

IN THE CHAMBER OF ANTI DOPING DISCIPLINARY PANEL

J.N. STADIUM COMPLEX, ENTRY GATE NO.10, STAIRCASE NO.3,
1ST FLOOR, HALL NO. 103-104, NEW DELHI - 110003, INDIA.

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In the Matter of **Mr. Shubham, S/o Sh. Sajjan, R/o House No.251, Asawarpur (71), Sonipat, Haryana - 131021** for the violation of Article 2.1 of Anti -Doping Rules 2021.

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|-----|-----------------------------------|--|
| 1. | Event | Wrestling |
| 2. | Name of Competition | Selection Trials Senior Championship, 2021 |
| 3. | Date of Sample Collection | 31.08.2021 |
| 4. | Nature of Sample | Urine |
| 5. | Urine sample Code Number | 6443443 |
| 6. | Name of Sample Witness | Dharmendra Kumar |
| 7. | Name of Dope Control Officer | Amit Kumar Soni |
| 8. | Date of Result 'A' Sample testing | 17/23.09.2021 |
| 9. | Result of 'A' sample | Adverse Analytical Finding for:
S5 Diuretics and Masking Agents. |
| 10. | Date of Initial Review | ---- |
| 11. | Date of provisional suspension | Voluntarily accepted by Athlete on 14.12.2021. |
| 12. | Date of first notice | 24.09.2021 |
| 13. | Date of Result 'B' Sample | Not Opted |

Amrity Chaudhary

P. Ali

- testing
14. Result of 'B' Sample Not Opted
16. Date of Notification _____
17. Date of hearing 16.03.2022 and 04.04.2022
18. Plea of the athlete
- On 28.08.2021, the Athlete had developed acute abdominal pain along with nausea and vomiting as a result of him contracting a Urinary Tract Infection ("UTF). Owing to the same, the Athlete had approached Dr. V.K. Gupta (M.B.B.S, M.S (Ortho) at Rama Hospital, Sonipat who prescribed 'Lasix' medicine to the Athlete which contains Furosemide and the same resulted in the adverse analytical finding. The Athlete has not taken the prohibited substance intentionally.
19. Date of decision 02.05.2022

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NADA notified its assertion relating to violation of Anti-Doping Rule 2.1 by **Mr. Shubham** (Sports Discipline- **Wrestling**).

Mr. Yasir, Law Officer NADA presented the case on behalf of NADA and produced the documents in support of the case. The Athlete was present in person through video conferencing along with his lawyer Mr. Vidushpat Singhania. Hearing was conducted on 16.03.2022 and 04.04.2022 by the Hearing Panel constituted under Rule 8.3.2.

Factual Background:

1. A urine sample ("Sample") of the athlete, Mr. Shubham ("**Athlete**") was collected on 31.08.2021 by the Doping Control Officer of NADA while he was participating in Selection Trials for Senior Championship, 2021 in the discipline of Wrestling. As per procedure, the Sample was split into two separate bottles, hereinafter referred to as Sample A and Sample B.
2. Sample A was tested at the Dope Control Laboratory, Belgium and was returned with an Adverse Analytical Finding (AAF) for S5. Diuretics and Masking Agents/Furosemide which is a specified prohibited substance under Category S-5 of the WADA's 2019 Prohibited List.

