

**BEFORE THE ANTI DOPING APPEAL PANEL
J.L.N. Stadium, Gate No. 10, Hall No. 103,
Lodhi Road, New Delhi -110 003**

Appeal No.-01.ADAP.2020

IN THE MATTER OF

Mr. Sumit Sangwan Sport - Boxing	APPELLANT
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Vs

National Anti-Doping Agency New Delhi	RESPONDENT
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Quorum: Ms. Vibha Datta Makhija, Chairperson
Dr. Harsh Mahajan, Member
Ms. Indu Puri, Member

Present: Athlete Mr. Sumit Sangwan is present in person.
Mr. Saurabh Mishra, Advocate for the athlete.
Ms. Manpreet Kuar, Advocate for NADA with Mr. Yasir Arafat, Law Officer of NADA.

Date 03.03.2020

ORDER

1. The present appeal arises from an order dated 26/12/2019 of the Anti Doping Disciplinary Panel. The facts of the case as extracted from the order of the Anti Doping Disciplinary Panel are as follows:

1. *“The urine sample of the athlete Mr. Sumit Sangwan was collected during the competition Elite Men Boxing Championship, 2019, Himanchal Pradesh by Doping Control Officer of NADA on 10/10/2019.*
2. *‘A’ sample was tested at the Anti Doping Laboratory, Qatar and was returned with an Adverse Analytical Finding (AAF) for Acetazolamide, Diuretics and Masking Agents.*
3. *Consequently, NADA issued a notice of charge dated 29/11/2019 for violation of Article 2.1 of the Anti Doping Rules of NADA.*
4. *The athlete vide his letter dated 10/12/2019 opted not to conduct the ‘B’ sample analysis.*

5. *The Hearing was conducted on 20/12/2019 and 26/12/2019 by the Hearing Panel under Rule 8.”*
2. After hearing the submissions of the both the sides, the Anti Doping Disciplinary Panel has concluded that the athlete has violated the Article 2.1 of the Anti Doping Rules of NADA. The main stay of violating the Article 2.1 of the Anti Doping Rules of NADA are reproduced as follows:
 19. *“The athlete in the present case is a senior athlete who has represented India at International competition and therefore, it was required of him that he shall be more vigilant in verifying the composition of the medicine he was taking for any treatment and not to continue with any medicine beyond the prescribed period. This caution was required from him being a senior athlete but he has completely failed in exercising the caution and prudence and was negligent in performing his duties as an Athlete though fully aware of the rules and regulations.”*
3. As such Anti Doping Disciplinary Panel has held the athlete, Mr. Sumit Sangwan is guilty of violating Article 2.1 of the Anti Doping Rules of NADA, and has imposed one (1) year ineligibility from the date of the decision, i.e. 26.12.2019 under Article 10.5.1 of the Anti Doping Rules of NADA.
4. We have heard Mr. Saurabh Mishra, Advocate appearing on behalf of the Athlete, and have also heard Ms. Manpreet Kaur, Advocate, and Mr. Yasir Arafat, Law Officer of NADA. It has been contended on behalf of the athlete that he has been suffering from eye infection. In order to rectify the same, he had consumed capsule IOPAR 250 mg. He has stated that he has consumed the medicine after exercising due care and diligence by seeking medical advice of Sports Authority of India’s Doctor and other qualified medical practitioner.
5. The athlete has also contended that he has reasonably explained how the adverse analytical finding (AAF)/anti doping rule violation has been caused.
6. Lastly, the athlete contended that he did not have any intention to ingest the Prohibited Substance in order to take undue advantage in sports since the medicine was consumed 13 days prior to the competition, and thus could not have given him any competitive advantage. Furthermore, the Prohibited Substance was ingested many days prior to the doping control test and it was not excreted from his body due to admitted case of Kidney malfunction which admittedly resulted in traces of the Prohibited Substance from his body.
7. As such it is contended that there has been No Significant Fault or Negligence on the athlete’s part and thus he is entitled to get the benefit of minimum sanction under Anti Doping Rules of NADA.

8. On behalf of NADA it has been argued that the athlete is a senior athlete, and is competing from 2011 onwards in various National and International level games, as such the highest standard of care is required to be exercised by the athlete and any negligence on his part cannot be ignored to assess his degree of fault. As a senior athlete, he has professional duty to ensure that no Prohibited Substance enters into his body. Further, it has been contended by NADA that Article 2.1 of the Anti Doping Rules of NADA imposes strict liability on the athlete for any Anti Doping Rule Violation. 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
9. It is further been argued that athlete has not consumed the Prohibited Substance bona fide since the medical paper/documents submitted by the athlete are not trustworthy.
10. NADA has also produced a TUE Enquiry form dated 01/10/2019 issued by the Anti Doping Laboratory, Doha, Qatar wherein the estimated concentration levels of the Prohibited Substance found in the urine sample of athlete is 34 ng/ml. It is thus contended that mere presence of the Prohibited Substance detected in the urine sample is sufficient to prove the anti doping rule violation committed by the athlete.

