

Anti-Doping Disciplinary Panel

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

To,

Date: 27.02.2023

Ms. Pallavi Jagadale
R/o Bhosala Military College, Nashik,
Maharashtra - 422015
Email: - jagadalepallavi13@gmail.com

Subj: Decision of the Anti-Doping Disciplinary Panel Case No.-243.ADDP.2022

NADA Vs. Ms. Pallavi Jagadale (ADAMS ID – JAPAF82845)

The order containing the decision of the Anti-Doping Disciplinary Panel dated 10.02.2023 in respect of final hearing of the above case held on 25.01.2023 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

The receipt of this communication may be acknowledged.

Encl: 11 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. 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 DISCIPLINARY PANEL

In the matter of Ms. Pallavi Jagadale for violation of Articles 2.1 and 2.2 of National Anti-Doping Agency Anti-Doping Rules, 2021

Quorum: Mr. Chaitanya Mahajan, Chairman, ADDP
Dr. Manik S. Ghadlinge, Medical Member, ADDP
Mr. Akhil Kumar, Sports Member, ADDP

Present: Mr. Yasir Arafat, NADA
Ms., Pallavi Jagadale, Athlete
Mr. Akshay Kumar, Counsel for Athlete

J U D G E M E N T

10.02.2023

1. The present proceedings before this Anti-Doping Disciplinary Panel (**“this panel”**) emanate from the Adverse Analytical Finding (**“AAF”**) against Ms. Pallavi Jagadale (**“the athlete”**). The athlete is a **“Long Distance 3000m or greater”** athlete and her date of birth as stated by her in the Dope Control Form (**“DCF”**), happens to be **27.03.2003**.
2. That the brief facts of the case are as follows:
 - 2.1 That on May 11, 2022, during "Out-Competition", Nashik Maharashtra a NADA Doping Control Officer ("DCO") collected a urine Sample from the Athlete. Assisted by the DCO, the athlete split the Sample into two separate bottles, which were given reference numbers A 6491548 (the "A Sample") and B 6491548 (the "B Sample").
 - 2.2 Both Samples were transported to the World Anti-Doping Agency ("WADA") - accredited Laboratory, National Dope Testing Laboratory, Delhi. The Laboratory analyzed the A Sample in accordance with the procedures set out in WADA 's International Standard for Laboratories.

2.3 Analysis of the 'A' Sample returned an Adverse Analytical Finding ("AAF") for the following:

**S2. Peptide Hormones, Growth factors, Related Substances and Mimetics/
Darbepoetin (dEPO)**

2.4 Above drug is listed under S2 of WADA's 2022 Prohibited List which are classified as non-specified substances.

3. As per NADA's records, the Athlete did not have a Therapeutic Use Exemption ("TUE") to justify the presence of above Anabolic Steroids in her system.
4. Final notice of Charge was issued by NADA on 14.11.2022 whereas Notification for AAF was first issued on 03.08.2022
5. The athlete, waived off her right to B-Sample analysis vide Appendix A-B Sample Arrangements Form dated 30.08.2022 and further submitted a reply dated 07.12.2022 to the Notice dated 03.08.2022, the contents of which are not repeated here for the sake of brevity.
6. The Athlete through her counsel submitted her Written Submissions dated 23.01.2023.
7. The ADDP hearing was scheduled to take place on 18.01.2023, Arguments were heard from both the sides, but the same was adjourned to 25.01.2023 owing to the fact that the counsel for Athlete submitted an Affidavit one-hour prior to the ADDP hearing, NADA Representative, nor the panel was in possession of the Affidavit, the counsel also cited some case laws and made oral arguments which were required to be brought on record in the form of Written Submissions. The relevant part of the interim order is reproduced herein:

"1. The Ld. Counsel for the Athlete submitted that an Affidavit has been filed one hour prior to the ADDP hearing.

2. The Ld. Counsel for the Athlete also made some oral submissions and cited some case laws in favour of the Athlete which were duly refuted by NADA representative.

3. The panel has not received a copy of the said Affidavit.

4. The NADA Representative orally submitted that the said Affidavit has not been perused by him either.

5. The panel hereby directs the following:

The counsel for the athlete is accorded time till 20.01.2023 (Friday) to submit any additional documents and that the oral submissions along with the cited case laws be brought on record in the form of Written Submissions.

6. The panel in the interest of justice deems it fit to adjourn the matter for final hearing on 25.01.2023.”

Observations and Findings of the Panel

We have heard the arguments made by the Athlete’s counsel, arguments by NADA and perused the available material on record shared with us.

8. The panel has perused the Affidavit brought on record, here we would like to point out that the Affidavit is non-notarized.
9. The counsel for Athlete submitted that the Athlete is a young girl and was 19 years of age at the time of sample collection. The Athlete had never been provided any education or exposure regarding the Anti-Doping Rules or prohibited substances.
10. Ld. Counsel further submitted that the Athlete tried to find out the source of the prohibited substance in her body which has resulted in Adverse Analytical Finding [AAF] and the only possible explanation was the injection administered by the supplement supplier Rajesh on the pretext that the same is a body relaxer and is dope free.

