

BEFORE THE ANTI DOPING APPEAL PANEL
Ground Floor, Staircase No. 5, Near AICS office, J.L.N. Stadium
Lodhi Road, New Delhi – 110003

(PROCEEDINGS CONDUCTED THROUGH VIRTUAL MODE)

Appeal No.- 13/ADAP/2023

IN THE MATTER OF:

Ms. Richa Bhadauriya (Sport – Athletics)	APPELLANT
	Versus	
National Anti-Doping Agency	RESPONDENT

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

Present: Parth Goswami for the Athlete and the Athlete in Person.
Yasir Arafat Law Officer for NADA.

Date of Hearing: 10.01.2024

Date of Order: 31.01.2024

ORDER

1. That the Appellant Ms. Richa Bhadauriya (“**Athlete**”) has filed the instant Appeal against the order dated 18.03.2023 passed by the Anti – Doping Disciplinary Panel in Case No. – 248.ADDP.2022 (“**impugned order**”). By way of the impugned order, the Athlete was found to have intentionally evaded dope testing and was consequently declared to be ineligible for a period of four years.
2. The facts of the case are as follows:
 - a. The 71st All India Police Aquatic and Cross – Country Championship, 2022 was organised on 20.08.2022 at Thiruvananthapuram, Kerala. The Athlete participated in the event as a member of the Indo –

Tibetan Border Police (“**ITBP**”) Team. The Athlete finished the race at the third position.

- b. Upon the conclusion of the race, when the Doping Control Officer (“**DCO**”) attempted to notify the Athlete at 7:02 AM on 20.08.2022 about giving her urine sample, it was found that the Athlete had disappeared from the venue after finishing her race. The Athlete failed to report to the doping control station even though various announcements were made.
 - c. A supplementary report dated 20.08.2022 was submitted by the DCO. On 22.11.2022, an initial review was completed with the remark that the Athlete refused/evaded to provide the urine sample.
 - d. In view of the same, on 23.11.2022, the National Anti - Doping Agency (“**NADA**”) issued a notice of charge for violation of Rule 2.3 of the National Anti – Doping Agency Anti – Doping Rules (“**Rules**”) for evading, refusing, or failing to submit the sample collection, thereby provisionally suspending the Athlete. In response to the same, the Athlete filed her Written Submissions before the Anti – Doping Disciplinary Panel.
 - e. As aforesaid, the Anti – Doping Disciplinary Panel passed the impugned order with the observation that the Athlete intentionally evaded dope testing and was thus ineligible for a period of four years. Hence, the present Appeal.
3. We have heard the parties at length.
 4. Ld. Counsel appearing for the Athlete has submitted that the Athlete has a history of Bronchial Asthma and has been receiving treatment for the same for quite some time in Bengaluru. It was further submitted that upon completion of the race, the Athlete was facing difficulty in breathing and was also wheezing.
 - 4.1 It is further submitted that since the athlete’s condition did not improve and she continued to face breathing problems and abdomen pain, another athlete, Ms. Sonal Sukhwal, who was participating in the same event on behalf of Rajasthan Police, took the Athlete to the

nearest Government Hospital upon the Athlete's request. At the Government Hospital, the Athlete was advised to visit a private hospital as the doctors in the Government hospital were not present at that time. Accordingly, the Athlete went to the KIMS Health Hospital, Thiruvananthapuram, where she was admitted in Emergency. Upon receiving treatment at KIMS Health Hospital, the Athlete went back to Bengaluru for further treatment.

4.2Ld. Counsel for the Athlete has further submitted that the Athlete was never informed about the dope test from the DCO and therefore there was no occasion for the Athlete to evade the dope test and thus her case is not of intentional doping. At best, the Athlete has been negligent and thus the period of ineligibility must be reduced to a period of two (2) years from four (4) under Article 10.3.1.

4.3Ld. Counsel for the Athlete has also submitted that as per Article 3.1 of the Rules, the burden of proof was on NADA to demonstrate that the Athlete had evaded the doping test and the said burden has not been discharged by NADA.

4.4It has also been submitted by the Ld. Counsel for the Athlete that in view of medical prescription and treatment papers, it is clear that the claim of the Athlete regarding her health is *bona fide*.

4.5It has been submitted that since the Athlete had never been subjected to a dope test before in her life, the Athlete was not aware of the doping control process.

