

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: 28.11.2023

Ms. Radhika Prakash Awati
R/o SAG SAI Gymnastic Centre,
Thalassery, Kerela - 640101
Email: - radhikafencer93@gmail.com

Subj: Decision of the Anti-Doping Appeal Panel Case No.- 22/ADAP/2023

NADA VS. MS. RADHIKA PRAKASH AWATI (ADAMS ID – PAPAMA50478)

The order containing the decision of the Anti-Doping Appeal Panel dated 18.11.2023 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: 04 sheets.



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, Fencing Association of India, J-52, 2nd Floor, Saket, New Delhi-110017.
3. Federation Internationale D'escrime (FIE) Maison du Sport International, Avenue de Rhodanie 54, 1007 Lausanne Suisse.
4. National Anti-Doping Agency, Jawaharlal Nehru Stadium, 1st Floor, Hall No.103, Lodhi Road, New Delhi 110003.

Anti-Doping Appeal Panel
J.L.N Stadium, Gate No. 10, Hall No. 103
Lodhi Road, New Delhi 110003
Telefax: 011-24368274

(PROCEEDING CONDUCTED THROUGH VIRTUAL MODE)

Appeal No.22/ADAP/2023

IN THE MATTER OF:

Ms. Radhika Prakash Awati	APPELLANT
	Vs	
National Anti-Doping Agency	RESPONDENT

AND IN THE MATTER OF:

National Anti- Doping Agency	APPELLANT
	Vs	
Ms. Radhika Prakash Awati	RESPONDENT

Quorum: **Mr. Nalin Kohli, Chairman, ADAP**
 Dr. PSM Chandran, Member
 Ms. Indu Puri, Member

Present: Ms. Radhika Prakash Awati with her counsel Mr. Saurabh Mishra
Mr. Yasir Arafat, for NADA

ORDER
18.11.2023

1. This is a case of cross appeals whereby the Athlete Ms. Radhika Prakash Awati (Sport-Fencing) and also NADA have challenged the order dated 18.08.2023 passed by the Anti-Doping Disciplinary Panel whereby an ineligibility period of fifteen (15) months has been imposed upon the Athlete.

Brief facts are as follows:

2. A urine sample of the Athlete, Ms. Radhika Prakash Awati (Sport-Fencing) was collected on 26.03.2023 during the 3rd Senior National Fencing Championship held at Pune wherein the Athlete secured the gold medal in the aforesaid competition. Two samples, viz. Sample A and Sample B, were collected as per procedure.
3. Sample 'A' was analyzed by the National Dope Test Laboratory (NDTL) and was returned with AAF for Glucocorticoids/Methylprednisolone which is a banned substance in the competition under 'S-9 category' of the WADA Prohibited List.
4. Consequently, NADA issued a notice of charge dated 19.06.2023 for violation of Article 2.1 & 2.2 of the Rules, 2021.

5. The Athlete applied for retrospective Therapeutics Use Exemption (TUE) which was rejected on 12.05.2023 by the TUE committee on the ground that medical prescription does not provide for the clinical details warranting prescription of Methylprednisolone to the Athlete, the prescription of the medicine is by the doctor who is not a qualified practitioner of modern (Allopathy) as Dr. Paresh Rajput was a homeopathic doctor and the medicine given by him is not as per the prescribed line of treatment.
6. The Athlete filed an appeal against the rejection of TUE which was also dismissed by the appellate body vide order dated 12.07.2023.
7. By way of the impugned order, an ineligibility of fifteen (15) months has been imposed on the Athlete. Hence these cross-appeals.
8. NADA has filed an appeal being aggrieved by the impugned order as the Ld. ADDP whereby it has granted reduction of penalty under Article 10.6.1 of the Rules. Whereas the Athlete has prayed for quashing of the impugned order and for setting aside the ineligibility period.
9. We have heard both the parties at length.
10. Article 2.1 of Anti-Doping Rules, 2021 states as follows:

“2.1 Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*”

2.1.1: It is the *Athlete's* 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 anti-doping rule violation under Article 2.1.”

11. The Athlete through her legal counsel has vehemently argued that the athlete cannot be held responsible for an act of the doctor who has prescribed medications when she was not in a good physical condition to properly brief the treating doctor. It is further submitted that she had consumed medications containing prohibited substances, however the same was inadvertent and not intentional and as per advice of a doctor. She states that no significant fault or negligence can be attributed to her and she has also disclosed the said prescription during the sample collection process. Thus, the athlete prays that she be exonerated or reprimanded. To strengthen her argument, reliance has been placed on Article 10.6 of the Rules – ‘Reduction of period of ineligibility based on no significant fault or negligence’.
12. Per Contra, NADA argues that the athlete’s version does not come across as credible, particularly in light of the fact that the Athlete’s version of the sequence of events i.e., travel by train journey on 22nd March 2023 from Ahmedabad to Pune, allegedly falling seriously unwell during the train journey resulting in an alleged hospitalization on 23rd March 2023 in Pune, being discharged on 23rd March 2023 evening itself and finally winning the gold medal in her field of sport on 26th March, 2023.