11. Further, one of the Athlete namely Ms. Komal has stated in a Non-Notarized Affidavit that the supplier namely Rajesh used to come to the training centre and he used to sell supplements, glucose as well as administers injections to the Athletes on the pretext of the same being muscle relaxer and dope free. Ms. Komal also stated that at the time when Mr. Rajesh administer injection to the Athlete Ms. Pallavi Jagadale, she was present there.

12. Ld. Counsel for the Athlete has also cited 2 case laws which the panel has perused.

13. The counsel further submitted that the Athlete admits that there is some fault on her part. However, the degree of his fault is normal degree of fault considering totality of circumstances under the definition of no significant fault or negligence and prayed that the Athlete be given reduction of otherwise applicable period of ineligibility under article 10.2.2 and 10.6.2 and a benefit under Article 10.7.1 may also be provided to the Athlete.

14. The Panel would here like to reiterate Article 2.1.1 of the NADA ADR, 2021

“It is the Athletes’ personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an antidoping rule violation under Article 2.1.”

15. The Panel here unanimously agrees that the Athlete in the present case totally disregarded the above-mentioned rule and took an injection on advice of a Third-Party. The Athlete should have consulted a doctor or her coach/trainer before ingesting anything in her body.

16. The panel is confused as to how the Athlete claims “Lack of Knowledge of Anti-Doping Rules” when it is an accepted fact that the Athlete had been through multiple Dope-Tests prior to the one in the present case. These contradictory statements reduce the credibility of other statements made by the Athlete.

17. The definition of *No Significant Fault or Negligence* as per Appendix-1 of the NADA ADR, 2021 is reproduced herein:

“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.”

“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. 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.”

18. The athlete in the present case has established that how the “Prohibited Substance” entered her body but has failed to establish “No fault or Negligence” / “No significant fault or Negligence”. It is hard to believe for the panel that a National-Level athlete will commit such a mistake and inject unknown substance without consulting her Doctor/ Coach. Article 2.1.1 of the NADA ADR, 2021 clearly stipulates that it is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies.

Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an antidoping rule violation under Article 2.1.

19. Now, here it is for the panel to decide whether this case is a case of Intentional Doping or not, the panel would like to reproduce Article

"10.2.3 As used in Article 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct which they 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."

20. If the he Athlete was feeling lethargic, she always had an option to visit a Doctor or a Hospital for a proper inspection, it should be noted that the Athlete was the one who approached this Mr. Rajesh, she could have approached a more trustworthy Medical Practitioner instead of him if she was having a medical issue.

21. The Athlete here in the present case is clearly trying to shift the blame on an unrelated Third-Party.
22. Here the panel would also like to reiterate that the substance found in the Athlete's body was a Peptide hormones, growth factors, related substances, mimetics and is listed under S.2 of WADA's 2022 Prohibited List, keeping in mind the medical usage of the said substance and based on opinion taken from Experts, it is clear that this drug is used for "Performance Enhancement" and its effect is a long-lasting one, for up to months, **the Argument of the Athlete that the sample collection was out-competition, hence, bears no significance.**
23. In the CAS Judgement in CAS 2020/ A/7536 Ashley Kratzer v. International Tennis Federation the Hon'ble Sole Arbitrator noted the Following:
- "It is well-known in the world of sport that particular care is required from an athlete when applying medications, because the danger of a prohibited substance entering the athlete's system is particularly high in such context, i.e. significant (e.g. CAS 2020/A/7299 no. 133 et seq.; CAS 2013/A/3327, no. 75; CAS 2016/A/4609, no. 68).*
- 89. It is uncontested between the Parties that the Appellant received some anti-doping education. She stated that she is aware that supplements and medications must be checked for prohibited substances before being administered. Thus, in the abstract, the Appellant is and was aware that self-medication is associated with a significant doping risk. This is corroborated by the fact that the Appellant competes at an elite level already for many years and was at the relevant time "already" 21 years old.*
- 90. What appears questionable, however, is whether the Appellant recognized the significant doping risk in relation to the specific circumstances of this case, i.e. whether she qualified the use of the Cream as administering or applying a medicine. Such assumption would be easier to make, if the Appellant had bought the Cream in a*

pharmacy, if the Cream had been given to her by doctor or if the Cream had been labelled as a medicine. This is not the case here. However, in the view of the Sole Arbitrator, it suffices that the Appellant in a parallel evaluation from a layperson's perspective knew enough to qualify her behaviour as some form of self-medication."

24. It was further noted that:

"In case of an ADRV involving a non-specified substance, an athlete is presumed to have acted intentionally (Article 10.2.1.1 TADP). However, the athlete can rebut such presumption. In the case at hand the substance found in the Appellant's sample is a non-specified substance. Consequently, the burden of proof rests on the Player to demonstrate that she did not commit the ADRV intentionally. She, thus, needs to convince the Sole Arbitrator by a balance of probability (Article 8.6.2 of the TADP) that she lacked intentionality within the meaning of Article 10.2.3 TADP."

