

Anti-Doping Disciplinary Panel

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

To,

Date: 26.04.2022

Mr. Nilesh Balhara
S/o Shri Mukesh Kumar
House No- 184/3, Village:
Neb Sarai, South West Delhi
Pincode:110068
Email: - nileshbalhara123@gmail.com

Subj: Decision of the Anti-Doping Disciplinary Panel Case No.- 175.ADDP.2021

NADA Vs. Mr. Nilesh Balhara

The order containing the decision of the Anti-Doping Disciplinary Panel dated 19.04.2022 in respect of final hearing of the above case held on 08.04.2022 is enclosed.

Please note that according to Article 13.2.2 of Anti-Doping Rules of NADA 2021, **the time to file an appeal to the National Anti-Doping Appeal Panel shall be twenty-one (21) days from the date of receipt of this decision by the appealing party.** The appeal may be filed at the abovementioned address.

Also please note that according of Article 10.7.1- (**Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations**)- Any period of Ineligibility imposed may be partially suspended if you assist NADA in uncovering and/or establishing an ADRV by another Athlete or Athlete Support Personnel pursuant to Article 10.7.1 ADR. Further, the athlete is subjected to doping control test during the ineligibility period, therefore, athlete is required to update his residential address as and when changed.

Copy of the NADA Anti-Doping Rules 2021 may be downloaded from NADA website at the following link:-www.nadaindia.org/en/anti-doping-rule-of-nada

The receipt of this communication may be acknowledged.

Encl: 07 sheets.



(Yasir Arafat)
Law Officer

Copy forwarded together with the copy of the order containing the decision of the Anti-Doping Disciplinary 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, Judo Federation of India, WZ-114/E, 3rd Floor, Hari Singh Complex, Todapur, Main Road, New Delhi – 110002.
3. International Judo Federation, 1007, Avenue, Lausanne, Switzerland.
4. National Anti-Doping Agency, J.L.N Stadium, 1st Floor, Hall No. 104, Lodhi Road, New Delhi, 110003.

ANTI DOPING DISCIPLINARY PANEL
J.L.N. Stadium, Gate No. 10, Hall No. 103,
Lodhi Road, New Delhi -110 003
Telefax: 011-24368248

In the Matter of **Mr. Nilesh Balhara, S/o Mr. Mukesh Kumar, H. No. 184/3, Village Neb Sarai, South West Delhi 110068** for the violation of Article 2.3 of Anti-Doping Rules of NADA 2021.

1.	Event	Judo
2.	Name of Competition	Out-Competition
3.	Date of Sample Collection	20/02/2021
4.	Nature of sample	Evading to sample collection
5.	Urine sample Code Number	NA
6.	Name of Sample Witness	NA
7.	Name of Dope Control Officer	Mr. Rajneesh Kumar Dr. Nishtah Ramavat
9.	Result of 'A' sample	NA
10.	Date of Initial Review	NA
12.	Date of first notice	08/04/2021
13	Date of Provisional Suspension	08.04.2021
13.	Date of Result 'B' Sample testing	NA
14.	Result of 'B' Sample	NA
15.	Date of hearing	08/04/2022
16.	Plea of the athlete	DCOs did not show the identification card that identified them as NADA officials
17.	Date of decision	19/04/2022

NADA notified its assertion relating to violation of Anti-Doping Rule 2.3 by **Mr. Nilesh Balhara (Sports - Judo)**.

Mr. Yasir Arafat Law Officer, NADA presented the case on behalf of NADA and produced the documents in support of the case. Final Hearing was conducted on 08/04/2022 by the Hearing Panel constituted under ADR.

Factual Background:

1. The Athlete has participated in National and International events and won several medals at the National and International level category of the discipline of Judo since 2012.
2. On 20.02.2021, Doping Control Officers of NADA notified the Athlete that he required to undergo a doping control test. It is alleged that the Athlete evaded and refused to sign the notification form nor accompanied the DCOs for submitting the urine sample for dope test and left the venue. In this regard a supplementary report and videos are placed on record.
3. Consequently, NADA issued a notice of charge dated 08.04.2021 (“**Notice of Charge**”) for violation of Rule 2.3 of the NADA Anti-Doping Rules (“**Rules**”). The notice of charge was also accompanied by a Mandatory provisional suspension, with effect from the date of notice. Since no response was received to the Notice of Charge from the Athlete. Therefore, the case file referred to the Anti-Doping Disciplinary Panel for Adjudication.
4. The hearing through video conferencing were held on 10.01.2022, 08.03.2022 & 08.04.2022 by the Anti-Doping Disciplinary Panel constituted under ADR, 2021. The hearing was attended by Mr. Yasir Arafat, Law Officer, NADA and the Athlete along with his Counsel Ms. Aahna Mehrotra.

