

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: 25.10.2023

Mr. Pankaj Mukheja,
R/o 7770-10,
Tripuri Town,
Patiala, Punjab 147001
Email: - pankajmukheja44@gmail.com

Subj: Decision of the Anti-Doping Disciplinary Panel Case No.- 133.ADDP.2023

NADA Vs. MR. PANKAJ MUKHEJA (ADAMS ID: - MUPAMA86605)

The order containing the decision of the Anti-Doping Disciplinary Panel dated 25.10.2023 in respect of final hearing of the above case held on 06.10.2023 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: 07 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. The Secretary General, National Rifle Association of India, NRAI House, 51-B, Tughlakabad, Institutional Area, New Delhi – 110062.
3. The Secretary General, ISSF Headquarters, Bavariaring 21, D-80336, Munchen Germany.
4. National Anti-Doping Agency, J.L.N Stadium, 1st Floor, Hall No. 104, Lodhi Road, New Delhi, 110003.

BEFORE THE ANTI DOPING DISCIPLINARY PANEL

In the matter of **Mr. Pankaj Mukheja** for violation of Articles 2.1 and 2.2 of National Anti-Doping Rules, 2021

(PROCEEDING CONDUCTED THROUGH VIRTUAL MODE)

Quorum: **Mr. Vineet Dhanda, Chairman, ADDP**
 Dr. Bikash Medhi, ADDP
 Ms. Archana Surve, ADDP

Present: **Mr. Yasir Arafat, NADA**
 Mr. Pankaj Mukheja along with his counsel Mr. Saurabh Mishra, Athlete

J U D G E M E N T

25.10.2023

1. The present proceedings before this Anti-Doping Disciplinary Panel (**“this panel”**) emanate from the Adverse Analytical Finding (**“AAF”**) against Mr. Pankaj Mukheja (**“the athlete”**). The athlete is an adult male 21-year-old **“Shooter”** and his date of birth as stated by him in the Dope Control Form (**“DCF”**), happens to be **28.02.2002**.
2. That the brief facts of the case are as follows:
 - 2.1 On **15.04.2023 & 16.04.2023**, NADA Doping Control Officer ("DCO") collected urine Samples from the Athlete during selection trials 3&4 (Riflr & Pital) in Bhopal, Madhya Pradesh with samples split into two parts. The ‘A’ and ‘B’ samples were marked with unique reference code of **6502689 & 6503428**. The said test were conducted in National Dope testing Laboratory, Delhi, India.
 - 2.2 The Athlete applied for TUE on 04.05.2023 for the substance he has been administering in his body namely **“Propranolol”**, to which the TUE Committee on 08.05.2023 in its decision, rejected his TUE application, stating *“TUE is not granted*

as committee observed that more suitable and appropriate medications are available for the indication which are not prohibited”.

- 2.3 The A samples 6502689 & 6503428 of the Athlete were tested at the National Dope Testing Laboratory, Delhi (NDTL) in accordance with the procedures set out in WADA's International Standards for Laboratories and was returned with an Adverse Analytical Finding (“AAF”) for **P1. Beta-Blockers/ Propranolol**.
- 2.4 The said Substance is a Beta-Blocker which is also called beta adrenergic blocking agents, used by the athletes to block the release of the stress hormones adrenaline and noradrenaline in certain parts of the body. These are listed under P1 of WADA's 2023 Prohibited List which are specified substances.
- 2.5 The initial review of samples A report shows that there was no apparent departure from the International Standard for Testing and Investigations (‘ISTI’) or the International Standard for Laboratories (‘ISL’) that could undermine the validity of the AAF and the AAF had not been caused by ingestion of the relevant Prohibited Substance through a permitted route.
- 2.6 First notification to the Athlete was issued on 19.05.2023 informing him about the AAF and was also informed about his rights and that in case the athlete is unwilling to accept the result of Sample A, he has the right to request for the opening of Sample B at his own cost.
- 2.7 The Athlete on 25.05.2023 denied for the counter-analysis of Sample B and accordingly the right of B-sample analysis was closed.
- 2.8 The Notice of Charge was issued to the Athlete on 19.06.2023 and final opportunity to submit explanation was granted to the Athlete up till 09.07.2023.
3. On 26.07.2023 notice was sent to the athlete for the initiation of disciplinary proceedings for the violation of Article 2.1 and 2.2 of ADR 2021 in terms of Article 8.3 of the International Standard for Result Management (ISRM) 2021.
4. Submissions made by the Athlete are reproduced herein:

