

Anti-Doping Appeal Panel

J.L.N Stadium, Gate No. 10 Hall No.103
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To,

Date: 10.01.2023

Mr. Shivpal Singh
S/o Mr. Ramashraya Singh
R/o 25, Hingutar Jagdishpur Chandauli,
Uttar Pradesh- 232105
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Subj: Decision of the Anti-Doping Appeal Panel Case No.-27/ADAP/2022

NADA Vs. Mr. Shivpal Singh

The order containing the decision of the Anti-Doping Appeal Panel dated 09.01.2023 in respect of final hearing of the above case held on 25.11.2022 is enclosed.

The receipt of this communication may be acknowledged.

Encl: 06 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, Gate No. 10 Hall No.103 , 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.- 27/ADAP/2022

IN THE MATTER OF:

Mr. Shivpal Singh (Sport – Athletics)	APPELLANT
	Vs	
National Anti-Doping Agency	RESPONDENT

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

Present: Mr. Parth Goswami, Mr. Vidush Singhania Advocates for the Athlete with Mr. Shivpal Singh athlete in person
Mr. Yasir Arafat, Law Officer for NADA.

Date of Hearing: 25.11.2022

Date of Order: 09.01.2023

ORDER

1. The Appellant Mr. Shivpal Singh (Athlete) has filed an appeal against the order dated 16.08.2022 passed by the Anti-Doping Disciplinary Panel in Case No. 209.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 at Greater Noida, Uttar Pradesh on 26.09.2021 “out of competition” by the Doping Control Officer of NADA. 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:
“S1.1 Anabolic Androgenic Steroids (AAS)/ metandinenone metabolites 17-epimetanedienone epimetenediol, 17a-methul-5B-androstane-3a, 17B-hydroxymethyl, 17a-methyl-18-nor-androst-1,4,13-trien-3-one”

(ii) Consequently, NADA issued a notice of charge dated 21.10.2021 for violation of Rule 2.1 of the National Anti-Doping Rules, 2021 ("ADR"). The notice of charge imposed a mandatory provisional suspension with effect from the date of notice. The Appellant opted out for B sample vide e-mail dated 22.11.2021.

(iii) By the way of impugned order an ineligibility of 04 years under Article 10.2.1.1 from the date of provisional suspension have been imposed upon Athlete. Hence, this Appeal.

3. We have heard both the parties at length. The Appellant's primary contention is that the Anti-Doping Rule Violation (ADRV) was not intentional rather it occurred due to consumption of fake/ contaminated supplement, namely, Prime Testo Booster, which was duly disclosed by him in the doping control form at the time of testing. It was submitted that the supplement was purchased by the Appellant's Coach, namely, Mr. Mintu Alhawat, from a retailer, namely, Herbal Power Pharmacy. The supplement store was later found to be involved in sale of contaminated supplements and an FIR dated 06.10.2021 has been registered against the said retailer for being engaged in sale of contaminated supplements. It was submitted that even the coach of the Appellant has filed an FIR dated 07.05.2022 against the owner of Herbal Power Pharmacy for supplying fake supplement due to which the doping test of the Appellant tested positive. It was further asserted that upon request of the Appellant the Ld. ADDP ordered for testing of the said supplement in the National Dope Testing Laboratory, New Delhi ('NDTL'). The NDTL has found the supplement to be contaminated and presence of 'Methandienone' was detected in the said supplement. Based on these facts, it was pleaded that the Ld. ADDP has erred in imposing the sanction upon the Appellant as the consumption is inadvertent and unintentional. It was submitted that the Appellant exercised due care and caution before taking the supplement, he checked the label and certifications of the supplement and after verifying that the supplement does not contain any prohibited substance he added the supplement to his diet. It was submitted that the Appellant is an honest and hard working Athlete who has represented India at various International Level Events and won laurels. It was also submitted that the ADRV arose out of competition and the Appellant had no intention or motivation to cheat. It was submitted that the Appellant may be given benefit of Article 10.6.1.2 as the supplement was contaminated. It was also submitted that the Appellant may also be given benefit of substantial assistance under Article 10.7 as his complaint led to filing of FIR and caution letter by UP Athletics Association. It was asserted that the Appellant's contentions are supported by FIR dated 06.10.2021 and 07.05.2021 registered by the Police against the owners of Herbal Power Pharmacy and the Letter dated 21.06.2022 issued by UP Athletics Association, wherein, it has been cautioned to not purchase supplements from Herbal Power Pharmacy. It was lastly submitted that the impugned order may be set aside considering the facts and circumstances of the case. The Appellant relies upon *Marin Cilic v. International Tennis Federation* (CAS/2013/A/3324 and CAS 2013/A/3335, 11 April 2014) for the purposes of determining duty of care, degree of fault and the standards to be applied for reduction of sanction under Article 10.5. On the point of extent of ineligibility, the Appellant relies upon – *Josh Barnett v. United States Anti-Doping Agency* (23.03.2018), *Madisyn Cox*

v. FINA, CAS 2018/A/5866 and United World Wrestling v. Sumit Malik (CAS 2022/ADD/47).