25. The panel believes that the Athlete being a seasoned player was totally aware of the consequences and "significant risk" involved with ingesting an unknown substance in her body, the panel also agrees that a seasoned player who has been through multiple dope-tests would be extra-cautions and vigilant and not just ingest any substance.

26. The athlete through her counsel has cited CAS 2013/A/3327 Marin Cilic v. International Tennis Federation, the panel would like to clarify that while talking about "The objective element of the level of fault" the CAS Panel Noted the following:

"At the outset, it is important to recognise that, in theory, almost all anti-doping rule violations relating to the taking of a product containing a prohibited substance could be prevented. The athlete could always

(i) read the label of the product used (or otherwise ascertain the ingredients),

- (ii) *cross-check all the ingredients on the label with the list of prohibited substances,*
- (iii) *make an internet search of the product,*
- (iv) *ensure the product is reliably sourced and*
- (v) *consult appropriate experts in these matters and instruct them diligently before consuming the product.”*

27. In the present case the athlete clearly failed to perform the above-mentioned steps, the claim that the Athlete comes from a financially weak background is irrelevant here, her duty was to ascertain all the ingredients in the substance, she could have always taken her time to do the same. It is worth mentioning that the Athlete paid Rs. 3,600/- for the said injections, the same amount could have easily covered for a Medical Consultation from a trustworthy medical practitioner.

28. Considering the Judgment of Ms. Nisha by the Ld. Appeal Panel, it has to be kept in mind that *firstly*, the applicable rules in the said judgement were NADA ADR, 2015, *secondly*, the panel in the said judgement clearly states in para 51 that: *We would like to clarify that the observations made in this case are peculiar to the facts of the present case. The observations regarding the disadvantaged position and background of the Athlete are necessitated in the present case, but are not applicable indiscriminately to all cases of sportspersons coming from such backgrounds, the clear and present effect of the background at the time of the AAF is required to be individually exhibited.*

29. Applying the same test, it can be safely deduced that the Athlete in the present case cannot be termed to be from a “Disadvantaged Background”, she had access to Suppliers, Senior Athletes, Medical Stores, a Smartphone with Internet and other Athletes, she had ample resources to come to a genuine conclusion regarding the

substance she injected in her body. It is worth mentioning here is that “*Disadvantaged Background*” is a term which is indicative of a lot of factors and financial capability is just a part of it, surrounding factors have to be seen and they differ from case to case. The judgement by the Ld. Appeal Panel in the case of Ms. Nisha clearly stipulates that “*the consideration of disadvantaged background cannot be a factor in determination of degree of fault for Athletes who have subsequently overcome the same, and procured access to training, specialised coaches, or information, making them cognisant of the consequences of their violations/fault.*”

30. It is also worthwhile to mention that no clear reason for taking the said injection has been provided by the Athlete, this in turn clarifies the intent of the Athlete to dope.
31. Based on the findings above it is clear that this is a case of “Intentional Doping” as there is no reason to believe that a National-Level athlete would be so naïve to ingest any substance in her body on advice of someone else. The Athlete is clearly trying to shift the blame on an unrelated third party for the ADRV committed by her.
32. All these circumstances clearly reveal that the intention of the Athlete was to Dope, as no Athlete of her level and understanding of the Anti-Doping Rules would behave in the manner she did.
33. In view of the Facts, Circumstances, Precedents and Rules mentioned above, it is held that the Athlete has violated Article 2.1 & 2.2 of the NADA ADR, 2021, **she is hereby sanctioned with an ineligibility of four (04) years as per Article 10.2.1 of the NADA ADR, 2021. The period of ineligibility shall commence from the date of provisional suspension i.e., 03.08.2022.** It shall be noted that the athlete has **failed to satisfy the panel that the ADRV was non-intentional as per Article 10.2.1.1 of the NADA ADR, 2021. The Athlete cannot be given reduction under Articles 10.2.2 & 10.6.2 of the NADA, ADR, 2021.**

34. That as per Article 10.10 of the NADA ADR, 2021, the athlete is hereby disqualified of all of the individual results obtained in the said Event with all Consequences, including forfeiture of all medals, points and prizes.

35. The athlete is entitled for the credit period of provisional suspension already undergone under Article 10.13.2.1 The panel hereby directs that the Athlete be given credit period of her provisional suspension which she had already undergone for calculating her total period of ineligibility of four (04) years.

The matter is disposed of, accordingly.



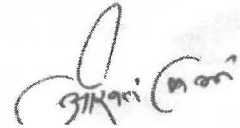
Mr. Chaitanya Mahajan

(Chairman)



Dr. Manik S. Ghadlinge

(Medical Member)



Mr. Akhil Kumar

(Sports Member)