4.6Ld. Counsel for the Athlete submits that upon completion of the race, the Athlete was lying at the finish line for 10 – 15 minutes but since there were no doctors present at the venue, she left for the hospital as her condition did not improve and she was having difficulty in breathing.

4.7Ld. Counsel for the Athlete has also made submissions on how the DCO's Report is self – contradictory and in contravention of WADA Guidelines and the Rules.

4.8At last, the Ld. Counsel has suggested that keeping in view of the fact that the Petitioner is the sole bread winner in her family and there were compelling reasons to leave the venue, her case might be

considered to be one of negligence and not of intentionally evading doping.

5. On the other hand, Ld. Counsel for NADA has submitted that no ground has been made out by the Athlete to interfere with the impugned order.

5.1 The Ld. Counsel for NADA has submitted that if the Athlete was indeed suffering from Bronchial Asthma, it would not have been possible for her to cover a distance of 10 kms at a stretch in a span of 38 minutes.

5.2 The Ld. Counsel for NADA has submitted that given there were so many participants as well as coaches, other team mates, officials, medical teams, spectators, etc., somebody else apart from Ms. Sonal Sukhwal would have also noticed the Athlete having breathing issues and lying near the finish line for a period of 10 – 15 minutes.

5.3 Ld. Counsel for NADA has further submitted that the case of the Athlete is not genuine is further evident from the fact that nowhere has the Athlete provided the name of the Government Hospital where the athlete allegedly went after the completion of the event.

5.4 It has also been submitted by the Ld. Counsel for NADA that as per the Emergency Treatment Certificate issued by the KIMS Hospital, there is no mention of the Athlete suffering from Acute Bronchitis or Wheezing. As per the said Certificate, the Athlete was being treated for Dysmenorrhea, which is a medical term for painful menstrual periods. The Certificate also states that the Athlete's vitals were found to be stable.

5.5 Ld. Counsel for NADA submits that Article 2.3 of the Rules is squarely applicable in the instant case as the Athlete has deliberately avoided DCO to evade dope testing and thus the Athlete must be sanctioned ineligible for a period of four years under Article 10.3.1 read with Article 10.2.3 of the Rules.

6. Having considered the arguments advanced and on a perusal of the record, we are of the view that no case has been made out by the Athlete to interfere with the impugned order.

7. As per Article 2.3 of the Rules, an athlete violates anti – doping rules by “*Evading Sample collection; or refusing or failing to submit to Sample collection without compelling justification after notification by a duly authorised Person*”. In the Rules, a comment is provided to Article 2.3 which states: “*For example, it would be an anti-doping rule violation of “evading Sample collection” if it were established that an Athlete was deliberately avoiding a Doping Control official to evade notification or Testing. A violation of “failing to submit to Sample collection” may be based on either intentional or negligent conduct of the Athlete, while “evading” or “refusing” Sample collection contemplates intentional conduct by the Athlete*”. Further, Article 20.1 of the Rules provides that an Athlete must be knowledgeable of and comply with the Rules. Under Article 20.2, an Athlete must be available for sample collection *at all times*.

8. In the instant case, it is clear that the Athlete was evading sample collection by deliberately avoiding the DCO. As mandated by Articles 20.1 and 20.2, the Athlete was required to be present at the event for giving her urine sample upon the completion of the race. Admittedly, the Athlete is a seasoned participant and has participated in various competitions before. Therefore, she must have been fully aware of the fact that she would be subjected to a dope test. However, even before the DCO could notify of the dope test, the Athlete left the venue.

9. It is further clear that the Athlete’s conduct was intentional as not even a single person at the event among the medical staff, coaches, participants, spectators, etc., apart from Ms. Sonal Sakhwal, noticed the Athlete suffering from breathlessness and wheezing at the finishing line or anywhere else during the Event. It is to be noted that the race was being conducted by All India Police organization. It is difficult to believe the Athlete’s contention that there was no medical staff present at the Event after she finished the race. In fact it is incongruous that the Athlete was in a position to receive congratulatory messages from her coach who she did not inform of her plight. It is also unnatural that the Athlete kept waiting for a few minutes for

her friend who was running the same race from another organization but chose not to confide in her team mates who finished the race earlier as is borne out from the record. In light of the above, there is no doubt that the Athlete intentionally avoided the DCO to evade dope testing as per Article 10.3.1 read with Article 10.2.3 of the Rules.

