

## **Anti-Doping Appeal Panel**

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

To,

Date: 04.09.2023

Mr. Ajay Kumar,  
R/o 405, Big Tample, Village: Pabnawa,  
Tehsil: Pundri, Dist-Kaithal,  
Haryana - 136020  
Email:- [tamakajay2@gmail.com](mailto:tamakajay2@gmail.com)

**Subj: Decision of the Anti-Doping Appeal Panel Case No.-27/ADAP/2023**

**NADA VS. MR. AJAY KUMAR (ADAMS ID: - KUAJMA13521)**

The order containing the decision of the Anti-Doping Appeal Panel dated 01.09.2023 in respect of final hearing of the above case held on 25.08.2023 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. General Secretary, Volleyball Federation of India, Room No. 72, Jawaharlal Nehru Stadium, Chennai – 600003.
3. International Volleyball Federations Ch. Edouard-Sandoz 2-4, 1006, Lausanne, Switzerland.
4. National Anti-Doping Agency, Jawaharlal Nehru Stadium, 1<sup>st</sup> Floor, 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/2023

**IN THE MATTER OF:**

Ajay Kumar  
(Sport – Volleyball)

...APPELLANT

Vs

National Anti-Doping Agency

...RESPONDENT

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

Present: Mr. Amrendra Mehta, Advocate for the Athlete with the athlete in-person  
Mr. Yasir Arafat, Law Officer for NADA.

**Date of Hearing: 25.08.2023**

**Date of Order: 01.09.2023**

**FINAL ORDER**

1. The Appellant Ajay Kumar (Sport - Volleyball) has filed an appeal against the order dated 05.07.2023 passed by the Anti-Doping Disciplinary Panel in Case No. 05. ADDP.2023 (“Impugned Order”).

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

(i) The Dope Test of the Appellant was carried out on 02.02.2023 during Khelo India Youth Games 2022 at Bhopal by the Dope Control Officer, NADA. The Urine sample of Appellant upon collection was split into two parts A and B with a unique code assigned to them being “6502742”. Thereafter, the Sample ‘A’ having unique code 6502742 were sent to National Dope Testing Laboratory, Delhi (in short “NDTL”) which is a World Anti-Doping Agency (WADA)-accredited laboratory. The said sample ‘A’ was duly analysed by the NDTL, in accordance with the procedures set out in the WADA’s International Standard for Laboratories. The Analysis of Sample ‘A’ returned an Adverse Analytical Finding (AAF) for the following:

**“S1. Anabolic Androgen Steroids (AAS) / dehydrochloromethyl-testosterone and its metabolites DHCMT-M3”**

(ii) Consequently, NADA issued Notification of Adverse Analytical Finding dated 22.02.2023 for violation of Article 2.1 and/or Article 2.2 of the NADA ADR, 2021 and imposed a provisional suspension with immediate effect and until the resolution of case, in accordance with Article 7.4.1 of the NADA ADR. The Appellant submitted its response vide letter dated 22.02.2023. Further, the appellant waived off his right for sample 'B' analysis Laboratory Documentation Package on 23.03.2023. Notice of Charge was issued to the Appellant on 06.04.2023.

(iii) By the way of impugned judgment dated 05.07.2023 the Appellant was held liable for sanctions under Article 10.2.1 and also liable for ineligibility for period of four (4) years from the date of Notification dated 22.02.2023. Hence, this appeal preferred.

3. We have heard both the parties at length. The Appellant has submitted that the present of prohibited substance in his test report is unintentional ingestion of the prohibited substance. The appellant further submitted that during the period from 27.10.2022 till 31.10.2022 the appellant was admitted at B.S. Heartcare Hospital, Kurukshetra for diagnosis due to Dengue. Further, the appellant submitted that between 07.01.2023 and 10.01.2023 the Appellant was admitted to Guru Brahmanand Hospital Pundri for being ill; and the appellant further remained admitted during 14.01.2023 till 21.01.2023 at Khelo India Team Camp Panchkula. The Appellant submitted that after returning from the said Camp i.e. 21.01.2023, the Appellant again felt feverish and went to the Hospital for diagnosis where the Appellant was prescribed certain medications such as 'Dolo 650' and 'one other medicine'. The Appellant has filed medical certificates / prescriptions / lab test reports to support his contentions. The Appellant did not challenge the presence of prohibited substance in his system. It was asserted that the presence of prohibited substance was unintentional as the medication was prescribed by doctors during the admission in Hospitals. It was also asserted that the Appellant had lack of knowledge and information in respect of Analytical Anti-Doping Rule Violation (ADRV). It was submitted that degree of fault of the Appellant may be assessed considering the overall circumstances including his age, background, experience and source of prohibited substance. Judgment of NADA v. Kirti Bhoite ADAP Case No. 09/ADAP2021 dated 18.4.2022 has been relied on.

