

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: 21.04.2022

Ms. K.M. Khushbu Gupta
D/o Mr. Ram Asary Gupta
R/o Dahilamau Uttari,
Prarapgarh Uttar Pradesh- 230001
Email: - khushbugupta60138@gmail.com

Subj: Decision of the Anti-Doping Appeal Panel Case No.-12/ADAP/2021

NADA Vs. Ms. K.M. Khushbu Gupta

The order containing the decision of the Anti-Doping Appeal Panel dated 20.04.2022 in respect of final hearing of the above case held on 13.04.2022 is enclosed.

The receipt of this communication may be acknowledged.

Encl: 04 sheets.



(Yasir Arafat)

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. Secretary General, Athletics Federation of India, A-90, Naraina Industrial Area, Phase-1, near PVR cinema, New Delhi- 110028.
3. International Association of Athletics Federations, 17, Rue Princesse Florestine BP 359, MC 98007, Monaco.
4. National Anti-Doping Agency, J.L.N Stadium, 1st Floor, Hall No. 104, Lodhi Road, New Delhi, 110003

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

(PROCEEDINGS CONDUCTED THROUGH VIRTUAL MODE)

Appeal No.- 12/ADAP/2021

IN THE MATTER OF:

Ms. Khushbu Gupta APPELLANT
(Sport – Athletics)

Vs

National Anti-Doping Agency RESPONDENT

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

Present: Ms. Khushbu Gupta Athlete in person.
Mr. Yasir Arafat Law Officer for NADA.

Date of Hearing: 13.04.2022

Date of Order: 20.04.2022

ORDER

1. The Appellant Ms. Khushbu Gupta (Athlete) has filed an appeal against the order dated 07.09.2021 passed by the Anti-Doping Disciplinary Panel in Case No. 153.ADDP.01.2020 (“impugned order”).

2. The facts of the case as available from the records before the Anti-Doping Disciplinary Panel are as follows:

(i) The doping control test of the Appellant was carried out by the Doping Control Officer of NADA during 68th All India Police Athletics Championship held at Panchkula. Urine Sample of the Appellant upon collection were sent to Doping Control Laboratory, Belgium, a World Anti-Doping Agency (WADA)-accredited laboratory. The Laboratory analysed the A Sample in accordance with the procedures set out in the WADA’s International Standard for Laboratories. Analysis of the A Sample returned an Adverse Analytical Finding (AAF) for the following:

“Mephentermine and its metabolite phentermine-stimulant – Non specified substance under S6 of WADA’s 2020 Prohibited List”

(ii) Consequently, NADA issued a notice of charge dated 22.04.2020 for violation of Rule 2.1 of the Anti-Doping Rules of NADA, 2015 (“ADR”). The notice of charge

imposed a mandatory provisional suspension with effect from the date of notice. The Appellant waived right to Sample B analysis vide letter dated 11.08.2020.

(iii) By the way of impugned order an ineligibility of 04 years under Article 10.2.1.1 from the date of provisional suspension have been imposed upon Athlete. Hence, this appeal.

3. We have heard both the parties at length. The Appellant's primary contention is that before the event she was experiencing pain in her muscles and muscles felt stiff. Fellow Athlete gave her a tablet for muscle relaxation, the Appellant without verifying contents of the said tablet consumed it and has stated the said medicine to be cause behind Anti-Doping Rule Violation (ADRV). It was contended that the Appellant has not consumed any prohibited substance intentionally rather the prohibited substance must have entered her system by way of medicine. It was further submitted that Appellant have always exercised due caution to not consume anything that could lead to an Adverse Analytical Finding. It was contended that the Appellant has a clean track record and has won several laurels on account of which she was offered position of SSB Jawan. It was submitted that the Appellant is not aware about the substances included in WADA's prohibited list. Lastly, it was submitted that the Appellant has admitted ADRV on her part and pleads for benefit on account of prompt admission. Appellant also claims benefit on account of substantial assistance.

