency (“**NADA**”) collected ‘out competition’ urine sample of the Athlete from Sonapat in accordance with the rules and procedures. The said sample was

*Gaurang Kanth*

*D.S. Arya*

split into two separate bottles which were given reference numbers A 6443022 (“A-Sample”) and B 6443022 (“B-Sample”). In the Dope Control Form (“DCF”), the Athlete had disclosed that he had consumed *‘Vitamine B3, Injunction-DECA DURABOLIN’*. Regarding the sample collection process, the Athlete recorded in the DCF that *‘My experience was good’*.

3. Both the samples were transported to the WADA accredited Laboratory, Doping Control Laboratory, Belgium (“*the Laboratory*”). The Laboratory received both the samples on 09.07.2021 with the seal intact without any tampering and deemed it appropriate for analysis. After the analysis of A-Sample in accordance with the procedures set out in WADA’s International Standard for Laboratory, the Laboratory returned an AAF for *‘Anabolic Androgenic Steroids (AAS/ Nandrolone (19-nortestosterone) metabolites 19-norandrosterone, 19-noretiocholanolone’*
4. This steroid is listed as an Anabolic Steroids under S1 of WADA’s 2021 Prohibited list and is a non-specified substance.

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5. In view of the aforesaid facts, NADA vide Notice of Charge dated 04.08.2021 charged the Athlete with the commission of an anti-doping rule violation (“*ADRV*”) for the presence of ‘*Anabolic Androgenic Steroids (AAS/ Nandrolone (19-nortestosterone) metabolites 19-norandrosterone, 19-noretiocholanolone*’ in the A-Sample in violation of Article 2.1 of the NADA Anti-Doping Rules, 2021 (“**ADR,2021**”).

6. The rights available to the Athlete and also the consequences of not responding to the Notice of Charge have been duly mentioned in the said Notice. The relevant extracts of the Notice of Charge, read, inter alia, as follows:

*“ 6.1.1 If you want to avoid being provisionally suspended, you must provide an explanation for the AAF by 05.00 pm after receipt of notice in seven (07) working days..... ”*

It was further mentioned in the Notice of Charge that :

*“6.5 Irregardless you must provide a detailed response to this Notice of charge after receipt of notice within seven (07) working days. If you fail to respond by this deadline, you will be deemed to have admitted the charge and accepted the Consequences outlines in paragraph 4.3 above.*

*6.6 If you fail to dispute the contents of this Notice within 15 days, then the consequences as specified in Article 8.3.2. shall be followed, i.e, it shall be presumed that you deemed to have admitted the violation, to have waived a hearing, and to have accepted the Consequences that are mandated*



*by these Anti-Doping Rules or that have been offered by NADA'*

NADA also informed the Athlete about his right for B Sample Analysis and right to obtain the A and B Sample laboratory documentation package. The relevant portion reads, as follows:

*'Alternatively, you may waive your right to a B Sample analysis. In those circumstances, you will be deemed to have accepted the A Sample result, but you may still challenge the matter at a hearing if you wish subject to Article 8.3'*

7. In response to the said notice dated 04.08.2021, the Athlete filed reply dated 24.08.2021 before the Director General, NADA highlighting the following facts:

- (i) He was practicing the Para-Badminton games since 1997 and there was no case of antidoping violation earlier.
- (ii) It was an out of competition sample test.
- (iii) On 21.06.2021 he got a severe unbearable lower back pain and his family took him to a nearby hospital namely 'Happy Family Hospital, Karnal, Haryana' and the doctor gave him medicines and injunction. The Athlete attached the medical prescription.