4. On the other hand, Mr. Yasir Arafat, the Ld. Law Officer on behalf of NADA submitted that the prohibited 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. Further, it was submitted by the NADA that the prohibited substance found is of non-specified category and whether the consumption was knowingly or unknowingly, the responsibility lies on the athlete and the athlete is guilty of ADRV. It was submitted that the medical documents, as submitted by the Appellant Athlete, does not satisfy the presence of prohibited substance in the Appellant' urine sample. It was submitted that the Appellant had also failed to disclose to Doctor that Appellant is athlete. It was also submitted that the Appellant admitted the consumption of prohibited substance and the Appellant has not exercised any, much less the basic degree of caution expected of an athlete at this level. It is further submitted by NADA that the violation of Rules has taken place and the Appellant is liable for sanctions under the applicable rules. Cases of WADA v. Indian National Anti-Doping Agency (NADA) & Rani Rai CAS 2021/A/8458, WADA v Indian National Anti-Doping Agency (NADA) & Dane Pereira CAS 2016/A/4609 are relied on.

5. As per the stand of Appellant he was suffering from disease i.e., dengue, and therefore, the appellant was diagnosed in B.S. Heartcare Hospital, Kurukshetra where the Appellant was

admitted from 27.10.2022 till 31.10.2022. Thereafter, post-selection in Khelo India Youth Games, the Appellant was again admitted in medical facilities; details are given hereinbelow:

S.No.	Hospital/Medical Facility	Duration	Health Reasons
1.	Guru Brahmanand Hospital Pundri	From 07.01.2023 till 10.01.2023	Illness
2.	Khelo India Team Camp, Panchkula	From 14.01.2023 till 21.01.2023	Unknown

In addition to the above, it was the stand of the Appellant that even after returning from the abovementioned last medical facility, the Appellant again felt feverish and went to the Hospital for diagnosis where the Appellant was prescribed medications such as ‘Dolo 650’ and ‘one other medicine’.

6. In the present matter, while it is the case of the Appellant that ingestion of the prohibited substance was in form of medical dose, no evidence has been led of the same. No material has been placed on record linking it to any medication which was prescribed to the Appellant by any doctor. Thus, the Appellant has failed to substantiate the source of ingestion was the medication that was prescribed. Further, it needs to be examined that whether the Appellant has “*no significant fault or negligence*” in committing the ADRV.

7. As per the opinion of Medical Member of this Panel, the prescription/medication as relied by the Appellant fails to justify the presence of *Methandienone* - an Anabolic steroid - in the athlete’s test sample. We also cannot lose sight of the fact that ‘**Anabolic Androgen Steroids (AAS) / dehydrochloromethyl-testosterone and its metabolites DHCMT-M3**’, a non-specified substance found in the sample of Appellant is a commonly abused performance-enhancing substance among the Athletes. Therefore, we are of the view that on failure of Appellant to disclose the true source of the prohibited substance, the consumption of prohibited substance by Appellant was intentional. The case of Appellant squarely falls within the ambit of Article 10.2 for all necessary sanctions. However, needless to mention that in order to apply Article 10.2 it is not necessary that “direct intent” must be shown even “indirect intent” is sufficient proof of intentional doping. The Appellant has intentionally consumed the above-mentioned prohibited substance, and therefore committed an ADRV. Therefore, the principles governing “*No Fault or Negligence*” or “*No Significant Fault or Negligence*” are inapplicable in the case of Appellant. The judgments relied on by the Appellant and NADA are not to be gone into as the same are inapplicable to the facts and circumstances of the present case in light of our aforesaid discussion.

8. We are of the considered opinion that the Appellant has committed an ADRV under Article 2.1 of the ADR. 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. Therefore, the Order dated 05.07.2023 in Case No. 05. ADDP.2023 passed by Anti-Doping Disciplinary Panel is upheld and the Appellant shall undergo ineligibility period of 4 years from the date of Notification which is 22.02.2023. We also direct that under Article 10.10 all other competitive results obtained by the Appellant from the date of sample collection i.e. 11.06.2022 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 to the Appellant through all mode i.e. registered post, electronic mail and also be sent through Appellant's Legal Counsel.



Prashanti Singh  
Member



Dr. Vivek Singh  
Member



Abhinav Mukerji  
Chairman