4. On the other hand, Mr. Yasir Afarat, Ld. Law Officer on behalf of NADA submitted that the prohibited non specified substances were found in urine sample of the Athlete and under Article 2.1.1 it is an athlete's responsibility to ensure that no prohibited substance enters his/her 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 submitted that the Athlete is an International level player and has participated in several events and being an experienced player, he should have exercised extra care and caution to ensure that no prohibited substance enter his body considering the number of fake supplements spread in the market. It was submitted that the benefit under doping regulations cannot be given to the Athletes who intake supplements at their own will without ensuring that the same is not contaminated and will not result in AAF. It was submitted that the Appellant cannot be granted benefit of 'No significant fault of negligence' as the Appellant has failed to bring on record any evidence to show that he conducted any research or enquiry to ensure that supplements were dope free. It was also submitted that the Appellant has failed to prove that the ingestion was not intentional. The Ld. Counsel has relied upon, Serge Despres v. Canadian Center for Ethics in Sport (CAS/2008/A/1489) and WADA v. Serge Despres, CCES & BCS (CAS 2008/A/1510) to establish that the Appellant was under duty to take additional steps to ensure that he does not consume prohibited substance and he further relies upon USADA v. Sabina Allen AAA (01-21-0018-0951) to substantiate that the Appellant has failed to prove unintentional use of supplement. Lastly, it was stated that the impugned order is based on correct reasoning and proper evaluation of facts therefore does not warrant any interference by this Ld. Panel.

5. In the present case, the perusal of Doping Control Form reveals that the Appellant has fully co-operated in the doping test and disclosed use of supplements he was consuming at the given time period. As the present case involves a non-specified substance, as per Article 10.2.1.1, the Athlete is imposed a four-year period of ineligibility unless they can establish, on the balance of probabilities, that ADRV was not intentional, in which case the standard sanction is a two-year period of ineligibility. Term "intentional" is defined in Article 10.2.3. What now needs to be determined is whether the Appellant engaged in conduct which he knew constituted an ADRV? And whether the Appellant knew that there was a significant risk that his conduct might constitute an ADRV and manifestly disregarded that risk?

6. The analysis carried out on behalf of the Appellant brings out that the origin of the prohibited substance is supplement, namely, "Prime Testo Booster", the position with regard to origin of prohibited substance has not been disputed by the Respondent. It is to be noted that, the Appellant was consuming composition "Prime Testo Booster" since a considerable period and his doping test has never been found positive. The supplement "Prime Testo Booster" was given to the Appellant by his coach Mr. Mintu Ahlawat, who purchased it from 'Herbal Power Pharmacy'. A coach being in position of trust, the Appellant relied upon supplement advised by his Coach. It has been established that Mr. Mintu Ahlawat has filed a complaint against the supplier which led

to registration of FIR against the owner of 'Herbal Power Pharmacy' for supplying contaminated supplements. An important aspect is both the Appellant and his coach are employees of the Indian Air Force and are serving as Junior Warrant Officers and the coach Mr. Mintu Ahlawat was assigned by the Air Force to coach the Appellant. There is a system of hierarchy and discipline of the highest standards in the armed forces and the Appellant being a disciplined soldier also followed instructions of his coach who sourced and gave these supplements to him. Failure to follow the directions of his coach would have resulted in adverse disciplinary proceedings against the Appellant in light of the strict discipline maintained in the Indian Armed Forces. We are also satisfied that the Appellant did basic research and checks in form of internet search and checking contents and certification before intaking the supplement and also consulted his coach for using the supplement. It cannot be lost sight of that the Applicant has studied up to class 12 only and is not someone who is highly educated. The testing was also out of competition. All the above factors establish that neither the Appellant was reckless or negligent in relation to his obligations towards ADRV, nor he knew that there was a significant risk that his conduct might constitute or result in an ADRV and manifestly disregarded that risk. The burden of proof that the Athlete is required to prove his allegations, is based on the "balance of probability" test. The "balance of probability" standard entails that the Athlete has the burden of convincing a panel that the occurrence of the circumstances, on which the Athlete relies, is more probably than their non-occurrence. Considering the disclosure of supplement in the doping control form, initiatives taken by the Appellant to get the supplement tested and reporting the incident to Police Authorities and that the supplement was being taken as part of daily diet out of the competition. We can safely assume that on balance of probabilities, the Appellant has established that he consumed the prohibited substance unknowingly and unintentionally and had no intention to cheat.

7. We have reached the conclusion, that the ADRV was not intentional. The Appellant also claims benefit on basis of "No Significant Fault or Negligence" and also seeks benefit pursuant to Article 10.6.1.2 – Contaminated Products. We are satisfied that the Appellant has established the origin of Prohibited Substance using scientific evidence and that the source could have caused the actual adverse finding. The test result or the establishment of the source of the prohibited substance has also not been disputed by NADA by placing any contrary material on record. What now needs to be determined is whether with the exercise of utmost caution the Appellant could have known or suspect that he has used or has been administered Prohibited Substance?

