

Anti-Doping Appeal Panel

J.L.N Stadium, Gate No. 10 Hall No.103
1st Floor, Lodhi Road, New Delhi 110 003
Telefax : 011-24368274

To,

Date: 12.04.2022

Mr. Gurmeet Singh
S/o Shri Tarsem Singh
Village – Salempur, Afigana
P.O. Gurdas Nangal,
Tehsil – Gurdaspur
District - Gurdaspur 143520
Email:- athleticsindia515@gmail.com

Subj: Decision of the Anti-Doping Appeal Panel Case No.-14/ADAP.2021

NADA Vs. Mr. Gurmeet Singh

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

The receipt of this communication may be acknowledged.

Encl: 04 sheets.



(Yasir Arafat)

Copy forwarded together with the copy of the order containing the decision of the Anti-Doping Appeal 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. Secretary General, Athletics Federation of India, A-90, Naraina Industrial Area, Phase-1, near PVR cinema, New Delhi- 110028.
3. International Association of Athletics Federations, 17, Rue Princesse Florestine BP 359, MC 98007, Monaco.
4. National Anti-Doping Agency, J.L.N Stadium, 1st Floor, Hall No. 104, Lodhi Road, New Delhi, 110003

BEFORE THE ANTI DOPING APPEAL PANEL
J.L.N. Stadium, Gate No. 10, Hall No. 103,
Lodhi Road, New Delhi -110 003

(PROCEEDINGS CONDUCTED THROUGH VIRTUAL MODE)

Appeal No.- 14/ADAP/2021

IN THE MATTER OF:

Mr. Gurmeet Singh APPELLANT
(Sport – Athletics)

Vs

National Anti-Doping Agency RESPONDENT

Quorum: Mr. Abhinav Mukerji, Chairperson
Dr. Vivek Singh, Member
Ms. Prashanti Singh, Member

Present: Mr. Deepender Singh Authorised Representative for the Athlete
Ms. Priyanka Arora Programme Associate Legal for NADA.

Date of Hearing: 5.04.2022

Date of Order: 5.04.2022

ORDER

1. The Appellant Mr. Gurmeet Singh (Athlete) has filed an appeal against the order dated 06.12.2021 passed by the Anti-Doping Disciplinary Panel in Case No. 164.ADDP.2021 (“impugned order”).

2. The facts of the case as available from the records before the Anti-Doping Disciplinary Panel are as follows:

(i) The doping control test of the Appellant was carried out by the Doping Control Officer of NADA during 24th National Federation Cup Senior Athletics Championship 2021 held at Patiala, Punjab. Urine Sample of the Appellant upon collection were sent to Doping Control Laboratory, Belgium a World Anti-Doping Agency (WADA)-accredited laboratory. The Laboratory analysed the A Sample in accordance with the procedures set out in the WADA’s International Standard for Laboratories. Analysis of the A Sample returned an Adverse Analytical Finding (AAF) for the following:

“SI.1 Anabolic Androgenic Steroids (AAS)/ The GC/C/IRMS results are consistent with the exogenous origin of:

- ***Androsterone,***
- ***Testosterone and at least one of is Adiol (5aAdiol and/or 5BAdiol),***

- *5aAdiol,*
- *aAdiol & 5BAdiol and*
- *Etiocolanolone and at least one of the Adioms (5aAdiol and/or 5BAdiol)”.*

Non-specified substances under S1 of WADA's 2021 Prohibited List

(ii) Consequently, NADA issued a notice of charge dated 01.06.2021 for violation of Rule 2.1 of the Anti-Doping Rules of NADA, 2015 (“ADR”). It was also mentioned therein that as per the records of NADA this was second Anti-Doping Rule Violation (“ARDV”) committed by the Appellant. Therefore, the consequences given under Article 10.9 shall be imposed upon the Appellant. The notice of charge imposed a mandatory provisional suspension with effect from the date of notice. The Appellant waived Sample-B analysis vide communication dated 08.07.2021.

(iii) During the final hearing the Appellant was proceeded *ex-parte* as he failed to appear before the Disciplinary Panel despite repeated opportunities granted. By the way of impugned order an ineligibility of 08 years under Article 10.9.1.1 with benefit of provisional suspension period already undergone was imposed on the Appellant. Hence, this appeal.

3. We have heard both the parties at length. The Appellant’s primary contention is that the Appellant has not consumed any prohibited substance intentionally rather the prohibited substance must have entered his system by way of nutritional supplements which he consumed as part of his diet. The Appellant contends that he is unaware of how the substance entered his body and is ready to have his supplements tested at this stage. He has also raised grievance in relation to the *ex-parte* procedure adopted.

