

BEFORE THE ANTI DOPING APPEAL PANEL
Conference Room, Pragati Vihar Hostel
Lodhi Road, New Delhi -110 003

Appeal No. ADAP/03/2011

IN THE MATTER OF

WADA

.....

APPELLANT

Vs

Sharadha Narayana

.....

RESPONDENT

CORAM:

JUSTICE C. K. MAHAJAN, CHAIRMAN
DR. K. D. TRIPATHI, MEMBER
MR. KHAJAN SINGH, MEMBER

Present:
Appellant

Mr. Khanna/Ms. Kiran, Advocate, NADA representing WADA,
Dr. Pradeep H. Gupta, Sr. Project Officer, NADA for respondent No.2
Ms. Sharadha Narayana the Respondent No. 1 in person alongwith Ms.
Sughandha Narayana

08.07.2011

ORDER

The Appeal Panel passed an order on 3/5/2011 holding that the parallel appeal before the National Anti Doping Appeal Panel was not maintainable. It was made clear that panel would proceed to the judgment provided WADA withdraws its appeal before CAS. We are informed by NADA that WADA has since withdrawn its appeal before CAS.

Arguments were heard at length on the last date of hearing as well as today. The present appeal is directed against the order of the Disciplinary panel dated 17/01/2011 holding that the respondent No. 1(athlete)

“In the considered opinion of the hearing panel the athlete has been able to establish that she was suffering from a medical ailment and for the treatment of which she has approached the established medical clinics. She has taken the medicines prescribed by them and it is only on that account that the banned steroid entered the body of the athlete. The athlete as lay person has reposed faith in the medical fraternity and had no reason to believe that any of the medicines prescribed to her could lead to any violation of the anti doping regulations. The athlete was well within her rights to rely upon the medical prescriptions and take the medicines prescribed and had no reason whatsoever to doubt the authenticity of the same.

Under section 10.5.1 of the “Anti Doping Rules 2010”, the athlete has made out a case for grant of benefit of the no fault no negligence provisions under the regulations which provide that the period of ineligibility shall be eliminated. In view of the same the benefit of the said provisions is granted to the athlete and despite the presence of the banned steroid in the body specimens of the athlete, for which due reasons and explanations has been given by the athlete.

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In this view of the matter the period of ineligibility is eliminated w. e. f. the date of passing of the order i.e. 17.01.2011.”

The respondent No. 1 is an athlete at the National level. Sample urine was collected on 16/5/2010 during In-competition (50th Open National Athletics Championship 2010) and she secured the Gold medal in 100 mt. The sample A was tested on 04/06/2010, the analytical finding reported that the presence of metabolites of stanozolol (3-OH stanazolol and 16 β -OH stanazolol) Anabolic steroid. The B sample was tested on 19/08/2010 with the same finding as of sample A. The athlete/respondent admitted having taken treatment for knee joint injury. There was thus a violation of the Anti Doping Rules (Article 2.1/WADA Code). Medical prescriptions and Laboratory reports were placed on record.

The matter was placed before the Disciplinary Panel. The respondent was given an opportunity to present her case. The disciplinary panel was of the view that ground for elimination or reduction on the period of ineligibility was established.

WADA has assailed the impugned order before the appeal panel.

Stanozolol is an anabolic agent as on WADA prohibited list. The same is prohibited in Competition as well as out of competition. Stanozolol is not a specified substance. The analyzed sample shows the presence of stanozolol and its metabolites, thus establishing administration of exogenous steroids. It was imperative for the respondent to have obtained TUE and having failed to do so, the respondent violated the Anti Doping Rules. It is contended on behalf of WADA that the respondent did not apply for therapeutic use exemption (TUE) in order to entitle her to take the prohibited drug. She also did not disclose the fact of medical treatment in respect of knee injury in the Dope Control form. Therefore, the order of the disciplinary Panel is liable to be set aside and the respondent is liable to incur the period of ineligibility.

The respondent has opposed the appeal on various grounds. It was contended that she had under medical supervision taken treatment for knee joint injury. She further contended that the doctor who was treating her failed to inform her of the presence of banned/prohibited substance being administered to

her. She was thus not aware that a prohibited substance was being administered to her. There is no fault or negligence on her part. She was undergoing treatment for knee injury and not aware of nature of the medicine and its implications in relation to Anti Doping Rule violation. Detailed documentation is placed on record, which we have considered.

We have heard the parties at length.