8. To assess whether the Appellant exercised utmost caution or not, the following elements should be taken into account: (i) The Appellant took "Prime Testo Booster", checked its label and confirmed that its listed ingredients did not include any prohibited substance; (ii) The Appellant conducted a basic internet search regarding "Prime Testo Booster" its produce and ingredients; (iii) The supplement "Prime Testo Booster" was given to the Appellant by his Coach; (iv) The supplement store from where the product was purchased was later found to be involved in sale of contaminated products; (v) The Appellant's Coach registered a FIR against the owner's of supplement store for supplying contaminated supplement; (vi) The supplement "Prime Testo Booster" was

found to be containing 'Methandienone' by the NDTL upon testing; (vii) The Appellant disclosed use of "Prime Testo Booster" in his doping control form; (viii) The Appellant was consuming supplement with composition similar to "Prime Testo Booster" since a considerable period of time and never tested positive, (ix) Appellant was expected as an Air Force Officer to follow the directions of his coach and both were part of a highly disciplined force failing which he would face disciplinary action.

9. This Panel considers that the elements listed above are in line with the responsibilities of a diligent player and the Appellant bore "No Significant Fault or Negligence" when viewed in the totality of circumstances. As mentioned above, it has not been disputed by the Respondent that the AAF was a result of contaminated product. According to NADA ADR, a Contaminated Product is a product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search. It has been established that the supplement Prime Testo Booster" was found to be containing 'Methandienone' a prohibited substance which was not disclosed on the product label and not discovered through basic internet search. Therefore, pursuant to Article 10.6.1.2 this Panel further finds that the Appellant has established both No Significant fault or Negligence and that the detected Prohibited Substance, came from a Contaminated Product. Therefore, the Appellant must receive benefit under Article 10.6.1.2.

10. The Appellant cannot be said to be at fault if the supplier of the products was indulging in corrupt practices and supplying fake supplements. In fact the Appellant is victim of a fraud perpetuated by unscrupulous persons who were selling contaminated / fake supplements. The supplement was in fact found to be contaminated with 'Methandienone' by the NDTL upon testing at the instance of the Applicant. However, considering the number of fake supplements available in the market and the risks associated with it, we feel that NADA should have issued detailed advisories to all concerned to be extra cautious in choosing and intaking the supplement. We also note that NADA has not placed on record any steps taken by it to curb spurious supplements in the market which is directly affecting efforts to control doping in sport.

11. This Panel deems it appropriate to categorize Appellant's degree of fault to be normal degree of fault, as the Appellant should have been extra cautious while taking nutritional supplements in light of rampant contamination and unscrupulous means being practised in the market. Perhaps the Appellant as a rule of prudence would have been better off getting a supplement source tested from time to time, which could have been done considering the risks associated with nutritional supplements. We are of the view that ADRV was unintentional and has occurred due to contamination of the supplement therefore the Appellant must receive benefit under Article 10.2.2, Article 10.6.1.2 and further under Article 10.7 in light of his efforts at uncovering the spurious supplement racket.

12. We have considered the case law relied upon by Ld. Counsel for NADA, in USADA v. Sabina Allen AAA (01-21-0018-0951) the Athlete's sample was taken in-competition and further the Athlete did not disclose use of any supplement or medication on the Doping control form except two cans of Redbull, later the Athlete took a stand that she consumed smoothie given by her friend which contained

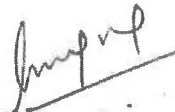
prohibited substances under these circumstances the Athlete was not given any benefit of reduction of sentence. The present case stands on entirely different footing as discussed above and therefore the present case deserves to be considered on its own merits. In Josh Barnett v. United States Anti-Doping Agency (23.03.2018), relied upon by the Appellant the athlete was subjected to mere reprimand for use of contaminated product.

13. We therefore sanction 01 year of ineligibility upon the Appellant based upon normal degree of fault under Article 10.6.1.2. The Appellant is advised to be extra-cautious and exercise due diligence before consuming any supplement in future. The Appeal is hereby allowed and the order dated 16.08.22 in Case No. 209.ADDP.2021 passed by Anti-Doping Disciplinary Panel is set aside. The ineligibility period of 01 year shall start from the date of provisional suspension i.e. 21.10.2021. We also direct that under article 10.10 all other competitive results obtained by the Athlete from the date of sample collection i.e., 26.09.2021 shall be disqualified all resulting consequences including forfeiture of medals, points, and prizes.

14. We also direct NADA to take steps proactively and to collaborate in an active way with appropriate regulatory agencies to prosecute and curb the menace of fake / contaminated supplements in the market. NADA is also directed to frame a policy and devise a mechanism to certify shops / establishments throughout the country as safe sources from where athletes can purchase supplements without fear of falling prey to unscrupulous elements. 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