

Anti-Doping Appeal Panel

J.L.N Stadium, Gate No. 10 Hall No.103
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Telefax : 011-24368274

To,

Date: 02.05.2022

Ms. Rakhi Halder
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Nawpara Ranaghat, Nadia,
West Bengal, India 741258
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Subj: Decision of the Anti-Doping Appeal Panel Case No.-15/ADAP/2022

NADA Vs. Ms. Rakhi Halder

The order containing the decision of the Anti-Doping Appeal Panel dated 29.04.2022 in respect of final hearing of the above case held on 20.04.2022 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. General Secretary, Indian Weightlifting Federation WZ-78, 1st Floor, Todapur Village, New Delhi 110012.
3. International Weightlifting Federation H-1146, Budapest, Istvanmezeiut, Hungary.
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.- 15/ADAP/2022

IN THE MATTER OF:

Ms. Rakhi Halder APPELLANT
(Sport – Weightlifting)

Vs

National Anti-Doping Agency RESPONDENT

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

Present: Ms. Daisy Roy and Mr. Parth Goswami, Advocates for the Athlete
Mr. Yasir Arafat Law Officer for NADA.

Date of Hearing: 20.04.2022

Date of Order: 29.04.2022

ORDER

1. The Appellant Ms. Rakhi Halder (Athlete) has filed an appeal against the order dated 16.12.2021 passed by the Anti-Doping Disciplinary Panel in Case No. 166.ADDP.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 out-of-competition at NIS, Patiala. 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:

“S1.1 Anabolic Androgenic Steroids (AAS)/TheGC/C/IRMS results are consistent with the exogenous origin of Androsterone

S1.1 Anabolic Androgenic Steroids (AAS)/TheGC/C/IRMS results are consistent with the exogenous origin of Testosterone and atleast one of the Adiol (5aAdiol and/or 5BAdiol)

S1.1 Anabolic Androgenic Steroids (AAS)/TheGC/C/IRMS results are consistent with the exogenous origin of Etiocholanone

S1.1 Anabolic Androgenic Steroids (AAS)/TheGC/C/IRMS results are consistent with the exogenous origin of 5aAdiol and/or 5BAdiol”

(ii) Consequently, NADA issued a notice of charge dated 05.03.2021 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 22.03.2021.

(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 is a senior athlete and experienced weightlifter who trains under the guidance of coaches of National Weightlifting Team and also avails services of medical staff of the National Weightlifting Team. The Appellant’s primary contention is that she was suffering from back injury in the months preceding her sample collection for which she consulted doctors, physiotherapists and masseuse. Thereafter, on advice of a fellow player namely Ms. Gurleen Kaur, the Appellant consumed ‘AndroGain’ which she believed was a plant-based healing supplement. It is submitted by the Appellant that after her sample tested positive, she came to know from one of her representative that the said plant-based supplement actually contained testosterone metabolites which are part of WADA’s prohibited list. It was asserted that the Appellant relied upon the terms “Natural Plant Based” which is imprinted on the label of said supplement. It was stated by the Appellant that in 10 years of her career she has undergone multiple doping tests but her sample never came positive as she took necessary care and caution while consuming supplements/medicine. The Appellant further stated that Ms. Gurleen Kaur refused to acknowledge that the said supplement contained any prohibited substance and even sent an authenticity report of the supplement. It was submitted that the Appellant had placed documents in form of whatsapp chats and voice clips before the disciplinary panel to substantiate that said supplement was provided to her on pretext of being a natural plant-based supplement.

4. Apart from the above stated arguments, it was asserted that the sample was taken out-of-competition and at the relevant time the Appellant did not have any upcoming competition to participate in, so there’s no question of cheating and performance enhancement. To substantiate the fact of back injury before the Ld. ADDP, Appellant had relied upon testimonies given by her coaches, medical staff and medical records. Lastly, it was submitted that the Appellant is innocent and it is out of sheer negligence and unawareness the prohibited system entered her system, thus she may be granted benefit in terms of Article 10.5 for ‘no significant fault or negligence’.

5. 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 credible 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.

6. In the present case, the perusal of Doping Control Form brings out the Appellant declared use of certain supplements at the time of testing but the supplement "Andro-Gain" is missing from the list of disclosed supplements. We have perused the label of the supplement and it nowhere mentions that it is a pain suppressor/healer rather it is clearly mentioned on the label that it is suitable for volume and strength training. Therefore, the argument raised by the Appellant that the supplement was taken for healing back injury is without merit. Our view is fortified with the fact that when the Appellant had been taking treatment of qualified doctors there was no occasion to seek opinion of non-medical person, that too from an athlete who does not even belong to her sport and if at all such advice was sought then it shows highly reckless and irresponsible conduct of the Appellant and the consequences of such act must follow. Upon consideration of the expertise and experience of Appellant, the argument raised by the Appellant regarding contaminated supplements is not found rational as it is the duty of the athlete to take due precautions and not consume any over-the-counter supplement until it is recommended by coaches or team doctors. The exercise conducted by the Appellant for finding out contaminated nature of supplement "Andro-Gain" through her representative, could have been very well carried out before consuming the said supplement. Therefore, it cannot be said that the Appellant exercised utmost caution before consuming the said supplement. The prohibited substance found in the sample of Appellant is prohibited at all times as such the question of sample being taken out-of-competition does not arise. Considering the overall facts and circumstances, the plea of unintentional ingestion taken by the Appellant is hereby rejected.

7. 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 10.2.1.1 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.

8. 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 04 years ineligibility imposed by the Anti-Doping

Disciplinary Panel vide its order dated 16.12.21 in Case No. 166.ADDP.2020 is upheld. 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