4. On the other hand, Ms. Arora on behalf of NADA submitted that the prohibited substances were found in urine sample of the Appellant and under Article 2.1.1 it is an athlete’s responsibility to ensure that no prohibited substance enters his body and further that under the said Article it is not necessary that intent, fault or negligence is required to be demonstrated to attract the provisions of Article 2.1. It was contended that the Appellant has failed to adduce any appropriate explanation with regard to presence of prohibited substance in his urine sample. It was asserted that the Appellant has no Therapeutic Use Exemption (“TUE”) to justify the presence of the aforesaid prohibited substance. In response to arguments raised by the Appellant, it was submitted that the Appellant failed to appear before the Ld. ADDP despite repeated opportunities and thus had to be proceeded *ex-parte*. It was further submitted that the supplements disclosed by the Appellant in his doping control form could not be the source of contamination of prohibited substance. It was asserted that this is the second ADRV committed by the Appellant thus he deserves no mercy of this Panel. Lastly, it was submitted that the impugned order does not warrant interference and present appeal is liable to be dismissed as the Appellant has failed to rebut the presumption that ADRV was not intentional.

5. What emerges for consideration is whether Ld. ADDP was justified in proceeding *ex-parte* against the Appellant and whether the Appellant has made out a case that ADRV was not intentional. In the present case, the Appellant was served notice of charge on 01.06.2021 for violation of Article 2.1 and vide communication

dated 08.07.2021 the appellant waived the right to B sample analysis. On, 12.07.2021 the Appellant was served hearing notice and was provided an opportunity to file written submissions. Thereafter, virtual hearing was held on 08.11.2021, however, the Appellant failed to join the proceedings. In the interest of justice, another opportunity was granted to the Appellant. On, 16.11.2021, the Appellant appeared before Ld. ADDP and sought time to file reply, which was granted to him. When the matter came up for hearing on 26.11.2021, neither any reply was filed by the Appellant before Ld. ADDP nor did he appear on the said date. Under these circumstances, the matter was proceeded *ex-parte*. We do not find any error in the procedure adopted by Ld. ADDP in the present case as the Appellant without any intimation remained absent from the hearings despite being given fair chances.

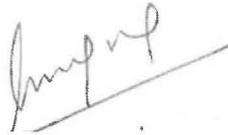
6. Another ground raised by the Appellant that the ADRV is not intentional but occurred due to nutritional supplements he consumed for recovery. In the ordinary course, the supplements declared by the Appellant in his Doping Control Form cannot be the source of prohibited substance found in the body of Appellant. The Appellant has not taken any initiative for testing of the said supplements to bring out a clear picture. The bland plea raised by the Appellant deserves to be rejected as the Appellant has failed to produce any evidence with regard to approval or accreditation of the supplements he had been taking, which would have been a normal procedure. We must add that as the present case involves non-specified substance the burden of proof rests upon athlete to bring out that the ADRV was not intentional. In totality of facts, this Panel is not satisfied with the explanation put forward by the Appellant to justify ADRV. The Appellant has orally made a vague plea for the first time during the hearing that he is willing to get the supplements tested. However, this plea is to be rejected as the Appellant cannot orally raise vague pleas for testing for the first time before this forum.

7. We are of the considered opinion that the Appellant has committed an ADRV under Article 2.1 of the ADR. Since, this was second ADRV committed by the Appellant therefore provisions of Article 10.9 were rightly applied. The Appellant has failed to discharge burden of proof that the ADRV was not intentional as is mandated under Article 10.2.1 for non-specified substances. Further, the conditions that would meet the requirements of “No Fault or Negligence” or “No Significant Fault or Negligence” are absent in the present case.

8. Once the presence of the prohibited substance is established in the body of the athlete and no exculpatory or mitigating circumstances exist, the natural consequences under the ADR follows. Therefore, we do not find any merit in the appeal and the same is dismissed. The sanction of 08 years ineligibility imposed by the Anti-Doping Disciplinary Panel vide its order dated 06.12.21 in Case No. 164.ADDP.2021 is upheld. As held by the Anti-Doping Disciplinary Panel the Appellant shall have benefit of provisional suspension period already undergone. A copy of the order be uploaded on the website of the NADA and a copy be sent by registered post to the postal address of the athlete and also emailed to his registered email address and sent to his counsel.



Prashanti Singh
Member



Dr. Vivek Singh
Member



Abhinav Mukerji
Chairman