

Anti-Doping Appeal Panel

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

To,

Date: 24.11.2023

Ms. Kashish Malik
D/o Mr. Devender Malik
R/o BG-3/50, Paschim Vihar
Delhi-110063
Email:- Kashish.malik04@gmail.com

Subj: Decision of the Anti-Doping Appeal Panel Case No.- 11/ADAP/2023

NADA VS. MS. KASHISH MALIK (ADAMS ID:- MAKAF59774)

The order containing the decision of the Anti-Doping Appeal Panel dated 21.11.2023 in respect of final hearing of the above case held on 23.10.2023 is enclosed.

The receipt of this communication may be acknowledged.

Encl: 03 sheets.



(Yasir Arafat)
Senior Programme Associate
(Legal)

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, Taekwondo Federation of India, 32, Valmiki Marg, Kaiserbagh Officers Colony, Kaiserbagh, Lucknow, Uttar Pradesh 226001.
3. World Taekwondo Federation, 5th Floor, Hyoja-ra, Jongno-gu, Seoul, Korea.
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-110003

(PROCESSINGS CONDUCTED THROUGH VIRTUAL MODE)

Appeal No. -11/ADAP/2023

IN THE MATTER OF:

Mr. Kashish Malik (Sport- Taekwondo)	APPELLANT
	Vs	
National Anti-Doping Agency	RESPONDENT

Quorum: Mr. Nalin Kohli, (Chairman)
Dr. PSM Chandran (Member)
Ms. Indu Puri, (Member)

Present: Mr. Parth Goswami, Advocate for the Athlete
Ms. Kashish Malik in person
Mr. Yasir Arafat for NADA

ORDER
21.11.2023

1. The Appellant Ms. Kashish Malik (Athlete) has filed an appeal against the order dated 08.03.2023 passed by the Anti-Doping Disciplinary Panel in Case No.249/ADDP.2022 (“impugned order”) wherein, an ineligibility of 2 years was imposed on the Athlete.
2. The facts of the case as available from the records before the Anti-Doping Disciplinary Panel are as follows:
 - 2.1 A urine sample (“Sample”) of the athlete, Ms. Kashish Malik (“Athlete”) was collected Out-Competition by the Doping Control Officer of NADA on 4th June 2022. As per procedure, the Sample was split into two separate bottles, hereinafter referred to as Sample A and Sample B with unique Code “6491816”.
 - 2.2 A Sample of the Athlete was tested at the National Dope Testing Laboratory, Delhi in accordance with the procedures set out in WADA’s International Standard for Laboratories and was returned with an Adverse Analytical Finding S5. Diuretics and Masking Agents/Furosemide. The WADA’s 2022 Prohibited List enlists Furosemide under the category S5, being a specified substance.
 - 2.3 Consequently, the Athlete was duly notified by a letter dated 30.08.2022 (“the Notification”) and a notice of charge (hereinafter referred as the “Notice of Charge”) dated 16.11.2022 for violation of 2.1 and 2.2 of the NADA Anti-Doping Rules, 2021 was issue to her.

2.4 By way of the impugned judgment dated 08.03.2023, the Appellant was held liable for sanctions with the ineligibility period of two (2) years for violation of Article 2.1 & 2.2 of ADR. Further, it was held that the ineligibility period shall be commenced from the date of anti-doping disciplinary panel decision i.e., 08.03.2023. Further, the Athlete was disqualified of all the individual results obtained in the Event with all Consequences, including forfeiture of all medals / points / prizes, from the date of sample collection i.e., 04.06.2022 in terms of Article 10.10 of ADR. Hence, this appeal.

3. NADA has taken strong objection and exception to the Advocate of the Athlete not disclosing the complete facts which came to light only after Ld. Member of this Panel Ms. Indu Puri specifically asked for more details.
4. We have heard both the parties at length. The Appellant has submitted that Ld. ADDP failed to appreciate the medical prescription of the doctor as well the affidavit of the doctor who said that the Athlete had severe UTI and she was prescribed Lasix 20 mg for therapeutic use for the treatment of prolonged savior UTI infection.
5. The Appellant has filed an affidavit dated 23.02.2023 executed by Dr. S Rajan and relied upon the decision of Ld. Anti-Doping Disciplinary Panel in the matter of NADA vs. Shubham wherein Ld. Panel imposed 5 months ineligibility on the Athlete". The counsel of the Athlete has also relied other two case laws "FINA Doping Panel 02/20 in the matter of Veronika HRYSHKO vs. FINA and CAS 2017/A/5317 Aleksei Medvedev v. Russian Anti-Doping Agency (RUSADA).
6. NADA submitted that 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 & 2.2. The Athlete has the responsibility to be knowledgeable of and comply with anti-doping rules and to take responsibility in the context of anti-doping for what they ingest and use. The duty to take care to avoid doping is personal and always remains with the Athlete, and the athlete cannot shift her responsibilities to anyone else.
7. NADA submits that the Athlete has failed to obtain the Therapeutic Use Exemption (TUE) certificate from NADA nor she has disclosed Lasix medicine, on her doping control form during sample collection.
8. In the present case, Athlete was an experienced professional and was responsible for ensuring that any medical treatment which she received did not violate the Rules. The athletes shall bear personal responsibility and the failure of a doctor does not exempt an athlete from personal responsibility. However, it cannot be ignored that Lasix is a masking agent that is commonly used to hide or prevent detection of a banned substance.
9. The Panel notes that the medicine Lasix which Dr. Rajan had given to the Athlete is not normally used to treat Unitary Tract Infection (UTI) as it can cause severe dehydration to the patient. The Athlete has not produced the cash receipts for purchase of medicines including Lasix as prescribed by the doctor. She has to state when and where and who had purchased the medicines. She also has to confirm whether she had informed the

camp doctor in Lucknow regarding the medications she is taking or preferred to maintain secrecy on it.

10. In the present case, the Athlete was administered the impugned medication Lasix 20 mg as prescribed by her doctor. Further, the medication clearly indicated the substance contained therein and was prescribed to the Athlete for a long period of time, i.e. over a period of 2 weeks. The Athlete, thus had sufficient time to check if the medication was dope free.
11. 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 satisfied the panel that she bears no significant fault or negligence. Therefore, the Order dated 08.03.2023 in Case No. 249.ADDP.2023 passed by Anti-Doping Disciplinary Panel is upheld and the Appellant shall undergo ineligibility period of 2 years from the date of order of Disciplinary panel i.e. 08.03.2023. We also direct that under Article 10.10 all other competitive results obtained by the Appellant from the date of sample collection i.e. 04.06.2022 shall be disqualified with all resulting consequences including forfeiture of medals, points and prizes.
12. This Panel as a parting comment would like to make it clear that the Advocates who come on the behalf of the Athletes are expected to discharge their responsibilities in the nature of assisting the panel with complete disclosure of all facts and not suppress any information that would present a skewed picture of the facts.
13. No doubt the Advocates are expected to argue the matter on behalf of the Athletes, however the same cannot be at the cost of presenting an argument that may lead to the panel in arriving at an incorrect finding, for that in itself is not in the interest of the athletes, since orders of the Appellant Panel are reviewed by WADA from time to time to ensure that due process and orders are complied with the code and its procedure.
14. In light of this, the panel advices that the advocates of the athletes should be careful and serve the interest of sports by assisting the panel with a true and correct picture of the facts.



Mr. Nalin Kohli
(Chairman)



Dr. PSM Chandran
(Member)



Ms. Indu Puri
(Member)