After giving due consideration to the submissions made before us and the documents/materials placed before us, we conclude that the order passed by Disciplinary panel is liable to be set aside, as the violation of Anti Doping Rules is established. The disciplinary panel concluded that the respondent had successfully made out a case for grant of benefit of the no fault or negligence provisions under the regulations which provide that the period of ineligibility shall be eliminated.

In order to eliminate or reduce the period of ineligibility the respondent has to establish that she bears no fault or negligence for the violation of the Anti Doping Rules and if she is successful then the period of ineligibility shall be eliminated. We are unable to uphold this finding. The question that needs to be answered that whether the respondent bore no fault or negligence. The respondent admits during hearing that she took substances that caused adverse analytical finding in the test. Therefore we can safely conclude that the respondent would have discussed treatment therapy with her doctor and its effects in relation to the Anti Doping Rule violation. A sanction cannot be completely eliminated on the basis of no fault or negligence even when the administration of the prohibited substance has been done by the athlete's, physician/doctor without disclosure to the athlete. In order to benefit from an elimination of the period of ineligibility for no fault or negligence, the athlete must establish that she did not know or suspect and could not reasonably have known or suspected, even with the exercise of the utmost caution, that she had used or been administered the prohibited substance.

In the present case the respondent no 1 has failed to establish that she took any precaution or made any inquiry to assess whether the medical treatment she was following was free from prohibited substances. It is true that the medical treatment was prescribed by the respondent's doctor. However, the respondent cannot hide behind her doctor's ignorance of the Anti Doping rules in order to escape from sanctions due to Anti Doping Rule violation. The medical treatment prescribed by the doctor does not dispense the athlete to control if the medicine she is prescribed contains prohibited substance. The respondent has not established that she exercised utmost caution and therefore

that she bore no fault or negligence. The respondent has also not shown any truly exceptional circumstance to warrant reduction of the otherwise applicable the period of ineligibility. It is the duty of the athlete to ascertain that the drug she was prescribed for a long period of time does not contain any prohibited substance. If the athlete fails to exercise this caution she should not get the benefit of no fault or negligence/no significant fault or negligence. In the present case the respondent had to be active to ensure that the medications she was using did not contain any compound that is on the prohibited list. It is the professional duty of the athlete to consult the rules and to be well aware of the duties and the athlete has to fulfill, amongst others to ensure that no prohibited substance enters in her body. In the present case the athlete concedes that she did not do anything to ensure that the medications/treatment she was taking did not contain any forbidden substance.

In the light of the reasons aforesaid the Appeal Panel concludes that the disciplinary panel erred in giving benefit of the no fault or negligence. Taking in to due considerations all the essential elements of this case and all the materials placed before the panel, we consider it proper to impose a two year period of suspension in this case.

We are further of the view that since the respondent was not provisionally suspended by the concerned national sports federation, she voluntarily refrained from participating in any sporting event after she was informed of the Anti Doping Rule violation by the letter dated 07/06/2010. It is mandatory for the NADA and the Athletics federation to have verbally informed the athlete in the first instance of the Anti Doping Rule violation followed by the notice in writing as soon as possible. This was not done by NADA as well as by the concerned sports federation. On her own wisdom the respondent no 1 choose not to participate in any sporting event after receiving the letter dated 07/06/2010. We are informed that in early 2010, NADA was not clear about imposing provisional suspension and issuing of notices to the athlete by the National Sports Federations. Furthermore there was considerable delay in the disposal of the case by the Disciplinary Authority. In this circumstance the respondent no 1 is entitled to receive the credit for such period that she did not participate in any sporting event and the penalty imposed on her shall operate from the date of sample collection i.e. from 16/05/2010.

Before parting with this appeal we observe that there is a lack of dissemination of Anti Doping Rules and procedures amongst the athletes and sportspersons more so when some of the athletes are not trained by SAI and sporting federations. They are thus ignorant of their duties and obligations and

the care and caution that is to be taken while undergoing treatment and ingestion of substances which are prohibited by WADA. Respondent no 1 falls in this category and was trained by a private coach. There is no doubt that it is the athlete's personal duty to ensure that no prohibited substance should enter in his/her body and the athlete is responsible for the presence of any prohibited substance or metabolites or markers found in his/her bodily specimen. The panel is of the opinion that suitable guidelines must be widely disseminated so as to guide and educate the sportspersons of the Do's and Don't in the field of sports to ensure a dope free sport.

The appeal is accordingly allowed to the extent aforesaid, and the order of the disciplinary panel is set aside.

Parties are to bear their own costs.

Sd/-

(Justice C. K. Mahajan) Chairman

(Dr. K. D. Tripathi), Member

(Mr. Khajan Singh), Member