Sanjay Chaudhary

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3. Consequently, NADA issued a notice of charge dated 24.09.2021 ("Notice of Charge") for violation of Rule 2.1 of the NADA Anti - Doping Rules ("Rule'). The notice of charge was also accompanied with the information that the Athlete can opt for suspension in terms of Article 7.9.2 of the Anti-Doping Rules.
4. The Athlete did not sought 'B' sample analysis in terms of Anti-Doping Rules, 2015 and on 14.12.2021 accepted the provisional suspension.
5. Pursuant to the collection of sample on 31.08.2021, the Athlete has even applied for Therapeutic Use Exemption (TUE) on 09.09.2021 mentioning that due to extreme medical condition he has consumed medicine/Lasix prescribed by Dr. V.K. Gupta. The TUE application was certified by Dr. V.K. Gupta.
6. The retrospective Therapeutic Use Exemption (TUE) applied by the Athlete was rejected on 23.09.2021 by the TUE Committee on the ground that the medical prescription given to the Athlete for treatment of abdominal pain was not appropriate.
7. The appeal preferred by the Athlete on 27.09.2021 against the rejection of TUE was also dismissed by the Appellate Body vide decision dated 02.11.2021 on the ground that the medicine prescribed to the Athlete for treatment of his abdominal pain which has Furosemide a prohibited substance is not accepted line of treatment.
8. The Athlete in reply to the Notice of Charge dated 24.09.2021 issued by NADA submitted written reply on 05.02.2022 through his lawyer Mr. Vidushpat Singhania.
9. Oral hearing was conducted on 16.03.2022 and 04.04.2022 by the Hearing Panel constituted under Rule 8 through Video Conferencing as due to pandemic Covid-19 physical hearing was not possible and



medically suggestible. The hearing was attended by Mr. Manish Yadav Law Officer, NADA and the Athlete was also present through on-line with his lawyer Mr. Vidushpat Singhania and presented his case before the Hearing Panel.

10. **Submissions of the Athlete**

- (a) On 28.08.2021, the Athlete had developed acute abdominal pain along with nausea and vomiting as a result of him contracting a Urinary Tract Infection ("UTF). Owing to the same, the Athlete had approached Dr. V.K. Gupta (M.B.B.S, M.S (Ortho) at Rama Hospital, Sonipat who prescribed 'Lasix' medicine to the Athlete which contains Furosemide and the same resulted in the adverse analytical finding. The Athlete has not taken the prohibited substance intentionally.
- (b) In order to substantiate his plea of medical treatment, the Athlete has brought on record along with the written reply the medical prescription dated 28.08.2021 issued by Dr. V.K. Gupta (M.B.B.S, M.S (Ortho) at Rama Hospital, Sonipat who prescribed 'Lasix' medicine to the Athlete which contains Furosemide for the alleged treatment of acute abdominal pain. As per the medical prescription the Athlete was prescribed the medicine - Lasix for 3 days i.e.; till 30.08.2021 and he participated in the competition on 31.08.2021.
- (c) The Athlete further submitted that he had no knowledge that the medicine "Lasix" has prohibited substances and he only relied upon the medical advice and treatment prescribed by Dr. V.K. Gupta for treatment of abdominal pain. He has not consumed any prohibited substance intentionally to increase strength or to gain unfair advantage over other athletes during the competition.

8. **Submissions of NADA**



- (a) It is submitted by NADA that the Athlete in the Doping Control Form dated 31.08.2021 signed by him has nowhere declared or mentioned about use of medicine - Lasix for treatment of abdominal pain though he alleged to have consumed the same till one day prior to the competition. He has only mentioned about consuming food supplements and it is an afterthought to escape the liability under the Anti-Doping Rules, 2015.
- (b) The Athlete is an experienced athlete who has participated in international and national level competitions and must be aware that he shall not consume any medicine or drug having prohibited substance without obtaining Therapeutic Use Exemption (TUE) from the NADA.
- (c) That the Athlete in order to escape his liability under the Anti-Doping Rules, 2015 retrospectively applied for Therapeutic Use Exemption (TUE) which was rightly rejected on 23.09.2021 by the TUE Committee on the ground that the medical prescription given to the Athlete for treatment of abdominal pain was not appropriate.

9. Observations and Findings of the Panel

After hearing the parties at length and having considered all documents and the oral submissions, the Panel observes and holds as under:

- (i) The core issue which arises for the consideration of the Hearing Panel is as to whether the Athlete has intentionally consumed the prohibited substance Diuretics and Masking Agents/Furosemide which is a specified prohibited substance under Category S-5 of the WADA's 2019 Prohibited List to enhance his performance and to gain unfair advantage over the other athlete's or it was administered to the Athlete by the doctor for treatment of his abdominal pain without his knowledge.