Additionally, it is argued that the athlete is responsible for knowing what constitutes an Anti-Doping Rule violation and the substances and methods which have been included on the Prohibited List. Furthermore, it is the athlete's personal duty to ensure that no prohibited substance enters his/her body. Further NADA argues that the ADDP has imposed arbitrarily ineligibility period of 15 months which is against Article 10.2.2 of the Rules, whereby minimum two years in-eligibility is mandatory.

13. There is much substance in what NADA contends. Before we get into the merits, for an Athlete to take benefit, the standard has to be high and the circumstances must be very believable for the panel to consider any relief or reduction in the ineligibility period. The code recognises that athletes may, in exceptional circumstances grant them the benefit of "*No Significant Fault*".
14. This panel has also seen merit in a few cases and ruled in favour of the said Athlete, however, such cases have been few and far apart. More importantly, the reasons given by the Athlete to claim the benefit of "*No Significant Fault*" were entirely believable and often backed by corroborated evidence brought forth by them.
15. Now, let us come to the case at hand and the facts before us brought by the Athlete.
The Athlete's version is that she severely fell ill on a train journey on 23.03.2023 while travelling to Pune and such was her condition that she could not either take any decision with respect to the hospital or treating doctor nor inform the doctor about her being an International Athlete with regard to the medication prescribed.
16. The Athlete further claims that it was her relative (brother) who brought her to the hospital on 23.03.2023 and he spoke to the doctor with regard to:
 1. The Hospital where she would be treated.
 2. The Doctor who would attend to her.
 3. The Medications to be prescribed to her by the Doctor.
17. There is no cogent reason as to why a homeopathic doctor would prescribe the Athlete the said Allopathic medicine for her illness. The Panel notes that as per the medical prescription submitted by the Athlete, she was prescribed *Tab Simalan, D Tab Standc, SP Predmet 4 mg and Vibact RS Tab OZ*. The medicine Predmet 4 mg prescribed to the Athlete contains the banned substance Glucocorticoids/Methylprednisolone which appears to be the reason for the adverse analytical finding.
18. There is no supporting document or evidence with regard to the stand taken by the Athlete to compel this panel to take note of her claim. What we have instead is an undated prescription, an OPD Register Entry. There is no detailed discharge summary by the Hospital with regard to Admission while a Homeopathic doctor treated her with Allopathic medicines, the test prescribed before the medicine was prescribed nor is there any copy of the pathological test i.e., blood, urine etc. conducted upon her.
19. This panel notes that the Athlete has failed to place on record any proof of the purchase of the medication through a prescription written by a doctor whereby failing to

substantiate the claims made by her before us. The substantial factor weighing against her is that despite being an experienced international athlete, she took no real steps to ensure that she did not commit an anti-doping violation by taking the substance.

20. How could this panel accept the version of the athlete that she travelled on 23.03.2023, was severely unwell on 23.03.2023 and yet, she was fit to the extent of participating in the event on 26.03.2023, just two days later and in fact winning a 'Gold medal' in the said event. The Athlete did not provide any satisfactory explanation and this question remains unanswered.
21. Given the totality of circumstances, this panel is unable to grant the benefit of "*No Significant Fault*" to the Athlete in light of Article 10.6.1 of the Anti-Doping Rules.
22. The Panel holds that the appellant Ms. Radhika Prakash Awati is sanctioned with a period of two (2) years ineligibility. Therefore, the appeal by National Anti-Doping Agency (NADA) is allowed and the Appeal filed by Ms. Radhika Prakash Awati is dismissed.
23. We hereby set aside the order dated 17.08.2023 in Case No. 139/ADDP/2023 passed by the Anti-Doping Disciplinary Panel and modify it to the following extent:
- a) Ms. Radhika Prakash Awati (Sport- Fencing) is declared ineligible for a period of two (2) years commencing on 17.08.2023;
 - b) Ms. Radhika Prakash Awati's individual results shall be disqualified in respect of the 3rd Senior National Fencing Championship, Pune and in consequence any prize money and ranking points obtained by her through her participation in that event must be forfeited.

The matter is disposed of, accordingly.

Dated: 18.11.2023



Nalin Kohli
Chairman



Dr. PSM Chandran
Member



Indu Puri
Member