

Anti-Doping Appeal Panel

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

To,

Date: 25.08.2023

Mr. Chandra Shekhar
S/o Mr. Virendra Sharma
R/o Shahjahanpur, Bulandshahar,
Uttar Pradesh - 202390
Email:- bk845823@gmail.com


Subj: Decision of the Anti-Doping Appeal Panel Case No.-08/ADAP/2023

NADA VS. MR. CHANDRA SHEKHAR (ADAMS ID: - CHCHMA99137)

The order containing the decision of the Anti-Doping Appeal Panel dated 23.08.2023 in respect of final hearing of the above case held on 18.08.2023 is enclosed.

The receipt of this communication may be acknowledged.

Encl: 05 sheets.



(Yasir Arafat)
Law Officer

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.- 08/ADAP/2023

IN THE MATTER OF:

Mr. Chandra Shekhar (Sport – Athletics)	APPELLANT
	Vs	
National Anti-Doping Agency	RESPONDENT

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

Present: Ms. Vrinda Bhandari and Mr. Parth Goswami Advocates for the Athlete
with athlete in person.
Mr. Yasir Arafat, Law Officer for NADA.

Date of Hearing: 18.08.2023

Date of Order: 23.08.2023

ORDER

1. The Appellant Mr. Chandra Shekhar (“Athlete/Appellant”) has filed an appeal against the order dated 19.01.2023 passed by the Anti-Doping Disciplinary Panel in Case No. 242.ADDP.2022 (“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 on 03.06.2022 by the Doping Control Officer of NADA during the 20th National Federation Cup Junior (U20) Athletics Championship, held at Nadiad, Gujarat. As per procedure, the Sample was split into two separate bottles, ‘A’ Sample and ‘B’ Sample. Urine Sample of the Appellant upon collection were sent to National Dope Testing Laboratory, Delhi, a World Anti-Doping Agency (WADA)-accredited laboratory. Analysis of the A Sample returned an Adverse Analytical Finding (AAF) for the following:

“S1.1 Anabolic Androgenic Steroids (AAS)/ drostanolone metabolite 3alfa-hydroxy-2alfa-methyl-5aflaandrostan-17-one”

(ii) Initial review notification was issued by NADA on 18.07.2022 along with “Appendix A: B Sample Arrangements Form”. The Appellant waived right to “B-Sample” Analysis on 23.08.2022. The Appellant also submitted preliminary submissions on 18.08.2022.

(iii) Consequently, NADA issued a notice of charge dated 22.09.2022 for violation of Rule 2.1 and/or 2.2 of the ADR.

(iv) The Appellant submitted detailed representation/reply on 12.10.2022, wherein, he emphasised on being treated as Protected Person. NADA submitted its response to the Written Submissions of Appellant on 18.01.2023.

(v) By the way of impugned order an ineligibility of 04 years under Article 10.2.1 from the date of provisional suspension have been imposed upon Athlete. Hence, this Appeal.

3. We have heard both the parties at length. On behalf of the Appellant, it was submitted that the Appellant belongs to a humble background and is a native of small village in Uttar Pradesh. It was submitted that the Appellant has not received any formal training in his sporting career. It was submitted that on the date of sample collection i.e. 03.6.2022 the Appellant was minor, aged around 16 years. It was submitted that Appellant got selected for Junior National Camp at NIS Patiala and joined the camp on 18.04.2022, owing to his good performance, he was facing trouble from fellow athletes and thus requested team coach for change of room, which was eventually changed. It was submitted that this was the first time the Appellant gave his urine sample for testing. It was further submitted that the Appellant along with his two teammates had found syringes in the trouser of other fellow Athletes in the camp, thus fearing that his sporting career might be jeopardized, he requested for the change of room. On account of this minor age, it was submitted that the Appellant ought to be treated as “Protected Person” under the definition for the same provided in Appendix 1 of the ADR. It was further stated that Appellant had no intention to cheat and claims reduction of period of ineligibility based on No Significant Fault or Negligence under Article 10.6 of the ADR. The Appellant relies upon decision of Court of Arbitration of Sport (“CAS”) in the case of: Marlin Cilic v. International Tennis Federation (CAS 2013/A/3327), WADA v. United States Anti-Doping Agency (USADA) & Eric Thompson (CAS 2008/A/1490), Shayna Jack v. Swimming Australia & Australian Sports Anti-Doping Authority (CAS A1/2020), Blagovest Krasimirov Bozhinovski v. Anti-Doping Centre of Republic of Bulgaria (CAS 2018/A/5580) decision of Ld. ADDP in case of NADA v. Rohit Yadav (ADDP Case No. 13/2017). Lastly, it was submitted that the impugned order may be set aside and the Appellant be granted relief as prayed.