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- (ii) As per Article 2.1 of the Anti-Doping Rules 2015, it is the personal duty of every Athlete to ensure that no prohibited substance, as defined and prescribed in the Prohibited List Of Substances, 2019 by the National Anti-Doping Agency, enters his or her body. Article 2.1.2 further provides that the sufficient proof of an anti-body doping rule violation under Article 2.1 is established by the presence of the Prohibited Substance or its Metabolites or Markers in the Athlete's sample.
- (iii) It is admitted and undisputed position that the Athlete's sample taken on 31.08.2021 while he was participating in the event – Selection Trials has tested positive for Diuretics and Masking Agents/Furosemide which is a specified prohibited substance under Category S-5 of the WADA's 2019 Prohibited List.
- (iv) When a sample testing returns a positive finding, the burden is on the Athlete to explain and justify as how the prohibited substance has entered his/her body.
- (v) The explanation given by the Athlete in his written submissions and as briefly noted above in paragraph (7) is that on 28.08.2021, the Athlete had developed acute abdominal pain along with nausea and vomiting as a result of him contracting a Urinary Tract Infection ("UTF). Owing to the same, the Athlete had approached Dr. V.K. Gupta (M.B.B.S, M.S (Ortho) at Rama Hospital, Sonipat who prescribed 'Lasix' medicine to the Athlete which contains Furosemide and the same resulted in the adverse analytical finding.
- (vi) In order to substantiate his plea of medical treatment, the Athlete has brought on record along with the written reply the medical prescription dated 28.08.2021 issued by Dr. V.K. Gupta (M.B.B.S, M.S (Ortho) at Rama Hospital, Sonipat who prescribed 'Lasix' medicine to the Athlete which contains Furosemide for the alleged treatment of acute abdominal



pain. As per the medical prescription the Athlete was prescribed the medicine – Lasix for 3 days i.e.; till 30.08.2021 and he participated in the competition on 31.08.2021.

- (vii) That pursuant to the collection of sample on 31.08.2021, the Athlete has even applied for Therapeutic Use Exemption (TUE) on 09.09.2021 mentioning that due to extreme medical condition he has consumed medicine/Lasix prescribed by Dr. V.K. Gupta. The TUE application was certified by Dr. V.K. Gupta.
- (viii) The retrospective Therapeutic Use Exemption (TUE) applied by the Athlete was rejected on 23.09.2021 by the TUE Committee on the ground that the medical prescription given to the Athlete for treatment of abdominal pain was not appropriate.
- (ix) The appeal preferred by the Athlete on 27.09.2021 against the rejection of TUE was also dismissed by the Appellate Body vide decision dated 02.11.2021 on the ground that the medicine prescribed to the Athlete for treatment of his abdominal pain which has Furosemide a prohibited substance is not accepted line of treatment.
- (x) The Athlete in the light of above submissions requested this Panel to consider the case of the Athlete under Article 10.5.1 for 'no negligence' or 'no fault' of the Athlete.
- (xi) Article 10.2 of NADA Rules 2015, provides as follows:

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6: 10.2.1 The period of Ineligibility shall be four years where:

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10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance and NADA can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be 'not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

(xii) In the medical prescription dated 28.08.2021 issued by Dr. V.K. Gupta (M.B.B.S, M.S (Ortho) at Rama Hospital, Sonipat, the Athlete was prescribed 'Lasix' medicine for 3 days for treatment of his abdominal pain which contains Furosemide – a prohibited specified substance.

(xiii) The Hearing Panel directed the NADA to examine the veracity of the medical prescription dated 28.08.2021 issued by Dr. V.K. Gupta

(M.B.B.S, M.S (Ortho) at Rama Hospital, Sonipat and to submit a report. The hearing was adjourned for 04.04.2022.