Athlete’s Submissions:

5. The Athlete has represented and accomplished laurels at various levels. The Athlete has been a part of the Indian contingent for the Commonwealth Games in 2018, where the Athlete won the gold medal in Judo. The Athlete also represented India at the Commonwealth Games 2019 and was runner’s up position.
6. The Athlete has never attempted to gain unfair advantage in his sport. The Athlete has been subjected to 3 different dope control tests and never been found positive for any ADRV.

7. The Athlete, on 20.02.2021, was present at the academy for his regular training session and approached by two persons claiming to be the doping control officer of NADA to collect the dope sample.
8. The Athlete requested the persons to show their identity proof as he did not trust that they are NADA officials. However, the persons did not show their ID cards to identify them as NADA officials.
9. The two persons instead showing their ID cards, left the venue around 20:00 hours. Thereafter, Mr. Rajpal Tokas and Mr. Dushyant Tokas called Mr. B.J. Verma, NADA official on his mobile number and informed the incident. Mr. Verma informed Mr. Rajpal that he will look into the matter and requested the person to come back to the academy and therefore, asked Mr. Rajpal and the Athlete to wait at the academy. Thereafter, Mr. Rajpal Tokas, Mr. Dushyant and Athlete waited at the academy till 22:30 hours. Meanwhile Mr. Rajpal Tokas tried contacting Mr. B. J. Verma around 21:30 hours, but he did not respond the call.
10. The WADA guideline for sample collection of blood and urine samples stipulates that DCO must show an authorization letter upon notifying the concerned Athlete for dope test. The ISTI Urine Sample Collection Guidelines state that an authorization letter from Testing Authority must be provided to the concerned Athlete. Relevant provision of ISTI Urine Sample Collection Guidelines is reproduced below:

“2.1 Testing Authority /Sample Collection Authority: Provide official documentation to Sample Collection Personnel validating their authority to collect a sample from the Athlete, e.g., an authorization letter from the Testing Authority.” Similarly, Article 3.4 (“Sample Collection Personnel Briefing”) provides: During the briefing, the DCO presents official documentation (e.g., an authorization letter from the testing authority) to Sample Collection Personnel that details the DCO’s authority to collect a Sample from the Athlete.”

11. The Article 5.3.3 of ISTI state that the *“Sample Collection Personnel shall have official documentation, provided by the Sample Collection Authority, evidencing their authority to collect a Sample from the Athlete, such as an authorization letter from the Testing Authority. DCOs shall also carry complementary identification which includes their name and photograph (i.e., identification card from the Sample Collection*

Authority, driver's license, health card, passport or similar valid identification) and the expiry date of the identification"

12. The Athlete submits that no authorization letter or identity proof linking the specific sample collection personnel to the Athlete was provided in compliance with procedure of WADA ISTI. The Athlete has relied a judgment Sun Yang vs WADA (CAS 2019/6148 dated 22.06.2021) & NADA vs. Mr. Jitesh Dagar dated 27.10.2020.
13. Lastly, it is submitted that Athlete did not evade the dope test but merely enforced his right and ensured that the due process must be complied with.

NADA Submissions:

14. The Athlete was dully approached by the DCO to submit the urine sample as evident from supplementary report dated 20.02.2021, video recording as well as the DCO's statement before hearing panel.
15. That the DCO in its supplementary report has mentioned that Mr. Nilesh Balhara was identified and verbally notified at 18:48 and asked to sign the notification form but the Athlete refuse to sign it.
16. That the DCO has informed the Athlete about failure to sign the notification form may constitute the ADRV. Thereafter, the athlete refused to sign the notification form and ran away from the venue.
17. That in the supplementary report it is also alleged that Mr. Rajpal Tokas has threatened the DCO and tried to manipulate the doping process.
18. The Athlete has intentionally evaded sample collection inspite of notice by Doping Control Officer which is a violation of Article 2.3 of NADA Rules and it is the duty of every Athlete to provide his/her sample when notified either in competition or out competition by the testing authority.
19. That as per Article 3.2 of NADA ADR, 2021: Methods of Establishing Facts and Presumptions 'Facts related to anti-doping rule violations may be established by any reliable means, including admissions. Inferring from the above, it is evident from the supplementary report of Doping Control Officer as well as video recording of the incident had proven that the Athlete evaded Dope Sample Collection on 20.02.2021 and therefore committed an ADRV.