4. On the other hand, Mr. Yasir Afarat, Ld. Law Officer 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/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 further submitted that the Appellant cannot claim innocence on the ground of being ignorant to anti-doping regime as the Appellant is an active sportsperson and have participated in various sporting events and won medals. It was asserted that the Appellant is well aware about anti-doping regime and prohibited substances as he states about finding doping syringes in National Camp, which he knew were prohibited. It was submitted that the fact of Appellant being a minor is immaterial as the Appellant has failed to prove that

the consumption of prohibited substance was unintentional. It was submitted that NADA has been actively holding awareness camps throughout the country to educate athletes of the anti-doping rules and prohibited substances, the athletes are advised to follow guidelines of NADA before participating in any events organized in association with any National Federation and remain clean at all times. The ignorance of ADR and anti-doping measures is not a ground for leniency in view of Articles 2.1.1 and 20 of the ADR. It was further submitted that prohibited substance “Drostanolone” which has been found in the sample of the Appellant can only be administered into body via injectable route. It was argued that Article 10.2.1.1 is attracted in the present case in view of the substance being a non-specified substance and the Appellant has not established that the anti-doping violation was unintentional and hence four years ineligibility period was appropriate.

5. Before coming to the merits of the present matter it is necessary to examine whether the ADR mandates a different yardstick to assess the cases of minors being Protected Persons.

6. On the above question posed before us, we observe that although on strict interpretation ADR does not make any distinction on the basis of age but grants certain exceptions for instance – in ascertaining degree of fault, Athlete’s inexperience or age being minor can be considered. Further, the minor athlete is not required to establish how the prohibited substance entered his body for plea of “No Significant Fault or Negligence”. The principle which emerges from sports law jurisprudence is that minor is not entitled to relaxation per se in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete's or other Person's fault or negligence. In *CAS 2007/A/1413 WADA v. FIG & Nadzeya Vysotskaya*, award of 20 June 2008, a case involving minor, the following view was taken:-

“44. The fact that the Gymnast was a minor at the time she was tested does not constitute either a circumstance eliminating or reducing her fault or negligence (see also CAS 2006/A/1032, para. 132 ff. and CAS 2005/A/830, para. 10.11 with further references). The Rules do not specifically refer to minors when defining their scope of application and those parts of the rules which define liability do not provide for a special regime for minors. On the contrary, the Rules state that they apply “to all participants in FIG activities”.

45. More specifically, with respect to the gymnasts duty of care in ensuring that they do not ingest any prohibited substance, and to the regime of sanctions that applies if they do and the conditions under which they can establish “no fault or negligence” or “no significant fault or negligence”, there is no wording in the Rules indicating that the responsibility of younger gymnasts, notably minors, should be assessed by a different yardstick. The Rules, therefore, do not anticipate a different regime for minors.

46. In these circumstances, the Panel considers that there is no automatic exception based on age. Such an exception is not spelled out in the Rules and would not only potentially cause unequal treatment of gymnasts, but could also put in peril the whole framework and logic of anti-doping rules not least in the light of the fact that in gymnastics (like in other sport) it is not uncommon to have minors compete at the highest level.”

7. The above view has also been taken in the case of Ms. Tamanna Singhal v. NADA Appeal No. 08.ADAP.-2019 decision dated 13.1.2020. Thus, the contention of the Appellant that being a Protected Person/Minor is ipso facto entitled to relief stands rejected. The same standards under the ADR would apply to a minor as they apply to adults except where specific exceptions have been made under the ADR itself. We however note, that *Fault* as explained in Appendix 1 of NADA ADR gives certain factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault which inter-alia include Athlete's or other Person's experience, whether the Athlete or other Person is a Minor etc.