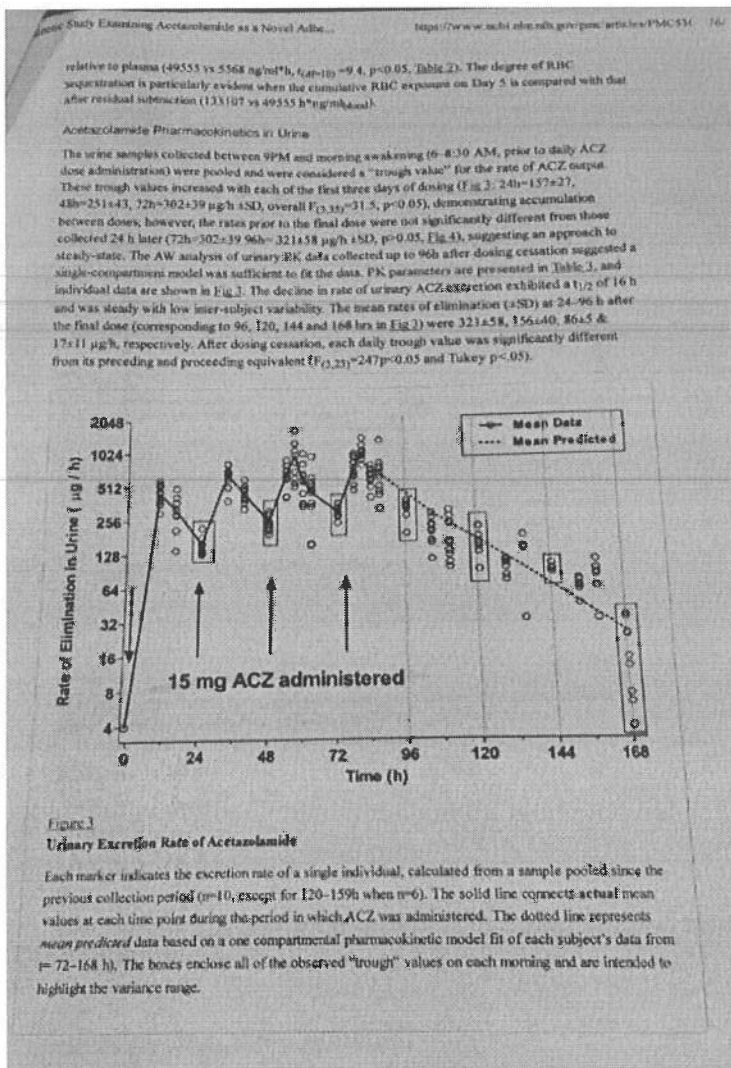
Findings:

11. At the time when the urine sample of the athlete was taken in competition on 10/10/2019, the Doping Control Form (DCF) was filled up by the Doping Control Officer of NADA on the instructions of the Athlete. In the column of declaration of medication used and blood transfusion taken, the athlete had declared "*T-Mobizox, Diclofinac, Forties Hospital OPD slip attached*".
12. The athlete had filed and produced his prescriptions of treatment starting from 16/09/2019 till 14/10/2019. The original of these prescriptions have also been produced by the athlete before the Disciplinary Panel and us. On an examination of the said medical documents, it is apparent the athlete was afflicted with a severe eye infection, and for this purpose he has consumed medicine on the advice of Dr. Suresh Arya on 16/09/2019. The athlete then consulted the Sports Authority of India Doctor, Northern Region, Sonapat on 20/09/2019 wherein certain medicines was prescribed by the Doctor on the outdoor patient ticket. It is the case of the athlete that the athlete was in constant touch with the SAI Doctor who then referred him to Dr. Ramesh Narang, an ophthalmologist/Eye Specialist in Sonapat, Haryana from 23/09/2019 onwards for treatment, who had prescribed certain medicines including IOPAR SR (250 mg.) on 23/09/2019. The invoice cash memo exhibiting the batch number

and date of purchase i.e. 23/09/2019 is also produced in original by the athlete, which exhibited purchase of three capsule of IOPAR. It has been seen that the prescription on said medication is discontinued after completing a course of a single tablet for three days. It is the case of the athlete that Prohibited Substance entered his body through the ingestion of capsule IOPAR SR which was duly prescribed by Dr. Narang, and the same was declared by the athlete in his Doping Control Form at the time of sample collection.