20. That the present case is a clear violation of Article 2.3 of the ADR, 2021 and hence warrants for imposition of stringent sanction under Article 10.3.1 of the ADR, 2021.
21. As for as the contentions of the Athlete that the Sample Collected Personnel did not show their ID cards is an afterthought as it is evident from the record that the Athlete was charge on 08.04.2021 for violation of ADRV, since then the Athlete has not raised this issue at any point of time either writing an email or written complainant till the commencement of first hearing i.e., 10.01.2022.
22. It is evident from the statement of Mr. B. J. Verma that Dr. Nishtha and Mr. Rajneesh Kumar have been appointed by National Anti-Doping Agency, NADA for collecting dope samples as per Mission Order #:M-1295225958. A copy of Mission Order and Authorization Letter have been provided to them before sample collection.
23. As it is evident from the statement of Mr. B. J. Verma who received a phone call from Mr. Rajpal Tokas favoring the Athlete and try to convince that the Athlete is a poor child, his mother is not well and he is a good player and will play best for Nation. As much it is understood that Mr. Rajpal Tokas threaten the DCO's to let Mr. Nilesh Balhara escape from the Doping Station/Doping Process.

Observations and Findings of the Panel

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

24. The panel finds that authority letter has been given by NADA to the DCOs on 19.02.202 at 5:41 pm, as DCOs have authority letter of which is satisfying Article 5.3.3. of WADA ISTI. Further the panel observes that videos are not in continuity, in the third video the DCOs can be heard on record saying that it hereby means that they have notified the Athlete for the dope test rather than the defense taken by the athlete asking to show their identification card. The panel feels that the requirement of Article 5.4.2.b was met especially in the way of the persistent show of papers by the DCOs to the athlete and also with the DCOs namely, Mr. Rajneesh and Ms. Nishtha on record saying that we hereby notifying you with the same show of papers. The panel finds the abrupt display of careless conduct and willful attitude by the athlete despite of 11 year on the field and after self admittedly 3 dope tests. The athlete was chosen to give random dope test and

later on referring to have Mr. Rajpal Tokas threatened the DCO's as confirmed by Mr. B.J Verma.

25. The question that came for all perusal with also that Dr. Nishtha chose to immediately report to her senior Mr. Verma and talks about the threatening and stopping her car and bribe as well. The panel also appreciated the arguments put forth by NADA that why Mr. Nilesh Balhara (the Athlete) not chose to approach NADA or any valid authority between the date of the incident i.e., 20.02.2021 and the issuance of the notice of charge i.e., 08.04.2021.
26. Dr. Nishtha during one of the virtual hearings has gone on record to admit that their ID cards had expired and that was why they were not wearing them around their necks. Yet given the Mission order was issued by NADA and that they had been given authority to conduct dope tests – a fact duly corroborated by Mr. BJ Verma who appeared twice on virtual hearings and also placed his written submissions on record - the arguments presented by the Athlete and his counsel regarding absence of authority of the DCOs will not hold in the opinion of the Panel.
27. The counsel for the Athlete Ms. Ahana Mehrotra presented very solid and intriguing arguments throughout the hearing and in her additional submissions also pointed to certain sections of the videos wherein the Athlete can be heard asking for the IDs of the DCO. However, on careful perusal of all the videos repeatedly by the panel members none of us could hear the Athlete asking the DCOs for proof of their IDs rather the Athlete can be clearly seen and heard trying to evade signing of the form as well as giving sample for dope test.
28. The panel finds that there were no compelling justifications for the Athlete's to evade sample collection and accordingly finds that the Athlete intentionally evaded the dope sample collection which has corroborated by the DCOs coming on record to state that one Mr. Rajpal Tokas threatened them, as confirmed by Mr. BJ Verma. Additionally, the Athlete submitted during VC hearing that he had no relation with Mr. Rajpal Tokas and did not know him at which the panel wonders why Mr. Tokas's affidavit is part of the Athlete's submissions before us if the two have no relation with each other.
29. Once a violation of anti-doping rules has been established, Sanctions on Individuals as provided under Article 10 of the Anti-Doping Rules 2021 must ensue. The present case

is for violation of Article 2.3, hence the Athlete is liable for sanctions under Article 10.3.1, an ineligibility for a period of 4 years.

The Panel holds that the Athlete Mr. Nilesh Balhara is liable for sanctions under Article 10.3.1 for an ineligibility for a period of 4 years. Normally, the period of ineligibility starts from the date of the order. In the present case, since the Athlete has been provisionally suspended from participating in any National Sports Federation / International Federation sanctioned Competition, as set out in Clause 5 of the Notice of Charge 08.04.2021. The period of his ineligibility for the period of 4 years shall commence from the date of provisional suspension, i.e., 08.04.2021.

We also direct that under Article 10.8 all other competitive results obtained by the athlete from the date of sample collection i.e., 20.02.2021 shall be disqualified with all resulting consequences including forfeiture of medals, points and prizes.

Dated: 19.04.2022



Dr. D.S. Arya
Member



Nupur Sharm
Chairman



Kalyan Chaubey
Member