10. Ld. Counsel for the Athlete has also placed on record certain medical reports of the Athlete to demonstrate that the Athlete is suffering from Bronchial Asthma. At the outset, we find it difficult to accept that an Athlete who is suffering from Bronchial Asthma will be able to cover a distance of 10 kms in a span of 38 minutes. This, coupled with the fact that nobody, apart from one Ms. Sonal Sukhwai, saw the Athlete near the finish line is enough for us to conclude that the case of the Athlete is not genuine. Additionally, her reports dated 07.08.2022 and 26.08.2022 of the KANVA Hospital, Bengaluru note that further evaluation is required to ensure whether the Athlete has Bronchial Asthma or not. It was only in the report dated 20.09.2022, one month after the race, that it has been stated that this is a known case of Bronchial Asthma. Pertinently, as per the Certificate of KIMS Hospital, the Athlete was being treated for Dysmenorrhea on 20.08.2022, which is a medical term for painful menstrual periods. The Certificate also states that the Athlete's vitals were found to be stable. There is no mention of Bronchial Asthma in that Certificate.
11. Ld. Counsel for the Athlete has also placed reliance on the fact that the Supplementary Report Form contains an incorrect statement of the DCO that the Athlete's coach, Mr. Amar Jeet, tried calling the Athlete after the race but she did not pick up the call. Rather, as per Mr. Amar Jeet, after the race, when the DCO asked him to call the Athlete, there was some network issue and the call did not go through. Accordingly, Mr. Amar Jeet informed the DCO that the call did not go through. We are of the opinion that nothing changes on Mr. Amar Jeet's statement, even if presumed to be genuine. Rather, it confirms the Athlete's absence at the time when she was required to be present for the doping test. In fact the email from Mr. Amar Jeet informs that he had congratulated the Athlete after the event, thus

- establishing that the medical condition of the Athlete was not as is being made out.
12. Ld. Counsel for the Athlete has also placed reliance on a decision of the CAS in Arbitration CAS 2016/A/4631 *William Brothers v. Fédération Internationale de Natation (FINA)*, award dated 21 March 2017 (“**William Brothers**”). This decision does not help the Athlete in any way as this is not a case where an Athlete evaded the doping test by leaving the venue even before they could be notified of the doping test. In *William Brothers*, the period of ineligibility was reduced from four years to two years because the concerned Athlete had a health history and received an onset of panic attacks at the time of testing and accordingly refused to undertake the doping test. Therefore, it was observed in *William Brothers* that there were extraordinary circumstances which prevented the concerned Athlete from submitting to the test.
 13. Reliance has also been placed on *NADA v. Ms. Kritika Jamwal*, Appeal No.-03/ADAP/2023, in which it was found by us that the Athlete had compelling circumstances to leave the venue as she got to know of her grandfather’s demise. However, in the instant case, the Athlete has not been able to demonstrate any compelling reason for her to leave the venue without giving her doping test.
 14. In light of the above, we are of the view that the Athlete has evaded the sample collection and is thus in breach of Article 2.3 of the Rules. Having found her conduct to be intentional, we confirm and uphold the impugned order vide which a period of ineligibly of four years has been imposed on the Athlete.
 15. One last plea is that the Athlete’s principal employer consider her case sympathetically in case it commences any proceedings against her as the Athlete is from a very poor background and is the sole bread winner in her family and has dependant family members some of whom are unwell. This

plea of the Athlete has no bearing on the outcome of the present case, though it is open to the Athlete to make a representation to her employer placing on record her submissions and it is hoped that the employer will consider her case sympathetically if the facts so require in accordance with law.

16. 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 18.03.2023 passed by in Case No. 248.ADDP.2022 is upheld. As held by the Anti-Doping Disciplinary Panel the period shall run from the date of provisional suspension i.e. 23.11.2022. We also direct that under Article 10.10 all other competitive results obtained by the Appellant from the date of sample collection i.e. 20.08.2022 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 by registered post to the postal address of the athlete and also emailed to her registered email address and sent to her counsel.



Prashanti Singh
Member



Dr. Vivek Singh
Member



Abhinav Mukerji
Chairman