13. The source of ingestion of the Prohibited Substance has been reasonably explained by the athlete. We have perused the medical documents submitted by the athlete as well as by NADA minutely. The authenticity of the medical prescriptions submitted by the athlete are not suspicious. NADA has not raised any objection with regard to the veracity of the medical prescription. We are of the view that the athlete was suffering from eye infection and took medicines on the advice of the Doctor, which contains Prohibited Substance. The bonafide consumption is further fortified by Therapeutic Use Exemption (TUE) Form which reveals that only 34 ng/ml of the Prohibited Substance is reported in the urine sample of the athlete which is evident that the athlete has not ingested the same just before the competition in order to gain undue advantage.

14. It is further submitted by the NADA that the said Prohibited Substance would ordinarily be found in the body only up to 48 hours. In support of this contention they relied on Wikipedia Article on said Prohibited Substance. The athlete has also submitted research study obtained from website wherein the research study exhibits that upon administration of 15 mg the same could found in the body from 72 – 168 hours. The rate of Elimination in urine is 32 ug/ph at the end of 168 hours. The Athlete produced the following scientific data:



15. The medical documentation of the athlete reveals that he has deranged renal function with serum creatinine on 27/09/2019 of 1.67 mg/dl with the upper limit of 1.30 mg/dl. The blood urea nitrogen level was also 26 mg/dl with the upper limit of 20 mg/dl at Forties Hospital, Shalimar Bagh, New Delhi. It is well known fact that clearance of drugs through the excretory system may get delayed in case there is kidney malfunction and drug may remain in the body for longer time than expected in those with normal kidney function.
16. In support of his argument, the counsel of athlete has cited following judgments:
 - (a) Mr. Manjeet Singh vs. NADA (Anti Doping Appeal Panel, New Delhi case no. ADAP/12/2011 dated 03/03/2012).
 - (b) Ms. Monisha S. vs NADA (Anti Doping Appeal Panel, New Delhi case no. 01/ADAP/2015 dated 28/01/2016).

(c) Mr. Kylie Palmer vs. FINA and Cycling Canada vs/ Mr. Jack Burke (Sports Dispute Resolution Centre of Canada SDRCC 13-0206 dated 02/10/2013)

17. On the other hand, NADA has cited the judgment of **Marin Cilic vs. International Tennis Federation (ITF) (Arbitration Court of Arbitration for Sports CAS 2013/A/3327 award of 11/04/2014)**. In the above said judgment CAS has devised a methodology of assessing the degree of fault of the athlete and the principles applicable to the length of the period of ineligibility, and the same are reproduced below:

“Principles applicable to the length of the period of ineligibility

69. *The breadth of sanction is from 0-24 months. As Article 10.4 says, the decisive criterion based on which the period of ineligibility shall be determined within the applicable range of sanction is fault. The Panel recognises the following degree of fault:*

- a) Significant degree of or considerable fault.*
- b) Normal degree of fault.*
- c) Light degree of fault.*

70. *Applying these three categories to the possible sanction range of 0 - 24 months, the Panel arrive at the following sanction ranges:*

- a) Significant degree of or considerable fault: 16-24 months, with a standard significant fault leading to a suspension of 20 months.*
- b) Normal degree of fault: 8 - 16 months, with a “standard” normal degree of fault leading to a suspension of 12 months.*
- c) Light degree of fault: 0 - 8 months, with a “standard” light degree of fault leading to a suspension of 4 months.*

71. *In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete’s situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.*

72. *The Panel suggests that the objective element should be foremost in determining into which of the three relevant categories a particular case falls.*

73. *The subjective element can then be used to move a particular athlete up or down within that category.*

74. *Of course, in exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however. At the outset, it is important to recognise that, in the theory, almost all anti doping rule violations relating to the taking of a product containing a prohibited substance could be prevented. The athlete could always (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross check all the ingredients on the label with the list of Prohibited Substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product.”*

18. In the present situation, the case falls under light degree of fault since the athlete has consulted SAI Doctor and only 34 ng/ml concentration level of the prohibited substance has found in the urine sample of the athlete. In view of the above, we are of the considered view that Anti Doping Disciplinary Panel did not consider the above factors and degree of fault, and did not apply the correct principles applicable to the length of the period of ineligibility with regard to sanction to be imposed in case of No Significant Fault or Negligence. We thus set aside the order of the Anti Doping Disciplinary Panel on the aspect of sanction and impose the sanction of ‘Reprimand’ with no period of ineligibility on the athlete.

19. The appeal thus stands disposed of.

Dr. Harsh Mahajan
Member

Vibha Datta Makhija
Chairperson

Indu Puri
Member

Sunanda v SIA
06/02/2020
Issued under signatures of Panel Assistant,

राष्ट्रीय डॉपिंग रोधी एजेंसी
National Anti Doping Agency
'A' Block, Pragati Vihar Hostel, Lodhi Road
नई दिल्ली-110003 / New Delhi-110003
Tel.. 011-24368248 24368271