

BEFORE THE ANTI-DOPING DISCIPLINARY PANEL

In the matter of Mr. Vishvjeet Kushwaha (Sports –Canoe) for violation of Articles 2.1 & 2.2 of Anti-Doping Rules, 2021

(PROCEEDING CONDUCTED THROUGH VIDEO CONFERENCING)

Quorum: **Mr. Vineet Dhanda, Chairman**
 Dr. Sanjogita Soodan, Member
 Mr. Jagbir Singh, Member

Present: Mr. Yasir Arafat Law NADA
 Mr.Santosh Kumar Pandey, legal aid counsel for the Athlete
 Mr. Vishvjeet Kushwaha Athlete in Person

J U D G E M E N T

1. The National Anti-Doping Agency of India is responsible for promoting, coordinating, and monitoring the doping control program in sports in India.
2. The Athlete is a National Level “Canoe Slalom” Player and his date of birth as stated by him in the Dope Control Form (“DCF”), happens to be **17.11.1998**.
3. The present proceedings before this Anti-Doping Disciplinary Panel (“**this panel**”) emanate from the Adverse Analytical Finding (“**AAF**”) against Mr. Vishvjeet Kushwaha (“**the athlete**”).
4. **That the brief facts of the case are as follows:**
 - a) The out-of-competition urine sample of the athlete was collected by the Doping Control Officer of NADA on 20.07.2023 from Bhopla, Madhya Pradesh. As per procedure, the Sample was split into two separate bottles, hereinafter referred to as Sample A and Sample B with unique code no. 6503417”.

- b) The A sample of 6503417 of the Athlete was 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 S1.1 Anabolic Androgenic Steroids (AAS)/Methyltestosterone Metabolites (17alpha-methyl-5beta-androstance-3 alpha, 17beta-diol and 17alpha-methyl-5alpha-androstance-3alpha,17beta-diol). The said Substances are listed under the S1 category of WADA's 2023 Prohibited List as a non-specified substance.
- c) Pursuant to Article 7.2.1 of ADR, the initial review of sample A showed that the Athlete did not have Therapeutic Use Exemption (TUE); 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. The AAF had not been caused by ingestion of the relevant Prohibited Substance through a permitted route.
- d) Notification was issued to the Athlete on 14.08.2023 informing him about the AAF that he was provisionally suspended from participating in any further sporting events till the conclusion of disciplinary proceedings pending against him. Through the said notification the athlete was 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 sample specimen tested and the right to an impartial hearing by the Independent Anti-Doping Disciplinary Panel to which the athlete waived off his right to have the B Sample analysis.
- e) The Notice of Charge was issued to the Athlete on 29.08.2023 and the final opportunity to submit an explanation was granted to the Athlete.
- f) The virtual hearing was conducted on 04.01.2024 by the Hearing Panel which

was constituted under Article 8 of ADR. During the hearing, the panel appointed Mr. Santosh Kumar Pandey as the legal aid counsel to represent the Athlete in his case.

- g) The final hearing was held on 08.02.2024, where the Athlete and his counsel appeared before the panel and presented their submissions on behalf of the Athlete.

5. Submissions of the Athlete

The counsel of the Athlete admitted the violation but denied the intentional use of the substance. The athlete claimed that he had taken health supplements to improve his health. The counsel of the athlete submits that the athlete is entitled to the reduction of the period of ineligibility based on No Significant Fault or Negligence under Article 10.6 of the ADR.

6. Submissions of the NADA

- a) It is submitted by NADA 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. The liability cast on the Athlete under the rules is strict and considerations of intent, knowledge, fault or negligence are not required to be proved for establishing an Anti-Doping rule violation.
- b) The Athlete has not been able to provide evidence regarding how the prohibited substance entered his body. Simply claiming innocence and suggesting that the substance may have entered their body through a supplement is not enough. To prove their innocence, the Athlete must provide concrete evidence that the particular supplement, medication, or other product they took contained the substance in question.
- c) It is the Athlete's responsibility to be aware of what constitutes an ADRV and which substances are prohibited. Therefore, he will be held accountable under Article 10.2.1.1 of ADR 2021.

7. Observations and Findings of the Panel

After hearing the parties at length and having considered all documentary and the written/oral submissions the Panel observes as under:

- a) It is undisputed that the Athlete's Sample has revealed the presence of Anabolic Androgen Steroids (AAS)/, S1.1 Anabolic Androgenic Steroids (AAS)/Methyltestosterone Metabolites (17alpha-methyl-5beta-androstance-3 alpha, 17beta-diol and 17alpha-methyl-5alpha-androstance-3alpha,17beta-diol). These substances are listed under the S1 category of WADA's 2023 Prohibited List and are considered non-specified substances. The use of prohibited substances is strictly forbidden under the rules.
- b) As per Article 2.1 of the Anti-Doping Rules 2021, it is the personal duty of every athlete to ensure that no prohibited substance, as defined, enters his or her body. Reference may also be made to Article 2.1.2 which provides that the presence of a prohibited substance or its metabolites is sufficient proof of anti-doping rule violation where Sample A returns an adverse finding.
- c) Where a sample testing returns a positive finding, the onus is on the athlete to explain how the substance entered his/her body. Fault, negligence or knowing use are not relevant considerations that need to be proved while making a case for anti-doping violation. The liability cast on the athlete is thus strict.
- d) The Panel is of the view that the Athlete's explanation that the positive finding resulted from health supplements is unsupported and lacks substantiation. As there are no exceptional circumstances to negate the presumed intentionality of the violation under Article 10.2.3 of the Rules, the Athlete must face a sanction of four years of ineligibility.

8. In view of the facts and circumstances stated above, the Panel holds that the Athlete is liable for sanctions under Article 10.2.1.1 and liable for the period of Ineligibility of 4 years. In the present case, since the Athlete had been provisionally suspended, the Panel accordingly holds that the Athlete's period of ineligibility for 4 years shall commence from the date on which the notification was sent, i.e., 14.08.2023.
9. We also direct that under Articles 9 &10.10 all other competitive results obtained by the athlete from the date of sample collection i.e., 20.07.2023 shall be disqualified with all resulting consequences including forfeiture of medals, points, and prizes.

Dated: 29.04.2024



Vineet Dhanda
Chairman



Dr. Sanjogita Soodan
Member



Mr. Jagbir Singh
Member