8. Now coming to the merits of the present case, the profile of the Athlete which has been presented before us shows that the Appellant is an active sports person and is aware about prohibited substances and anti-doping regime. The Appellant has himself stated in his submissions that he had requested for a room change as he feared in being caught in a doping scandal. Though it was argued by the Appellant that the substance is also available in tablet form, nothing has been placed on record to substantiate the same. The Medical Member on this Panel has confirmed that this particular drug is only available in the form of injection and is prescribed for renal failure/ cancer treatment but is often misused as a performance enhancer by athletes. The Appellant thus cannot claim foul play by fellow Athletes and moreover, these are bland allegations without any supporting evidence, thus, liable to be rejected. The conduct of the Appellant also does not inspire confidence and during the interaction with the Appellant at the time of hearing it could not be said that the Appellant was someone who did not know what he was doing. The Appellant has also averred that he used to regularly consume energy drinks including water from bottles of other athletes. This also shows the negligent conduct of the Appellant that he was not concerned about what he was administering to himself orally as well.

9. That the Appellant had not been able to prove that ADRV was unintentional thus no relief can be granted in terms of Article 10.2.2. The Appellant has not been to bring any specific incident to our attention when his career was tried to be jeopardized through any foul play by fellow Athletes. Merely, the fact that one athlete from his camp was found positive for doping has no impact on facts and circumstances of the present case. The plea of sabotage raised by the Appellant are bland allegations without any names or particulars of the alleged persons. Without the basic material to establish mala-fide and sabotage being furnished the plea of the Appellant is liable to be rejected. 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.

10. The case laws relied upon by the Appellant do not help his case either. In *Marlin Cilic v. International Tennis Federation (CAS 2013/A/3327)* the CAS Panel determined period of ineligibility based upon degree of fault, in the present case we are of the opinion that considering the experience of the Appellant it seems that Appellant has not been able to exercise utmost caution and therefore is not entitled to any relief as prayed. In *WADA v. United States Anti-Doping Agency (USADA) & Eric Thompson (CAS 2008/A/1490)* the CAS Panel has held that in determining an athlete's fault or negligence, age/youth and

experience may be relevant facts to be assessed, depending upon the specific circumstances of the case. In *Shayna Jack v. Swimming Australia & Australian Sports Anti-Doping Authority* (CAS A1/2020) the Athlete produced credible evidence to prove unintentional ingestion and probabilities from where the prohibited substance entered her system, the Appellant before us has merely made bland allegations, thus, not entitled to any relief. In *Blagovest Krasimirov Bozhinovski v. Anti-Doping Centre of Republic of Bulgaria* (CAS 2018/A/5580) the CAS Panel after taking into account the maturity in type of sport and taking into account degree of diligence that is to be exercised even by minor Athletes rejected the case of the Athlete therein. In *NADA v. Rohit Yadav* (ADDP Case No. 13/2017) the Panel was concluded that the Athlete lacked experience and knowledge to the Anti-Doping regime thus granted benefit under Article 10.2.2. Needless to say, we have already expressed our opinion on the circumstances of the present case.

11. In view of totality of circumstances this panel is not persuaded that the ADRV was unintentional and therefore as per our view the Ld. ADDP has rightly sanctioned the Appellant with a four-year period of ineligibility. We however modify the impugned judgment to the extent it states that Appellant cannot be treated as “Protected Person” in this case. The status to Appellant as “Protected Person” being minor is not disputed but that doesn’t entitle him to any special relief.

12. Therefore, we did not find any merit in the appeal and the same is dismissed. The sanction of 04 years ineligibility imposed by the Anti-Doping Disciplinary Panel vide its order dated 19.01.2023 passed by in Case No. 242.ADDP.2022 is upheld. As held by the Anti-Doping Disciplinary Panel the period shall run from the date of provisional suspension i.e., 18.07.2022. We also direct that under Article 10.10 all other competitive results obtained by the Appellant from the date of sample collection shall be disqualified with all resulting consequences including forfeiture of medals, points and prizes. 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