- 4.1 The counsel of athlete during the disciplinary proceedings submitted that the athlete did not take this substance intentionally to enhance his performance.
- 4.2 The counsel of athlete submits that the athlete was having the problem of panic attack with palpitations, chest pain, heavy sweating and shortness of breath followed by increased heart rate. The prescription dated 24.12.2022, 29.12.2022, 17.01.2023 and 15.03.2023 in this regard has been furnished before the Panel.
- 4.3 The counsel of athlete submits that the athlete was prescribed medicines **Etvis Beta** which contained the prohibited substance “**Propranolol beta blocker**” which was found in his sample. It is further said that he did not know that the said medications were prohibited under the WADA Rules and had consumed them unintentionally, as per a doctor’s prescription.
- 4.4 The counsel of athlete submits that the Athlete has dully mentioned the medicine in his doping control form which shows his bonafide intention to take medicine.
- 4.5 The counsel of athlete submits that on 13.03.2023, the Athlete has visited Dr. Sandilya Pandey of Dr. Karan Singh Shooting Range, Etvis Beta Sports Authority of India and has produced the old prescription given by Dr. Singla in which, Etvis Beta was prescribed to him. But the SAI doctor did not advise to stop the said medicine.
- 4.6 Lastly, the counsel of athlete submits that the Athlete is at no fault or Negligence in the fact and circumstances of the present case. Alternatively, if it is at fault, then he is entitled for no significant fault or negligence under Article 10.6 of the Rules. In support of his contentions, Ld. counsel has relied on the following CAS Judgments.

- i. CAS 2013/A/3327 Marin Cilic vs. International Tennis Federation
- ii. CAS Anti-Doping Division (OG PyeongChang) AD 18/004
International Hockey Federation

- iii. CAS 2005/A/830 S. vs. FINA
- iv. CAS 94/129 USA Shooting &Q./UTI

5. Submissions by NADA:

- 6.1 The representative of NADA stated that the initial burden of proof has been established by the NADA since the dope test results have confirmed the presence of substance from the specified category which attracts the punishment under Article 10.2 of the ADR.
- 6.2 The representative of NADA stated that under Article 2.1.1 of the Rules, it is the personal duty of each Athlete to ensure that no Prohibited Substance enters his/her body. Further, Athlete has not taken any reasonable care to consult a medical practitioner and has also failed to carry out due diligence to ensure that the substance consumed was dope free and compliant to the Rules, 2021.
- 6.3 The representative of NADA stated that mere consuming/administering a prohibited substance for the purpose of treatment without obtaining TUE is not exempt from ADRVs.

Observations and Findings of the Panel

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

- 6. It is undisputed that the Athlete's Sample has tested positive for Propranolol, Beta-blocker which is a specified substance and is listed as in Category P1 of the WADA's 2023 Prohibited List.
- 7. The Panel notes that as per the medical prescription submitted by the Athlete, he was suffering from palpitation and anxiety and had a blood pressure of 132/90 mm/Hg. Having said that, it is not entirely unbelievable that the Athlete may have been prescribed the said medication for purposes of treating his anxiety and related medical conditions.

8. The Panel is of the view that it is the Athlete responsibility to ensure any medical treatment he receive is in accordance with anti-doping rules. The Athlete cannot escape from his responsibilities by putting the entire blame on the doctor who prescribed the medicines for his treatment. The Rules impose a positive duty on an athlete to ensure that he does not violate the doping rules and the said duty cannot be simply avoided or delegated away by laying the blame on the doctor.
9. The Panel is also mindful of the fact that the SAI doctor prescription dated 13.03.2023 does not prescribed any medicine which contain the prohibited substance by which, the Athlete could have avoided an anti-doping rule violation. The fault lies with the Athlete.
10. The facts of the case cited before us are also completely different from the facts of the present case and hence no reliance can be placed on the said decisions.
11. In view of the above discussion, it is established that a violation under Article 2.1 and 2.2 of the Anti-Doping Rules has taken place, since the violation was with regard to the specified substance and the use was not intentional. hence the Athlete would be liable for sanctions under Article 10.2.2 of the Rules subject to the reduction of no significant fault or negligence under 10.6 of the rules.

Relevant rules are as under:

Article 10.2 Ineligibility for Presence, Use or Attempted Use or Possession of a Prohibited Substance or Prohibited Method: The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

Article 10.2.1 *The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:*

Article 10.2.1.1 *The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional*

Article 10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and NADA can establish that the antidoping rule violation was intentional

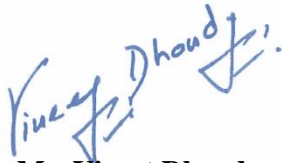
Article 10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of Ineligibility shall be two (2) years.

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

12. The Panel hold that, in light of the duties incumbent on athletes, the lack of diligence of the Athlete who has failed to make any inquiries about the medicine which was used since December, 2022, and his experience as national and international athlete has not established no significant fault or no significant negligence in accordance with Article 10.6.1 of ADR.
13. The panel hold that the Athlete is sanctioned for a period of two (2) years ineligibility, starting from the date of the present order because the athlete has not accepted the provisional suspension in the present matter.
14. **In view of the facts and circumstances stated above, the Panel holds that the Athlete is liable for sanctions under Article 10.2.2 and liable for ineligibility for a period of 2 year. In the present case, the Athlete has not accepted his provisional suspension, the Panel accordingly holds that the Athlete's period of his ineligibility for the period of 2 year shall commence from the date of decision i.e., 25.10.2023.**

15. We also direct that under Article 10.10 all other competitive results obtained by the athlete from the date of incident i.e., 12.05.2023 shall be disqualified with all resulting consequences including forfeiture of medals, points, and prizes.

The matter is disposed of, accordingly.



Mr. Vineet Dhanda
(Chairman)



Dr. Bikash Medhi
(Medical Member)



Ms. Archana Surve
(Sports Member)