*G. Singh*

*R. Arora*

- (iv) In the dope control form itself he mentioned about his medication.
- (v) He could not take any formal TUE as the pain was unbearable and his condition was very severe. He was not aware that the medicines administered by the Doctor was falling within the list of prohibited substances.
- (vi) The alleged ADRV was not intentional.
8. The Athlete subsequently on 22.09.2021 applied for retroactive Therapeutic Use Exemption under Article 4.3 of the ISTUE for the Medication 'Nandrolone Decionate'. TUE Committee considered the said Application for Retroactive TUE, however, vide order dated 23.09.2021 refused to grant the retroactive TUE observing that *'After receiving the documents, the committee is of the opinion that the treatment given is not appropriate for the condition mentioned. Therefore, the TUE is not granted.'*
9. The matter was placed before the Anti-Doping Disciplinary Panel. The Athlete filed his Reply dated 23.11.2021 before the Panel reiterating his stand as taken before the DG, NADA.
10. NADA filed their Written Submissions, opposing the contentions of the Athlete. NADA, in their Written Submissions highlighted the following facts:



- (a) Urine sample of the Athlete was collected on 03.07.2021 and the test was conducted at the WADA Accredited Lab -Belgium in accordance with the ISL standards and reported ADRV.
- (b) The Athlete failed to disclose to the doctor that he is an Athlete, and he can not be administered with medicine containing prohibited substances.
- (c) His application for retroactive TUE has been rejected.
- (d) The Athlete was negligent, impetuous and reckless and failed to exercise due care and rigour while ingesting prohibited substances listed under the WADA's Prohibited List, 2021.

Relying upon the CAS Judgement in WADA Vs Indian NADA 2016/A/4609, NADA argued that the Athlete may be granted maximum punishment as prescribed under the NADA ADR-2021.

11. We have heard the arguments advanced on behalf of the Athlete and the NADA and perused the available material on record.
12. As per Article 3 of the NADA ADR 2021, the burden is on the NADA to prove that an ADRV has occurred. In order to discharge the said burden, NADA placed on record the AAF Test report for A Sample issued by the Laboratory which shows the presence of *'Anabolic Androgenic Steroids (AAS/ Nandrolone (19-nortestosterone) metabolites 19-norandrosterone, 19-*





*noretiocholanolone*' in the Athlete's urine sample. The said prohibited substance is a non-specified substance under S-1 of WADA's 2021 Prohibited List.

13. As per Article 2.1.1 of NADA ADR, 2021, it is the personal duty of each Athlete to ensure that no prohibited substance enters his/her body. Hence, each Athlete is responsible for any prohibited substance or its metabolites or markers present in his/her sample. Further as per Article 2.1.2, in a case where the Athlete waives his or her right of B-Sample analysis and the B-Sample is not analysed even after the A-Sample analysis establishes the presence of prohibited substance, the same can be considered as a sufficient proof of an ADRV under Article 2.1.
14. Admittedly, the A-Sample analysis has been carried out at WADA Accredited Laboratory in Belgium. As per Article 3.2.2, there is a rebuttable presumption in favour of WADA-accredited laboratories to the effect that custodial procedures have been followed and sample analysis has been conducted in accordance with the WADA International Standards of Laboratory ("ISL"). In order to rebut the said presumption, the Athlete needs to establish a departure from the ISL which could have reasonably resulted in AAF.





Records of the present case reveal that the Athlete, even after the receipt of the Notice of Charge, neither challenged the AAF reported in A-Sample analysis nor requested for the B Sample analysis. Therefore, the presence of the prohibited substance in the urine sample of the Athlete is established beyond doubt and hence it is held that the NADA has successfully proved beyond doubt that the Athlete is in violation of Article 2.1 of the NADA ADR, 2021.

15. That as per Article 10.2, the period of ineligibility for a violation of Article 2.1 of NADA ADR, 2021 is for four (4) years subject to the potential reduction as per Article 10.5 (No fault or Negligence), 10.6 (No significant fault or Negligence) or 10.7 (For reasons other than fault).
16. That as per 'Appendix-1 Definitions' of NADA Rules 2021, 'No Fault or Negligence' and 'No Significant Fault or Negligence' are defined as follows:

*"No Fault or Negligence: The Athlete or other Person's establishing that he or she did not know or suspect and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule."*

*"No Significant Fault or Negligence: The Athlete or other Person's establishing that any Fault or negligence, when viewed in the totality of the circumstances and taking into*



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

17. CAS panel had an occasion to consider the cumulative conditions to be analyzed while examining whether an Athlete is entitled to the benefit of reduction of standard sanction in **CAS 2015/A/4127 Ian Chan v. CWSA and CCES**. The Panel observed, inter alia, as follows:

*'to benefit from the elimination or reduction of the standard sanction, a player must fulfil two cumulative conditions, i.e. establish how the specified substance entered his body on a balance of probabilities and establish the absence of intent to enhance his sporting performance to the comfortable satisfaction of the hearing panel. In this respect, the sincerity of a player, the absence of obvious inconsistencies between his statements, the fact that he is not a professional, the relative lack of incentive he has to dope himself given his age/competition level and the uncertainties which remain regarding the degree of effect of certain factors (his condition of health, the adverse weather conditions, his apparently unusual resistance to the side effects of large doses of inhaled salbutamol, etc.) on the test results, are factors to be taken into consideration'.*

18. In the present case, the Athlete's sample tested positive for the presence of a non-specified substance '*Anabolic Androgenic Steroids (AAS/ Nandrolone (19-nortestosterone) metabolites 19-norandrosterone, 19-noretiocholanolone*'. It is the case of the

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Athlete that he was suffering from unbearable lower back pain and hence on 21.07.2021, he was taken to 'Happy Family Hospital, Karnal, Haryana. The doctor administered him with 'Deca Durabolin' 50 mg injection. The salt composition of the said Injection is 'Nandrolone Decanoate'. The Athlete's sample tested positive for the above mentioned non specified substance because of the injection 'Nandrolone Decanoate'. Hence, the Athlete successfully established how the prohibited substance entered into his body.

19. That now, it is important to ascertain the 'degree of fault' of the Athlete which can be considered by the Panel while deciding the Penalty. The CAS Panel had an occasion to examine how to measure an Athlete's fault while deciding the Penalty in **WADA v.**

**Martin Johnsrud Sundby & FIS CAS/2015/A/4233:**

*"The Panel notes that an impressive body of jurisprudence has defined the circumstances relevant to the measurement of an athlete's fault, and translated them into the determination of a proper sanction, chiefly in the context of disputes relating to the use of "contaminated products" (such as food supplements), but also in cases where medicines were taken in a therapeutic context (broadly defined) without a TUE. Also in this arbitration, the Parties have drawn the Panel's attention to specific decisions. The Panel agrees that precedents in terms of the approach in principle provide helpful guidance. However, the Panel underlines that each case must be decided on its own facts and that "although consistency of sanctions is a virtue,*



*correctness remains a higher one: otherwise unduly lenient (or, indeed, unduly severe) sanctions may set a wrong benchmark inimical to the interests of sport” (CAS 2011/A/2518 § 10.23 of the award).*

*At the same time, the Panel notes that in CAS 2013/A/3327 & 3335 the Panel summarized, based on a review of CAS precedents, some principles applicable to the determination of the length of the sanction when Article 10.4 WADC (or provisions corresponding thereto) applies. More specifically, the Panel recognised the following degrees of fault:*

- i. significant degree of or considerable fault*
- ii. normal degree of fault*
- iii. light degree of fault.*

*In CAS 2013/A/3327 & 3335, then, applying these three categories to the possible sanction range of 0-24 months contemplated by Article 10.4 WADC, the Panel arrived at the following sanction ranges:*

- i. significant degree of or considerable fault: 16-24 months, with a “standard” significant fault leading to a suspension of 20 months;*
- ii. normal degree of fault: 8-16 months, with a “standard” normal degree of fault leading to a suspension of 12 months;*
- iii. light degree of fault: 0-8 months, with a “standard” light degree of fault leading to a suspension of 4 months.*

*The holding in CAS 2013/A/3327 & 3335 was then applied in other CAS decisions, and was recently adopted in CAS 2016/A/4371, in the context of the 2015 edition of the WADC.*

*This Panel agrees with CAS 2013/A/3327 & 3335: in order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a*

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*... A. ...*

*reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities. The objective element should be foremost in determining into which of the three relevant categories a particular case falls. The subjective element can then be used to move a particular athlete up or down within that category."*