- (xiv) That NADA on 25.03.2022 submitted the report that Dr. V.K. Gupta (M.B.B.S, M.S (Ortho) at Rama Hospital, Sonipat on 28.03.2021 treated the Athlete for abdominal pain and as per his medical knowledge and judgment he has prescribed medicine 'Lasix' to the Athlete for 3 days.
- (xv) It is relevant to note that Dr. V.K. Gupta in his prescription dated 28.08.2021 nowhere recorded or stated that the person he was treating is a state and national level athlete and regularly participates in the events.
- (xvi) The Hearing Panel is of the view that the Athlete being an experienced Athlete it was expected from him that he shall inform Dr. V.K. Gupta that he is an Athlete and has to participate in the event schedule on 31.08.2021. If, informed Dr. V.K. Gupta would not have prescribed medicine 'Lasix' to the Athlete which contains prohibited substance specially when the Athlete has not obtained TUE (Therapeutic Use Exemption) from NADA before using any medicine having prohibited substances. This shows the negligent and callous behaviour of the Athlete and non-seriousness towards the Anti-Doping Rules, 2015.
- (xvii) That the Hearing Panel is of the view that there are not enough evidences on record to show that the Athlete has intentionally consumed the prohibited substance or he has the knowledge that the medicine "Lasix" given to him for treatment of abdominal pain by Dr. V.K. Gupta has prohibited substance and he will gain unfair advantage over the other athletes/player in the competition.
- (xviii) That the Hearing Panel holding that the Athlete has not intentionally taken the prohibited substance, shall not absolve the Athlete from his responsibilities under the Anti-Doping Rules, 2015. It

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was required from the Athlete that he should have been more vigilant and careful and shall have informed Dr. V.K. Gupta before administering any medicine that he is an Athlete and participates in national and international events. The Athlete is expected to know and follow the Anti-Doping Rules, 2015. This caution was required from him being a senior and experienced Athlete but he has completely failed in exercising the caution and prudence and was negligent in performing his duties as an Athlete though fully aware of the rules and regulations.

(xix) Once this Hearing Panel reaches to the conclusion that the Athlete has not intentionally consumed the prohibited substance to gain unfair advantage over other player/athlete in any competition but had completely failed in exercising the caution and prudence and was negligent in performing his duties as an Athlete, the next question which arises for the consideration is the period of ineligibility which is to be imposed under Article 10 of the Anti-Doping Rules, 2015 on the Athlete in the facts and circumstances of the case.

(xx) That under Article 10.4 of the Anti-Doping Rules, 2015, the ineligibility shall be completely eliminated if the Athlete is clearly able to establish No Fault or Negligence which is not applicable in the present case. If the Athlete is able to establish No Significant Fault or Negligence, the ineligibility period may be reduced according to the provisions of Article 10.5.

10. In view of the above, it is established that a violation under Article 2.1 of the Anti-Doping Rules has taken place. The explanation offered by the Athlete shows his negligence which is no ground to exonerate him.

11. Once a violation of anti-doping rules has been established, sanctions of individuals as provided under Article 10 of the Anti-Doping Rules, 2015 must ensue. Article 10.2.2 provides that

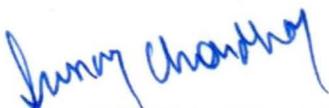
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for violations of Article 2.1, the period of ineligibility shall be two years. Article 10.5.1 provides that where the anti-doping rule violation involves a specified substance as in the present case and the Athlete can establish no significant fault or negligence, then the period of ineligibility shall be at a minimum a reprimand and at a maximum two years of ineligibility depending on the Athlete's degree of fault.

12. The Hearing Panel holds that since the Athlete in the present case was negligent and has not informed the doctor treating him that he is an athlete and taken medicine "Lasix" which has prohibited substance without obtaining TUE from NADA, **he is liable for sanctions under Article 10.5.1 for ineligibility for a period of 5 months. After the period of ineligibility is over the Athlete can participate in the events/competitions.**

13. In the present case, since the Athlete has accepted the provisional suspension on 14.12.2021 from participating in the events, **the period of his ineligibility of 5 months shall commence from the date of acceptance of provisional suspension i.e. 14.12.2021.**



(SUNNY CHOUDHARY)

MEMBER

Rana Kanganda
Chengappa

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Kanganda Chengappa
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(DR.RANA.K.CHENGAPPA)

MEMBER



(JAGBIR SINGH)

MEMBER

Dated: 02.05.2022