4. On the other hand, Sh. Arafat, Ld. Law Officer on behalf of NADA submitted that the prohibited substances were found in urine sample of the Appellant and under Article 2.1.1 it is an athlete's responsibility to ensure that no prohibited substance enters his/her body and further that under the said Article it is not necessary that intent, fault or negligence is required to be demonstrated to attract the provisions of Article 2.1. It was contended that the Appellant has failed to adduce any appropriate explanation with regard to presence of prohibited substance in her urine sample. It was asserted that the Appellant has no Therapeutic Use Exemption ("TUE") to justify the presence of the aforesaid prohibited substance. It was submitted that the stand taken by the Appellant to justify presence of prohibited substances is absolutely vague, unsubstantiated and uncorroborated, the Appellant has failed to produce any evidence in support of her plea of unintentional ingestion. Lastly, he submits the impugned order does not warrant interference and present appeal is liable to be dismissed as the Appellant has failed to rebut the presumption that ADRV was not intentional.

5. In the present case, the perusal of Doping Control Form brings out the Appellant declared use of pre-workout and Mouizox Painkiller at the time of testing. As pointed out by the Ld. Medical Member of this Panel, the painkiller medication declared by the Appellant cannot be the source of prohibited substance found in the body of Appellant as it is not present in the chemical composition of the painkiller. As per the claim of the Appellant she is a professional and experienced Athlete, considering the experience of the Appellant and the number of tournaments she has participated in, the argument raised by the Appellant regarding being unaware of WADA's Prohibited List is not found rational. The submission of the Appellant that she took due care and caution to not consume anything prohibited is also found irrational as the Appellant in an ignorant manner took medicine from fellow Athlete and consumed it without verifying its

contents or consulting her coach or doctor. We must say, it is highly improbable that an Athlete would take medicine handed over by another athlete just before competition, as the chances of sabotage are on higher side during events. As per the submission of the Appellant the medicine was taken right before the competition therefore possibility of enhanced performance cannot be ruled out. The bland plea of unintentional ingestion of prohibited substance raised by the Appellant deserves to be rejected as the Appellant has failed to produce any evidence to substantiate her plea.

6. It is trite jurisprudence in Anti-Doping Laws around the globe, that with respect to establishing the origin of the prohibited substance, it is not sufficient for an athlete merely to make protestations of innocence and suggest that the prohibited substance must have entered his/her body inadvertently from some supplement, medicine, or other product. An athlete must adduce concrete evidence to demonstrate that a particular supplement, medication, or other product that he/she had taken had in fact contained the substance in question.

7. In CAS 2010/A/2230, International Wheelchair Basketball Federation v. UK Anti-Doping Award dated 22.2.2011 the CAS expressed the athlete's burden as follows: *"To permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination - two prevalent explanations volunteered by athletes for such presence - do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature for the athlete 's basic personal duty to ensure that no prohibited substances enter his body."*

8. The benefit of prompt admission has already been granted to the Appellant by the Ld. ADDP by starting the ineligibility period from date of sample collection. As per our view, the Appellant has not provided any substantial assistance as it did not lead to discovery or establishing anti-doping rule violation by other person.

9. We are of the considered opinion that the Appellant has committed an ADRV under Article 2.1 of the ADR. The Appellant has failed to discharge burden of proof that the ADRV was not intentional as is mandated under Article 10.2.1 for non-specified substances. Further, the conditions that would meet the requirements of "No Fault or Negligence" or "No Significant Fault or Negligence" are absent in the present case.

10. Once the presence of the prohibited substance is established in the body of the athlete and no exculpatory or mitigating circumstances exist, the natural consequences under the ADR follows. Therefore, we do not find any merit in the appeal and the same is dismissed. The sanction of 4 years ineligibility imposed by the Anti-Doping Disciplinary Panel vide its order dated 07.09.21 in Case No. 153.ADDP.01.2020 is upheld. As held by the Anti-Doping Disciplinary Panel the period of ineligibility shall run from date of sample collection i.e. 05.03.2020. 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 his registered email address and sent to his counsel.



Prashanti Singh
Member



Dr. Vivek Singh
Member



Abhinav Mukerji
Chairman