20. In the present case, the panel notes the following elements;

**(A) In Favour of the Athlete**

- (i) The Athlete suffered unbearable lower back pain and he was taken to hospital and doctor administered him with 'Deca Durabolin' 50 mg injection. The prohibited substance entered the body through this.
- (ii) It was an out of competition sample testing.
- (iii) The Athlete with all bonafide intention mentioned about the said medication in the DCF itself.
- (iv) The Athlete has no intention to cheat or enhance the sporting performance.
- (v) Later after the receipt of Notice of Charge from NADA, he realized how the prohibited substance entered into his body and immediately applied for the retroactive TUE. Eventhough it was rejected, there was a positive attempt on behalf of the Athlete to rectify the mistake committed by him unknowingly.
- (vi) The Athlete is practicing the Para-Badminton from 1997 and the present one is his first ADRV.
- (vii) Hence, from the totality of the events as explained, the sincerity and honesty of the Athlete is not under doubt.

**(B) Against the Athlete**

- (i) the Athlete nowhere averred that he ever disclosed to the concerned doctor that he is an Athlete and no medicine which contain prohibited substance should be administered to him.
- (ii) The TUE Committee opined that '*treatment given is not appropriate for the given condition*'.

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(iii) The Athlete is an experienced player and hence he should have been aware about his antidoping obligations and should have taken utmost care to ensure that the prohibited substance should not enter his body.

21. As per NADA ADR-2021, it is the personal duty of the Athlete to ensure that no Prohibited Substance enters their bodies. Hence an Athlete is expected to exercise utmost care and caution, which is expected to be much more than a normal person. However, it appears to the Panel that the Athlete was suffering from unbearable lower back pain, and he might not have been in a position to disclose to the doctor that he is an Athlete. Hence the doctor administered medicine which contain prohibited substance. In addition, the Panel is comfortably satisfied about the Athlete's sincerity and honesty. The Panel also accepts the fact that it was not the intention of the Athlete to enhance his performance in any manner. Further the Athlete disclosed the name of medication in his DCF itself. The medicine has been injected to him by a professionally qualified doctor. Having regard to the overall circumstances of the case and considering its objective and subjective elements as explained by the CAS Panel in **WADA v. Martin Johnsrud Sundby & FIS CAS/2015/A/4233**, the Panel is of the considered view that the case of the Athlete is falling under



Article 10.6 of the NADA ADR-2021, 'No significant Fault or Negligence'.

22. NADA relied upon the CAS Judgement in WADA Vs Indian NADA 2016/A/4609 and argued that there was 'indirect intention' and hence the Athlete may be granted maximum punishment as prescribed under the NADA ADR-2021. The Panel examined the said CAS Judgement thoroughly. In the said case, it was an 'in competition' sample testing and the Athlete never disclosed about the said medication in the DCF. In the present case, due the severe pain, the Athlete was not in a position to disclose anything to the doctor concerned. It was an 'out competition' sample testing and the Athlete honestly disclosed about the medication in the DCF. Hence considering the overall facts and circumstances, the Panel is of the considered view that the present case is different from the cited CAS Judgment.

23. As per Article 10.6.2 of NADA ADR-2021, if an Athlete or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility

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*Aravind*

otherwise applicable. Hence in the present case, the case of the Athlete falls under the category of 'No significant Fault or Negligence', and the Panel already assessed the degree of fault as 'normal', the Athlete is hereby sanctioned with an ineligibility of 2 years.

24. Hence in view of the discussion made hereinabove, it is held that the Athlete has violated Article 2.1 of NADA ADR, 2021. Further he is entitled for the reduction of Penalty under Article 10.6 (No Significant fault or negligence) and hence he is sanctioned with an ineligibility of two (02) years under Article 10.2 NADA ADR, 2021 from the date of final hearing decision. However, the Athlete is entitled for the credit of period of provisional suspension (Article 10.13.2) already undergone. Accordingly, the Panel hereby directs that the Athlete be given credit of period of his provisional suspension which he had already undergone for calculating his total period of ineligibility of Two (02) years.

The matter is disposed of, accordingly.



Gaurang Kanth  
(Chairman)



Dr. D.S Arya  
(Member)



Mr. Akhil Kumar  
(Member)